

FT302*

Settlement Agents Act 1981

**Settlement Agents' Code of Conduct
Amendment Rules 2000**

Made by the Settlement Agents' Supervisory Board with the approval of the Minister.

1. Citation

These rules may be cited as the *Settlement Agents' Code of Conduct Amendment Rules 2000*.

2. Commencement

These rules come into operation on the day that is 3 months after the day on which they are published in the *Government Gazette*.

3. The rules amended

The amendments in these rules are to the *Settlement Agents' Code of Conduct 1982**.

[* *Published in Gazette 15 October 1982, pp. 4064-6.*

For amendments to 16 December 1999 see 1998 Index to Legislation of Western Australia, Table 4, p. 277.]

4. Rule 6A inserted

After rule 6 the following rule is inserted —

“

6A. Appointment to act

- (1) An appointment to act as a settlement agent required under section 43 of the Act (whether contained in a separate appointment document or in an offer to purchase or a contract for sale) is to be in the form of, or contain the information set forth in, Form 1 in the Schedule.
- (2) As soon as practicable after receipt of the appointment referred to in subrule (1) the appointed settlement agent shall either —
 - (a) if he or she is unable to accept the appointment, notify the vendor or purchaser, as the case requires, of that inability to act; or
 - (b) if he or she is able to act, sign the appointment and forward a true copy of the appointment document to his or her client.

”

5. Rule 8 amended

(1) Rule 8(1) is amended as follows:

- (a) by deleting “then, before the appointment required under section 43 of the Act is effected,” and inserting instead —

“

then, before the appointment to act as a settlement agent required under section 43 of the Act is signed,

”;

- (b) by deleting “to that person a notice in writing in the form of Form 1 in the Schedule to these rules.” and inserting instead —

“

or cause to be given to that person a notice in writing in the form of Form 2 in the Schedule (“**disclosure notice**”).

”.

(2) Rule 8 is amended by inserting after subrule (1) the following subrules —

“

(1a) Where —

- (a) a licensee has been appointed by a signed appointment under section 43 of the Act to act on behalf of a person (“**the client**”) in a transaction which has been negotiated by a person referred to in subrule (1)(a) or (b); and
- (b) the licensee is not the person who obtained the signature of the client referred to in paragraph (a) to the document in which the appointment is contained,

the licensee shall, before acting on behalf of the client in the transaction, ensure that the disclosure notice was given in accordance with subrule (1) before the appointment was signed by the client.

(1b) Where a person proposes to appoint a licensee to act on his or her behalf in a transaction in relation to which the finance has been provided or is proposed to be provided by a financial institution —

- (a) which is the same legal entity as the licensee;
- (b) in which the licensee has an interest, whether as a partner, director, substantial shareholder, unitholder or beneficiary of a trust; or
- (c) which has an interest, whether as a partner, director, substantial shareholder, unitholder or beneficiary of a trust, in the licensee,

then, before the appointment to act as a settlement agent required under section 43 of the Act is signed by

that person, the licensee shall give or cause to be given to the person a notice in writing in the form of Form 2 in the Schedule.

- (1c) A licensee shall retain a copy of the disclosure notice for 6 years after the date of acknowledgement of receipt of the notice by the vendor or purchaser, as the case requires.

”.

- (3) Rule 8 is amended by inserting after subrule (2) the following subrule —

“

- (3) In this rule —

“substantial shareholder” means a person who has a substantial shareholding within the meaning in Part 6.7 of the Corporations Law, in a body corporate as if the prescribed percentage for the purposes of that Part were 20%.

”.

6. Schedule amended

The Schedule is amended by deleting Form 1 and inserting the following forms instead —

“

Form 1

[r. 6A]

Appointment of Settlement Agent [Please read this document before appointing a settlement agent to act for you.]
<p><u>Your rights</u></p> <p>You have the right to appoint a settlement agent (or a solicitor) of your choice to act on your behalf and to change that appointment at any time before the settlement date.</p> <p>Should you wish to change your settlement agent prior to the settlement date, your first appointed settlement agent must accept your decision and is obliged to assist you with this change.</p> <p>A settlement agent may act for both the vendor and the purchaser where —</p> <ul style="list-style-type: none"> • both parties acknowledge in writing that they are aware the settlement agent proposes to do this; • both parties give prior consent to the settlement agent so acting; and • the settlement agent is able to provide all information and advice to both parties. <p>If a conflict of interest arises your settlement agent must not continue to act for you, and you should then appoint an unrelated settlement agent (or a solicitor) to represent you.</p> <p>There is a maximum scale of fees. You may negotiate a fee lower than the prescribed maximum before making an appointment of a settlement agent.</p>

Please be aware that if you change your settlement agent, your first appointed settlement agent may in some circumstances be entitled to a portion of the fees based on the work the settlement agent has undertaken on your behalf. However, the fees payable to the later settlement agent (or solicitor) should be reduced on account of reduced work being required.

