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Western Australia

## **Real Estate and Business Agents and Sales Representatives Code of Conduct 2016**

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## **Real Estate and Business Agents and Sales Representatives Code of Conduct 2016**

Prescribed under section 101 of the Act by the Commissioner.

### **Part 1 — Preliminary**

#### **1. Citation**

This code is the *Real Estate and Business Agents and Sales Representatives 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, unless the context otherwise requires —

*Act* means the *Real Estate and Business Agents Act 1978*;

*agent* means a licensed agent;

*client* —

- (a) of an agent or sales representative, includes, where the context permits, a prospective client; and
- (b) of a sales representative, includes a client of a licensee or developer, who is the employer, principal or partner of the sales representative;

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***commission*** includes a fee, charge or other remuneration, whether monetary or otherwise;

***regulations*** means the *Real Estate and Business Agents (General) Regulations 1979*;

***transaction*** includes the negotiation of a transaction.

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

**4. Code applies to all agents and sales representatives**

- (1) Each agent or sales representative acting for a client must comply with this code.
- (2) Subrule (1) applies to, and in respect of, all agents or sales representatives including where the agent or sales representative is a principal of a business or an employee of a licensee.

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Conduct 2016***

General duties

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**Part 2 — General duties**

**5. Acting in best interests of client**

When acting for a client an agent or sales representative must act in good faith in the best interests of the client.

**6. Duty of care, diligence and skill**

When acting for a client an agent or sales representative must exercise due care, diligence and skill.

**7. Duty of honesty**

When acting for a client an agent or sales representative must be honest in all dealings with the client, other agents and sales representatives, and other persons involved in a transaction.

**8. Disclosure where related to vendor**

- (1) When acting for a client who is a vendor an agent or sales representative who is related to the vendor as described in subrule (2) must disclose that in writing to each purchaser.
- (2) An agent or sales representative is related to a vendor if the agent or sales representative —
  - (a) has a controlling interest in the vendor; or
  - (b) is a spouse, de facto partner, child, grandchild, sibling, parent or grandparent of the vendor.

**9. Confidential information**

- (1) An agent or sales representative must treat as confidential information obtained while acting 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

**Real Estate and Business Agents and Sales Representatives Code of Conduct 2016**

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- (c) is known by the agent or sales representative to be confidential.
- (2) Information to be treated as confidential under subrule (1) must not, directly or indirectly, be disclosed by an agent or sales representative to another person, unless —
  - (a) the disclosure of the information is required by law; or
  - (b) the client is fully informed of the proposed disclosure and agrees to it in writing.

**10. Client's instructions**

When acting for a client an agent or sales representative must —

- (a) provide each service relating to the client's instructions within a reasonable time after receiving the instructions; and
- (b) act in accordance with the client's reasonable instructions.

**11. Misleading or deceptive conduct**

When acting for a client an agent or sales representative 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.

**12. Unconscionable conduct**

When acting for a client an agent or sales representative must not engage in unconscionable conduct within the meaning of the *Australian Consumer Law (WA)* Part 2-2.

**13. Fiduciary obligations**

An agent or sales representative must comply with any obligation that may arise as a result of any fiduciary relationship between the agent or sales representative and a client.



***Real Estate and Business Agents and Sales Representatives Code of  
Conduct 2016***

Employees

**Part 3**

**r. 14**

**Part 3 — Employees**

**14. Supervision and control of employees**

(1) In this rule —

***agent who carries on a business*** means —

- (a) an agent who personally carries on a business; or
- (b) a person in bona fide control of a business carried on by a body corporate; or
- (c) a person in bona fide control of a business carried on by a firm.

(2) An agent who carries on a business 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) An agent who carries on a business 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) An agent who carries on a business must —

- (a) personally manage the business; and
- (b) frequently attend the offices at which the business is carried on.

***Real Estate and Business Agents and Sales Representatives Code of Conduct 2016***

**Part 4** Conflict of interest

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**Part 4 — Conflict of interest**

**15. Acting for multiple clients in same transaction**

An agent or sales representative must not act for more than one client in a transaction unless, before the agent or sales representative begins so acting, the clients gave fully informed written consent for the agent or sales representative to act for more than one client in the transaction.

