

Land Valuers Licensing Act 1978

Licensed Valuers Code of Conduct 2016

Laid down by the Commissioner with the approval of the Minister.

Part 1 — Preliminary

1. Citation

This code is the *Licensed Valuers Code of Conduct 2016*.

2. Commencement

This code comes into operation as follows —

- (a) rules 1 and 2 — on the day on which this code is published in the *Gazette*;
- (b) the rest of the code — on the day after that day.

3. Terms used

- (1) In this code —

Act means the *Land Valuers Licensing Act 1978*;

as if complete valuation means a valuation of a proposed development that assumes the proposed development to be in a completed state as at the date of the valuation and reflects current market conditions at that date;

as is valuation means a valuation that provides the current value of the land as it currently exists rather than an “as if complete valuation” of any proposed development;

client, in relation to a licensed valuer, includes, where the context permits, a prospective client;

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proposed development means any planned development or redevelopment of land, including building improvements or modifications, that are proposed, approved or under construction on the land with the exception of land for which the value of the work on the land when completed will be \$200 000 or less;

regulations means the *Land Valuers Licensing Regulations 1979*;

reward means any valuable consideration in money or moneys worth paid or received —

- (a) whether payable in cash or kind; and
- (b) whether paid or received directly or indirectly; and
- (c) whether paid or received separately or as a component of a composite price or fee paid or received in respect of any service;

valuation work means any work performed by a licensed valuer connected with the valuation of land.

- (2) A term has the same meaning in this code as it has in the Act unless the contrary intention appears in this code.

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General duties **Part 2**

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Part 2 — General duties

4. Knowledge of relevant law

A licensed valuer must have a complete knowledge of and comply with —

- (a) the Act, the regulations and this code; and
- (b) the duties and obligations imposed on a licensed valuer by the Act, the regulations and this code.

5. Application of code

A licensed valuer must where instructions are accepted to perform valuation work for a client, for either a single task or multiple tasks, perform the valuation work in accordance with the requirements of this code regardless of the costs to be charged by the licensed valuer.

6. Acting in best interests of client

When performing valuation work for a client a licensed valuer must act in good faith in the best interests of the client.

7. Duty of care, diligence and skill

- (1) A licensed valuer must perform valuation work for a client with due care, diligence and skill.
- (2) A licensed valuer must perform valuation work for a client in accordance with the Australian valuation industry's accepted principles and practices of valuation.

8. Duty of honesty

When performing valuation work for a client a licensed valuer must be honest in all dealings with the client, other licensed valuers and other persons.

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9. Confidential information

- (1) A licensed valuer must treat as confidential information obtained while performing valuation work for a client that has not been made public and that —
 - (a) is by its nature confidential; or
 - (b) was specified as confidential by the person who supplied it; or
 - (c) is known by the licensed valuer to be confidential.
- (2) A licensed valuer must also treat as confidential a valuation prepared for a client that has not been made public.
- (3) Any information or valuation to be treated as confidential under subrule (1) or (2), must not, directly or indirectly, be disclosed by a licensed valuer to another person, unless —
 - (a) the disclosure of the information or valuation is required by law; or
 - (b) the client is fully informed of the proposed disclosure and agrees to it in writing.

10. Use of information

A licensed valuer must not use information obtained while performing valuation work for a client to benefit —

- (a) the licensed valuer; or
- (b) any person other than the client.

11. Client's instructions

A licensed valuer must perform valuation work for a client —

- (a) within a reasonable time after receiving the client's instructions; and
- (b) in accordance with the client's reasonable instructions.

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General duties

Part 2

r. 12**12. Misleading or deceptive conduct**

When performing valuation work for a client a licensed valuer must not engage in conduct that is misleading or deceptive or is likely to mislead or deceive within the meaning of the *Australian Consumer Law (WA)* Part 2-1.

13. Competency

- (1) A licensed valuer must not perform valuation work for a client beyond the licensed valuer's competency.
- (2) If a licensed valuer becomes aware of any circumstance or matter that places the performance of valuation work beyond the licensed valuer's competency the licensed valuer must not continue to perform the valuation work.
- (3) Subrules (1) and (2) do not prevent a licensed valuer from performing, or continuing to perform, valuation work beyond the licensed valuer's competency if, with the prior written consent of the client, the licensed valuer engages another licensed valuer with the necessary competency to assist in performing the valuation work.