Disclosure of interest

Where a settlement agent has a business or financial relationship with a real estate agent, real estate sales representative, developer or financial institution the settlement agent is required to inform a prospective client of that relationship because a conflict of interest may arise during the course of the settlement. When a settlement agent is so required to give this information it is to be contained in a Disclosure of Interest form.

A Disclosure of Interest Form in the prescribed form:

- (1)* Is not required
- (2)* Has been given to you

Appointment

Property/Business:

Vendor(s):

Purchaser(s):

To:

[Name and address of settlement agent]

I/We* being the vendor(s)/purchaser(s)* named above appoint you to represent me/us* in the settlement of the property referred to above and:

- (1) I/We* agree to pay the maximum prescribed fee or a lesser fee negotiated with you and all disbursements incurred by you.
- (2)* You may also act for each other party to the transaction if you advise me immediately should any conflict of interest arise between the parties.
OR
- (3)* You may not act for any other party to the transaction.

Acknowledgment of receipt of appointment form

I/We* hereby acknowledge and confirm that a true copy of this document was received.

Dated the day of (year)

Signature of

vendor(s)/

purchaser(s)*:

Acceptance of appointment

I accept the appointment to act as your settlement agent on the terms set out in this appointment.

Dated the day of (year)

Signature of

Settlement Agent:

* Please delete where not applicable



Form 2

[r. 8]

Disclosure of Interest [Please read this document before appointing a settlement agent to act for you.]
Name of proposed settlement agent:
Name of associated body or person:
Role of associated body or person: (e.g. Real estate agent, real estate sales representative, developer, financial institution.)
Property:
Vendor(s):
Purchaser(s):
Take notice that there is a business or financial relationship between the proposed settlement agent and the associated body or person named. As a result the associated body or person may receive a financial benefit (by way of commission, interest, additional business etc.) if settlement of this transaction is effected. Because the associated body or person will generally only receive financial benefit if settlement of the transaction is effected, it is possible that the proposed settlement agent may be faced with a conflict of interest if, for instance, you choose to terminate the transaction before settlement or to seek advice about your right to do so.
<u>Your settlement agent's responsibility to you</u> The relationship between your settlement agent and you, as a client, must be one of utmost good faith. Your settlement agent must not put his/her duty to you in conflict, or likelihood of conflict, with his/her own interests or the interests of any other person or organization.
<u>What is a conflict of interest?</u> In general a conflict of interest may arise in 3 ways: 1. When a settlement agent has a business or financial association with a person or body (e.g. a real estate agent, real estate sales representative, developer or financial institution) and therefore more than his or her interest as a settlement agent in the settlement being effected. 2. When a person or body (e.g. a real estate agent, real estate sales representative, developer or financial institution) has a business or financial association with a settlement agency and therefore an interest in settlement being effected.

3. When a settlement agent is acting for both the vendor and the purchaser of a real estate transaction or a business transaction. The *Settlement Agents Act 1981* and the *Settlement Agents' Code of Conduct 1982* provide that a settlement agent may not act for both parties (i.e. the vendor and the purchaser) unless —

- both parties acknowledge in writing that they are aware the settlement agent proposes to do this;
- both parties give prior consent to the settlement agent acting for the vendor and the purchaser; and
- the settlement agent is able to provide all information and advice to both parties.

If a conflict of interest arises each party must then become separately represented.

Your rights

You have the right to appoint a settlement agent (or a solicitor) of your choice to act on your behalf and to change that appointment at any time before the settlement date.

If a conflict of interest arises your settlement agent must not continue to act for you, and you should then appoint an unrelated settlement agent (or a solicitor) to represent you.

Should you wish to change your settlement agent prior to the settlement date, your first appointed settlement agent must accept your decision and is obliged to assist you with this change.

Please be aware that if you change your settlement agent your first appointed settlement agent may in some circumstances be entitled to a portion of the fees based on the work the settlement agent has undertaken on your behalf. However, the fees payable to the later settlement agent (or solicitor) should be reduced on account of reduced work being required.

Acknowledgment of receipt of disclosure statement

I/We* hereby acknowledge and confirm that a signed original of this document was received and that I/we* have read and understood the document prior to appointing a settlement agent to act for me/us on the day of (year)

Signature of vendor(s)/purchaser(s)*:

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* Please delete where not applicable.

GREG GAUNT, Chairman

DOUG SHAVE, Minister for Fair Trading