**16. Referrals and recommendations**

(1) In this rule —

***supplier*** means a person supplying any goods or services and includes a finance broker and a settlement agent.

(2) An agent or sales representative who recommends a supplier to a client must disclose in writing to the client —

- (a) any significant relationship, connection or affinity between the agent or sales representative and the supplier; and
- (b) any potential conflict of interest, and the nature of that potential conflict of interest, arising from the relationship, connection or affinity referred to in paragraph (a).

(3) An agent or sales representative who recommends —

- (a) a supplier, other than a settlement agent, to a client must disclose in writing to the client any commission accepted, directly or indirectly, by the agent or sales representative from any person for the recommendation; or
- (b) a settlement agent to a client must not accept, directly or indirectly, any commission from any person for the recommendation.

***Real Estate and Business Agents and Sales Representatives Code of  
Conduct 2016***

Conflict of interest

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- (4) Before being appointed to act by a client who has been referred by any person to an agent or sales representative, the agent or sales representative must disclose in writing to the client any commission paid or given by the agent or sales representative, directly or indirectly, for the referral.

***Real Estate and Business Agents and Sales Representatives Code of Conduct 2016***

**Part 5** Appointment and payment of fees

**r. 17**

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**Part 5 — Appointment and payment of fees**

**17. Appointment to act**

- (1) An agent or sales representative who does not have an appointment to act from a person must not —
  - (a) act as an agent or sales representative for the person; or
  - (b) represent that the agent or sales representative is acting for the person.
- (2) Any change made to the appointment to act must be in writing and may be made by way of amendment to the original document that appointed the agent or sales representative.

**18. Restriction on discounts and rebates**

- (1) An agent or sales representative must not, in connection with a transaction or a service provided to a client by the agent or sales representative, demand or receive a discount or rebate that relates to a service provided by a service provider, unless the agent or sales representative has —
  - (a) disclosed to the client the full nature, extent and amount of the discount or rebate; and
  - (b) obtained the written consent of the client to the demanding or receiving of the discount or rebate by the agent or sales representative.
- (2) In subrule (1), a service provider includes a stocktaker, tradesperson and a person providing a service relating to advertising.

**19. Further restriction on reward for service**

An agent or sales representative must not demand or receive a commission, reward or other valuable consideration from any person for the provision of a service that is —

- (a) greater than the amount agreed in writing with the client; or

***Real Estate and Business Agents and Sales Representatives Code of  
Conduct 2016***

Appointment and payment of fees

**Part 5**

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- (b) unjust in the circumstances; or
- (c) not initialled on the agreement by the client.

**20. Claiming expenses from client**

- (1) If an agent or sales representative is entitled to demand or receive reimbursement from a client of an expense that the agent or sales representative has incurred, the agent or sales representative must promptly give to the client all information that the client may reasonably require in order to be satisfied —
  - (a) as to the amount of the expense; and
  - (b) that the expense was properly incurred by the agent or sales representative.
- (2) An agent or sales representative must not demand or receive reimbursement of an expense that the agent or sales representative has incurred in respect of advertising, sign boards, printed materials and promotions unless —
  - (a) the client has agreed in writing to pay the expense; and
  - (b) the agreement specifies a maximum amount that the agent or sales representative may demand or receive by way of reimbursement; and
  - (c) the maximum amount is stated on the agreement and has been initialled by the client.

***Real Estate and Business Agents and Sales Representatives Code of Conduct 2016***

**Part 6**                      Specific duties of agents and sales representatives

**r. 21**

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**Part 6 — Specific duties of agents and sales representatives**

**21.        Terms used**

In this Part —

***business*** means any commercial undertaking or enterprise in respect of any profession, trade, employment, vocation or calling;

***lease*** includes let and the acquisition under lease or letting of tenancy or occupation;

***sale*** includes an exchange or other disposal.

**22.        Certain inducements prohibited**

- (1) An agent or sales representative must not knowingly induce or attempt to induce a person to breach —
  - (a) an appointment to act; or
  - (b) a contract of sale of any real estate or business; or
  - (c) a contract to lease any real estate or business.
- (2) An agent or sales representative must not knowingly induce or attempt to induce a person to enter into a contract under which the person would be liable to pay a commission to more than one agent or sales representative in relation to a sale or lease of any real estate or business.