Licensed Valuers Code of Conduct 2016**Part 3** Employees**r. 14**

Part 3 — Employees**14. Supervision and control of employees**

- (1) In this rule —
assistant, to a licensed valuer, means a person who is employed as an assistant to the licensed valuer.
- (2) A licensed valuer who carries on a business as a valuer of land must take all reasonable steps to ensure that every person employed in or engaged by the business whether paid or unpaid complies with —
 - (a) the provisions of the Act, the regulations and this code as are applicable to the person; and
 - (b) any other law applicable to the business and the person.
- (3) A licensed valuer who carries on a business as a valuer of land is responsible for the supervision and control of the work of every person employed in or engaged by the business whether paid or unpaid.
- (4) A licensed valuer must properly supervise and control any work performed, on behalf of the licensed valuer, by an assistant to the licensed valuer.
- (5) If an assistant to a licensed valuer prepares a valuation report on behalf of the licensed valuer, the licensed valuer must sign or co-sign the valuation report as the primary signatory and must —
 - (a) form an independent opinion regarding the valuation in accordance with the Australian valuation industry's accepted principles and practices of valuation; and
 - (b) co-inspect the land.
- (6) Subrule (5)(b) does not apply to a licensed valuer if the valuation report is prepared —
 - (a) for a residential property; and

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Employees

Part 3

r. 14

- (b) by a person who —
 - (i) is an assistant to the licensed valuer; and
 - (ii) is a provisional member of the Australian Property Institute; and
 - (iii) holds a designation as a residential property valuer from the Australian Property Institute;and
- (c) in accordance with the designation.

Licensed Valuers Code of Conduct 2016**Part 4** Conflict of interest**r. 15.**

Part 4 — Conflict of interest**15. Terms used**

In this Part —

another client, of a licensed valuer —

- (a) means a client of the licensed valuer and if the licensed valuer carries on or is employed in or engaged by, a business, a client of any other partner, member, officer or employee of the business; and
- (b) does not include a prospective client;

conflict includes a potential conflict;

interest, of a client, means an interest relating to land the subject of the valuation work performed or proposed to be performed for the client;

litigious matter means a matter that involves, or is likely to involve, proceedings in a court or tribunal.

16. Conflicts between interests of clients

- (1) A licensed valuer must not agree to perform valuation work for a client if the licensed valuer is aware, or could reasonably be expected to be aware, of a conflict between an interest of the client and an interest of another client of the licensed valuer.
- (2) Subrule (1) does not apply if, before the licensed valuer agrees to perform the valuation work for the client —
 - (a) the licensed valuer fully informs the clients described in subrule (1) in writing of the conflict; and
 - (b) those clients agree in writing to the licensed valuer performing the valuation work.
- (3) If a licensed valuer becomes aware, or could reasonably be expected to have become aware, of a conflict between an interest of a client and an interest of another client of the licensed valuer after the licensed valuer has agreed to perform

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Conflict of interest

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valuation work for those clients, the licensed valuer must not continue to perform valuation work for those clients.

- (4) Subrule (3) does not apply if —
 - (a) the licensed valuer fully informs the clients described in subrule (3) in writing of the conflict; and
 - (b) those clients agree in writing to the licensed valuer continuing to perform the valuation work for those clients.
- (5) A licensed valuer who carries on or is employed in or engaged by, a business must not agree, or continue, to perform valuation work for a client in relation to a litigious matter if another partner, member, officer or employee of the business is acting as an expert witness in the litigious matter.

17. Conflicts between interests of licensed valuer and client

A licensed valuer must not agree, or continue, to perform valuation work for a client if a conflict exists between an interest of the licensed valuer and an interest of the client, unless —

- (a) the licensed valuer fully informs the client in writing of the conflict; and
- (b) the client agrees in writing to the licensed valuer performing, or continuing to perform, the valuation work.

18. Impartiality and independence

- (1) When performing valuation work for a client a licensed valuer must act with impartiality and independence.
- (2) Without limiting the generality of subrule (1) —
 - (a) a licensed valuer must not be influenced by a client, or any other person with an interest in the valuation work, when determining the content or methodology of a valuation; and

Licensed Valuers Code of Conduct 2016**Part 4** Conflict of interest**r. 18**

- (b) a licensed valuer must act with impartiality and independence when acting as an expert witness in a litigious matter.
- (3) A licensed valuer must not perform valuation work for a client that is contingent on the licensed valuer obtaining a predetermined result or finding.

