

BUYERS AGENT RULES OF CONDUCT - NSW

Rules 1 - 11

1. Knowledge of Act and Regulations

An agent must have a knowledge and understanding of the Act and the regulations under the Act and other relevant laws, (including laws relating to tenancy, fair trading, trade practices, anti-discrimination and privacy) as may be necessary to enable the agent to exercise his or her functions as agent lawfully.

2. Fiduciary obligations

An agent must comply with the fiduciary obligations arising as an agent.

3. Honesty, fairness and professionalism

An agent must act honestly, fairly and professionally with all parties in a transaction.

An agent must not mislead or deceive any parties in negotiations or a transaction.

4. Skill, care and diligence

An agent must exercise reasonable skill, care and diligence.

5. High pressure tactics, harassment or unconscionable conduct

An agent must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.

6. To act in client's best interests

An agent must act in the client's best interest at all times unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

7. Confidentiality

An agent must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer, unless:

- (a) the client or customer authorises disclosure, or**
- (b) the agent is permitted or compelled by law to disclose.**

8. To act in accordance with client authority

An agent must not act as an agent or represent himself or herself as acting as an agent on behalf of a person without written authority.

9. To act in accordance with client's instructions

An agent must act in accordance with a client's instructions unless it would be contrary to this Act or regulations under the Act, or otherwise unlawful to do so.

10. Licensee must ensure employees comply with the Act and regulations

An agent who is the licensee-in-charge at a place of business must take reasonable steps to ensure other licensees or registered persons employed in the business conducted there comply with the Act and regulations under the Act.

11. Conflicts of interest

An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests.

RULES 12 - 17

12. Referral to service provider

An agent who refers a principal or prospect to a service provider must not falsely represent to the principal or prospect that the service provider is independent of the agent.

A service provider is considered to be 'independent' of an agent if:

- (a) the agent receives no rebate, discount, commission or benefit for referring a client or customer to the service provider, and**
- (b) the agent does not have a personal or commercial relationship with the service provider.**

The following are examples of a personal or commercial relationship:

- (a) a family relationship,**
- (b) a business relationship,**
- (c) a fiduciary relationship,**
- (d) a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.**

If the service provider is not independent of the agent, the agent must disclose to the principal or prospect:

- (a) the nature of any relationship, whether personal or commercial, the agent has with the service provider, and**
- (b) the nature and value of any rebate, discount, commission or benefit the agent may receive, or expects to receive, by referring the client or customer to the service provider.**

13. Licensee not to recommend engagement of services of solicitor or licensed conveyancer acting for other party

An agent must not recommend that a principal or prospect engage the services of a solicitor or licensed conveyancer, or firm of solicitors or licensed conveyancers, if the agent knows that the solicitor or licensed conveyancer, or the firm of solicitors or licensed conveyancers, acts or will be acting for the other party to the agreement concerned.

Sub-clause (1) does not prevent an agent recommending that a principal or prospect engage the services of a solicitor or licensed conveyancer if no other solicitor or licensed conveyancer is available (for example, in a remote location).

If no other solicitor or licensed conveyancer is available, the agent must, in recommending their engagement, advise the principal or prospect that the solicitor or licensed conveyancer is or will be acting for the other party.

14. Inducements

An agent must not offer to provide to any other person any gift, favour or benefit, whether monetary or otherwise, in order to induce any other person to engage the services of the agent as agent in respect of any matter.

15. Soliciting through false or misleading advertisements or communications

An agent must not solicit clients or customers through advertisements or other communications that the agent knows or should know are false or misleading.

16. Insertion of material particulars in documents

An agent must not submit or tender to any person for signature a document, or cause or permit any document to be submitted or tendered to any person for signature, unless at the time of submission or tendering of the document all material particulars have been inserted in the document.

17. Duty to provide copy of signed documents

An agent who submits or tenders a document to any person for signature, or who causes or permits a document to be submitted or tendered to any person for signature, must immediately after the person has signed the document give a copy of the document to the person.

RULES 18 - 25

18. Representations about the Act or regulations

An agent must not falsely represent to a person the nature or effect of a provision of the Act or any regulation under the Act.

An agent must not, either expressly or impliedly, falsely represent, whether in writing or otherwise, to a person that a particular form of agency agreement or any term of such an agreement is required by the Act or a regulation under the Act.

19. Agency agreements must comply with regulations

An agent must not enter into an agency agreement unless the agreement complies with any applicable requirements of the Property, Stock and Business Agents Regulation 2003, as required by section 55 of the Act.

20. Statement of property details

At the time of entering into an agency agreement with a principal to act as buyers agent for the principal, an agent must prepare and give to the principal a statement of property details that is signed by the agent and specifies the following:

- (a) details known to the agent of the type of property to be purchased,**
- (b) details of any special instructions about the property to be purchased (for example, an instruction that vacant possession is required in the case of rented property).**

Note. These details can be changed by agreement between the parties or as provided by the agency agreement.

21. Principal to be informed of negotiations

The agent must keep the principal informed of each stage of the negotiation of a purchase price, as instructed by the principal. This rule does not apply to bids made in the course of an auction.

22. Licensee to obtain best possible purchase price

An agent is to use his or her best efforts to obtain the best possible purchase price, without breaching standards of ethical conduct or engaging in conduct that is contrary to good agency practice.

23. Licensee not to exceed agreed purchase price in negotiations or at auction

In negotiations for the purchase of a property, the agent must not exceed the maximum or agreed price fixed by the principal without the express written authorisation of the principal or a person authorised by the principal.

When the bidding at an auction exceeds the maximum or agreed price fixed by the principal, the licensee must not continue bidding without the express authorisation of the principal or a person authorised by the principal.

24. Information to be given when expression of interest deposit paid

When the principal pays an expression of interest deposit in respect

of the proposed purchase of a property prior to exchange of contracts, the agent must inform the principal that the vendor has no obligation to sell the property or the purchaser to buy the property or the purchaser to buy the property and the deposit is refundable if a contract for the sale of the property is not entered into. The information must be provided in writing and may be provided on the receipt issued by the vendor or their agent.

An agent must promptly inform the principal when the agent becomes aware of any subsequent offers to purchase the property.

25. Licensee must not accept payment for a referral

A licensee must not demand or accept a fee or other valuable consideration for referring the principal to a selling agent.