**23.        Advertising**

- (1) An agent or sales representative must not, without the written consent of a client —
  - (a) advertise that any real estate or business is for sale or lease by the client; or
  - (b) erect or display a notice of sale or lease for the client.

***Real Estate and Business Agents and Sales Representatives Code of  
Conduct 2016***

Specific duties of agents and sales representatives

**Part 6**

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- (2) When acting for a client an agent or sales representative must not —
- (a) advertise or offer for sale or lease any real estate or business at a price or on any other terms, other than as authorised by the client; or
  - (b) advertise or offer to purchase or lease any real estate or business at a price or on any other terms, other than as authorised by the client.

**24. Material facts**

- (1) Prior to the execution by a client of any contract relating to the sale or lease of any real estate or business the agent or sales representative must make all reasonable efforts to ascertain or verify all facts material to the transaction (the ***material facts***) that a prudent agent or sales representative would ascertain or verify.
- (2) An agent or sales representative must promptly communicate a material fact to any person who may be affected by the material fact and appears to be unaware of it.

**25. Client identification verification**

An agent or sales representative who receives instructions to offer real estate for sale must —

- (a) promptly obtain a copy of the certificate of title for the real estate and refer to that copy for the name of the registered proprietor; and
- (b) as soon as practicable after receiving the instructions and before a contract for that sale is executed, make all reasonable efforts to verify —
  - (i) the identity of each person who claims to be, or to act for, a person who is to sell all or any of the real estate; and
  - (ii) each person's authority to sell the real estate, or to act for the person selling it.

***Real Estate and Business Agents and Sales Representatives Code of Conduct 2016***

**Part 6**                      Specific duties of agents and sales representatives

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**26.        Duties regarding opinion of market price**

If an agent or sales representative gives a person an opinion as to the current market price of real estate or a business, the agent or sales representative must not act as an agent or sales representative for the person unless the agent or sales representative gives the person the following in writing —

- (a) a statement of the opinion;
- (b) the reasons on which the opinion is based;
- (c) if available, information regarding the sale of similar real estate or businesses, supporting the opinion.

**27.        Communicating offers to client**

When acting for a client an agent or sales representative must communicate each offer to the client as soon as practicable after the offer is made.



***Real Estate and Business Agents and Sales Representatives Code of  
Conduct 2016***

Repeal and transitional

**Part 7**

**r. 28**

**Part 7 — Repeal and transitional**

**28. *Code of Conduct for Agents and Sales Representatives 2011*  
repealed**

The *Code of Conduct for Agents and Sales  
Representatives 2011* is repealed.

**29. Transitional**

(1) In this rule —

***transitional period*** means the period of 2 months beginning on the day on which the *Real Estate and Business Agents and Sales Representatives Code of Conduct 2016* (other than rules 1 and 2) comes into operation.

(2) For the purposes of sections 34(1), 50(1) and 103(2)(c)(iii) and (4)(c)(iii) of the Act, an agent or sales representative to whom this rule applies is taken not to have acted in breach of this code.

(3) This rule applies to an agent or sales representative who during the transitional period —

- (a) fails to comply with a provision of this code; but
- (b) complies with the provisions of the *Code of Conduct for Agents and Sales Representatives 2011*.

D. HILLYARD, A/Commissioner.

**Real Estate and Business Agents and Sales Representatives Code of Conduct 2016**

**Defined terms**

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**Defined terms**

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

| <b>Defined term</b>                   | <b>Provision(s)</b> |
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Western Australia

## Settlement Agents Code of Conduct 2016

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## Settlement Agents Act 1981

**Settlement Agents Code of Conduct 2016**

Made by the Commissioner with the approval of the Minister.

**Part 1 — Preliminary****1. Citation**

These rules are the *Settlement Agents Code of Conduct 2016*.