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Appointment of licensed valuer and payment of fees

Part 5**r. 19****Part 5 — Appointment of licensed valuer and payment of fees****19. Costs disclosure**

- (1) Before performing any valuation work for a client a licensed valuer must make a costs disclosure to the client.
- (2) The costs disclosure must —
 - (a) be given to the client in writing; and
 - (b) disclose the maximum amount that the client will be charged by the licensed valuer to provide the services that the licensed valuer has agreed to provide to the client.
- (3) The maximum amount disclosed in the costs disclosure must include all fees, charges and disbursements to be charged by the licensed valuer to provide the services that the licensed valuer has agreed to provide to the client.

20. Reward not to exceed costs disclosure unless unforeseen significant change occurs

- (1) A licensed valuer is not entitled to receive a reward for a service that exceeds the amount disclosed to the client for that service in the costs disclosure given to the client unless subrule (2) applies.
- (2) A licensed valuer may only receive a reward for a service that exceeds the amount disclosed to the client in the costs disclosure if —
 - (a) there is an unforeseen significant change in the scope of the work required to provide the service; and
 - (b) the licensed valuer informs the client in writing of that change; and
 - (c) the client agrees to the licensed valuer continuing to provide the service; and

Licensed Valuers Code of Conduct 2016**Part 5** Appointment of licensed valuer and payment of fees**r. 21**

- (d) the reward that exceeds the amount disclosed is reasonable having regard to that change.

21. Fees for referrals

- (1) If a licensed valuer reasonably believes that the licensed valuer, or a person nominated by the licensed valuer, will receive a fee or any other benefit as a result of the licensed valuer referring a client to a person who provides another service, then the licensed valuer must disclose in writing to the client the fee or benefit to be received at the time the referral is made.
- (2) If a licensed valuer, or a person nominated by the licensed valuer, pays a fee or gives any other benefit to a person who provides another service in exchange for that person referring a client to the licensed valuer, then the licensed valuer must disclose in writing to the client the fee or benefit to be given at the time the referral is made.

22. Written authority

A licensed valuer must obtain, or confirm, in writing all instructions received from a client or a client's representative —

- (a) before the licensed valuer begins any valuation work for the client; and
- (b) as soon as practicable after the licensed valuer agrees to perform the valuation work.

Licensed Valuers Code of Conduct 2016
Specific duties of licensed valuer **Part 6**

r. 23

Part 6 — Specific duties of licensed valuer

23. Risk management

A licensed valuer must maintain a risk management programme that includes the following —

- (a) appropriate professional indemnity insurance;
- (b) documented compliance procedures including an internal disputes resolution process;
- (c) training systems for any employee;
- (d) participation in continuing professional development.

24. Retaining documents and information

A licensed valuer must take all reasonable steps to ensure that the following are retained for at least 6 years from the date a valuation report is issued to a client —

- (a) a copy of the valuation report;
- (b) all instructions received from the client or the client's representative relating to the valuation report;
- (c) all other records and information on which the valuation report was based.

25. Inspection of land and contents of report

- (1) A licensed valuer performing valuation work for a client must ensure that the land to be valued is inspected in accordance with the Australian valuation industry's accepted principles and practices of valuation.
- (2) Subrule (1) does not apply if —
 - (a) the client agrees in writing that the land will not be inspected or will be only partially inspected; and
 - (b) the licensed valuer discloses in the valuation report that the land has not been inspected or was only partially inspected; and

Licensed Valuers Code of Conduct 2016**Part 6** Specific duties of licensed valuer**r. 25**

- (c) the licensed valuer discloses in the valuation report the effect that the failure to conduct an inspection or a complete inspection has on the valuation provided.
- (3) A licensed valuer must include the following in a valuation report for a client —
- (a) in the case of a mortgage valuation, other than a valuation of a single dwelling residential property for residential use, as a covering page, a valuation executive summary in the form of Schedule 1;
 - (b) the date of any inspection made of the land;
 - (c) the kind of interest in land that is valued (for example, freehold or leasehold);
 - (d) the valuation date;
 - (e) the date that the report was issued;
 - (f) the licensed valuer's signature and licence number;
 - (g) a statement, under the heading of "Assumptions, Conditions and Limitations", of all assumptions made in arriving at an opinion of value and all conditions, requirements or limitations arising from the client's instructions or for any other reason;
 - (h) where the licensed valuer has an interest of any kind, whether direct or indirect, in land valued or a development proposed for that land, a statement describing the nature and extent of the interest in the land or development;
 - (i) particulars of any conflict, or potential conflict, of interest that the licensed valuer has informed a client of under rule 16(2)(a) or (4)(a) or 17(a).
- (4) A licensed valuer must attach as an annexure to a valuation report issued to a client all instructions received from the client or the client's representative and any written agreement under rule 16(2)(b) or (4)(b) or 17(b).

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Specific duties of licensed valuer **Part 6**

r. 26

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- (5) If a valuation is of a proposed development, a licensed valuer must include —
- (a) in the valuation report the definitions of *as if complete valuation* and *as is valuation* as set out in rule 3(1); and
 - (b) an as is valuation immediately following the as if complete valuation in —
 - (i) the valuation report; and
 - (ii) any certificate of valuation or other valuation summary in the report or attached to it.

26. Valuation methodology

- (1) A licensed valuer must take all reasonable steps to gather sufficient relevant data in forming an opinion of value or, in the absence or deficiency of the data, explain in the valuation report the basis for forming the opinion of value.
- (2) A licensed valuer must ascertain and verify all relevant facts and information that a prudent licensed valuer would ascertain or verify in order to provide a professional valuation of land for a client.
- (3) Where the facts or information referred to in subrule (2) have not been ascertained or verified, a licensed valuer must make written disclosure of this to a client in the valuation report issued to the client together with a statement of the extent, if any, to which the failure to ascertain or verify the facts or information in question qualifies or affects the valuation provided.
- (4) A licensed valuer must not produce a valuation that purports to predict a future value or future values.

Licensed Valuers Code of Conduct 2016**Part 6** Specific duties of licensed valuer**r. 26**

- (5) Subrule (4) does not prevent a licensed valuer from —
- (a) forecasting income or outgoings using economic price prediction modelling, including discounted cash flows, to determine a present value; or
 - (b) making properly qualified forecasts.

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Repeal and transitional **Part 7**

r. 27

Part 7 — Repeal and transitional

27. Repeal of 2016 Code

The *Licensed Valuers Code of Conduct* published in the *Gazette* on 2 February 2016 at p. 321-4 is repealed.

28. Transitional

- (1) In this rule —
transitional period means the period of 2 months beginning on the day on which the *Licensed Valuers Code of Conduct 2016* (other than rules 1 and 2) comes into operation.
- (2) For the purpose of section 28(2)(c) of the Act, a licensed valuer to whom this rule applies is taken not to have acted in breach of this code.
- (3) This rule applies to a licensed valuer who during the transitional period —
 - (a) fails to comply with a provision of this code; but
 - (b) complies with the provisions of the *Licensed Valuers Code of Conduct* published in the *Gazette* on 2 February 2016 at p. 321-4.

Licensed Valuers Code of Conduct 2016**Schedule 1** Executive Summary

Schedule 1 — Executive Summary

[r. 25(3)]

EXECUTIVE SUMMARY

MORTGAGE VALUATION

LAND ADDRESS:

CERTIFICATE OF TITLE:

REGISTERED OWNERS:

ENCUMBRANCES: (Limited to those that affect the use or value of the relevant land.)

LAST SALE: (Report any transaction(s) within the last 3 years including date of sale, consideration and other relevant details. Facts relating to a current contract for sale of the relevant land must also be included.)

ZONING:

DESCRIPTION OF THE LAND "AS IS":

DESCRIPTION OF PROPOSED DEVELOPMENTS:

COMMENTS:

INTEREST VALUED:

VALUATION DATE:

AS IS VALUATION:

AS IF COMPLETE VALUATION:

VALUER: (name, signature, valuer's licence number and date)

Licensed Valuers Code of Conduct 2016
Executive Summary **Schedule 1**

IMPORTANT:

All data provided in this summary is wholly reliant on, and must be read in conjunction, with the information provided in the attached report. This summary is a synopsis only, designed to provide a brief overview and must not be acted on in isolation.

D. HILLYARD, A/Commissioner.

M. MISCHIN, Minister for Commerce.

Licensed Valuers Code of Conduct 2016**Defined terms**

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Act.....	3(1)
another client.....	15
as if complete valuation	3(1)
as is valuation.....	3(1)
assistant.....	14(1)
client	3(1)
conflict	15
interest.....	15
litigious matter	15
proposed development	3(1)
regulations.....	3(1)
reward	3(1)
transitional period	28(1)
valuation work	3(1)