**2. Commencement**

These rules come 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 rules — on the day after that day.

**3. Terms used**

- (1) In these rules —

*Act* means the *Settlement Agents Act 1981*;

*appointment to act* means an appointment to act as a settlement agent required under section 43 of the Act;

*client*, in relation to a licensee, includes —

- (a) where the context permits, a prospective client; and
- (b) a client of an employer, principal or partner of the licensee; and
- (c) a client of a person employed in or engaged by the licensee;

*disclosure notice* means a notice in writing in Form 2;

**Settlement Agents Code of Conduct 2016****Part 1** Preliminary**r. 4**

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*Form* means a form in Schedule 1;

*regulations* means the *Settlement Agents Regulations 1982*.

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

**4. Code applies to all licensees**

- (1) Each licensee who is a settlement agent acting, directly or indirectly, for a client must comply with these rules.
- (2) Subrule (1) applies to, and in respect of, all licensees including where the licensee is a principal of a business or an employee of another licensee.

**Settlement Agents Code of Conduct 2016**

## General duties

**Part 2****r. 5****Part 2 — General duties****5. Knowledge of relevant law**

A licensee must have a complete knowledge of and comply with —

- (a) the Act, the regulations and these rules; and
- (b) the duties and obligations imposed on a licensee by the Act, the regulations and these rules.

**6. Acting in best interests of client**

When acting as a settlement agent for a client a licensee must act in good faith in the best interests of the client.

**7. Duty of care, diligence and skill**

When acting as a settlement agent for a client a licensee must exercise due care, diligence and skill.

**8. Duty of honesty**

When acting as a settlement agent for a client a licensee must be honest in all dealings with the client, other settlement agents and other persons involved in a transaction.

**9. Confidential information**

- (1) A licensee must treat as confidential information obtained while acting 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 licensee to be confidential.

**Settlement Agents Code of Conduct 2016****Part 2** General duties**r. 10**

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- (2) Information to be treated as confidential under subrule (1) must not, directly or indirectly, be disclosed by a licensee to another person, unless —
- (a) the disclosure of the information is required by law; or
  - (b) the client is fully informed of the proposed disclosure and agrees to it in writing.

**10. Client's instructions**

When acting as a settlement agent for a client a licensee must —

- (a) provide each service relating to the client's instructions within a reasonable time after receiving the instructions; and
- (b) act in accordance with the client's reasonable instructions.

**11. Client to be fully informed**

When acting as a settlement agent for a client a licensee must communicate regularly, and in a timely manner, with the client and keep the client well informed of matters relevant to the client's interests.

**12. Misleading or deceptive conduct**

When acting as a settlement agent for a client a licensee 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. Unconscionable conduct**

When acting as a settlement agent for a client a licensee must not engage in unconscionable conduct within the meaning of the *Australian Consumer Law (WA)* Part 2-2.



***Settlement Agents Code of Conduct 2016***

General duties

**Part 2**

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**r. 14****14. Fiduciary obligations**

A licensee must comply with any obligation that may arise as a result of any fiduciary relationship between the licensee and a client.

**Settlement Agents Code of Conduct 2016****Part 3** Employees**r. 15**

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**Part 3 — Employees****15. Supervision and control of employees**

- (1) A licensee who carries on a business as a settlement agent 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 these rules as are applicable to the person; and
  - (b) any other law applicable to the business and the person.
- (2) A licensee who carries on a business as a settlement agent is responsible for the supervision and control of the work of every person employed in or engaged by the business whether paid or unpaid.

**16. Sufficient supervision of settlement agent business**

- (1) In this rule —

***business*** means a business as a settlement agent carried on by a licensee;

***professionally conducted***, in relation to carrying on a business from a registered office or registered branch office, means that the business is conducted in accordance with the Act, the regulations, these rules and any other law relevant to the business.
- (2) If a licensee who carries on a business is an individual the licensee must —
  - (a) provide sufficient supervision to ensure that the business is professionally conducted; and
  - (b) ensure that each manager of a registered branch office of the business provides sufficient supervision to ensure that the business carried on from that office is professionally conducted.

**Settlement Agents Code of Conduct 2016****Employees****Part 3****r. 16**

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- (3) If a licensee who carries on a business is a firm or a body corporate —
- (a) each partner of the firm, or each director of the body corporate, who is a settlement agent must —
    - (i) ensure that each person in bona fide control of the business provides sufficient supervision to ensure that the business is professionally conducted; and
    - (ii) ensure that each manager of a registered branch office of the business provides sufficient supervision to ensure that the business carried on from that office is professionally conducted;
  - and
  - (b) each person in bona fide control of the business who is a settlement agent must —
    - (i) provide sufficient supervision to ensure that the business is professionally conducted; and
    - (ii) ensure that each manager of a registered branch office of the business provides sufficient supervision to ensure that the business carried on from that office is professionally conducted.
- (4) A manager of a registered branch office of a business who is a settlement agent must provide sufficient supervision to ensure that the business carried on from that office is professionally conducted.

**Settlement Agents Code of Conduct 2016****Part 4** Conflict of interest**Division 1** General**r. 17**

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**Part 4 — Conflict of interest****Division 1 — General****17. Conflict of interest**

A licensee must not act, or continue to act, as a settlement agent for a client if a conflict of interest or potential conflict of interest exists between the interests of the licensee and the interests of the client, unless —

- (a) the licensee fully informs the client, in a disclosure notice, of the conflict or potential conflict; and
- (b) the client agrees in writing to the licensee acting, or continuing to act, as a settlement agent for the client.

**18. When licensee may act for more than one party**

- (1) If a licensee proposes to act for more than one party (the *parties*) to a transaction then before each of the parties gives consent in accordance with the requirements set out in section 46(3) or 47(3) of the Act, the licensee must complete a disclosure notice and give it to each party.
- (2) Having started to act for more than one party to a transaction in accordance with section 46(3) or 47(3) of the Act, a licensee must not continue to act for any of the parties if —
  - (a) there is a real possibility that the licensee would be required, in order to comply with the Act, the regulations and these rules, to act contrary to the interests of a party; or
  - (b) the interests of one party require withholding information or advice from another party.

**Settlement Agents Code of Conduct 2016**

Conflict of interest

**Part 4**

General

**Division 1****r. 19**

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**19. When business may act for more than one party**

- (1) A licensee who carries on a business as a settlement agent must ensure that a person employed in or engaged by the business (the *person*) does not act as a settlement agent for a party to a transaction if another person employed in or engaged by the business acts for another party to the transaction.
- (2) Subrule (1) does not apply if, before the person is appointed to act as a settlement agent, each party described in that subrule —
  - (a) acknowledges in writing that the party is aware that another person employed in or engaged by the business acts, or proposes to act, for another party to the transaction; and
  - (b) gives written consent to the persons employed in or engaged by the business so acting; and
  - (c) was given a disclosure notice.
- (3) However, even if subrule (2) has been complied with, a licensee who carries on a business as a settlement agent must ensure that a person employed in or engaged by the business, does not continue to act for the party if there is a real possibility that the person would be required, in order to comply with the Act, the regulations and these rules, to act contrary to the interests of the party.

**20. Disclosure of interests**

- (1) A licensee must not act, or continue to act, as a settlement agent for a client if the licensee has an interest in the client's transaction, including if the licensee is a party to the transaction or may benefit, directly or indirectly, from the transaction, unless —
  - (a) the licensee fully informs the client, in a disclosure notice, of the interest; and
  - (b) the client agrees in writing to the licensee acting, or continuing to act, as a settlement agent for the client.

**Settlement Agents Code of Conduct 2016****Part 4** Conflict of interest**Division 2** Specific**r. 21**

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- (2) Subrule (1) does not apply in relation to an interest that the licensee has because the licensee is acting as a settlement agent in the client's transaction.

**Division 2 — Specific****21. Terms used**

In this Division —

**beneficiary**, in relation to a trust, means an individual who is a beneficiary under the trust (whether the beneficiary has a vested share or is contingently entitled or is a potential beneficiary under a discretionary trust);

**developer** has the meaning given in the *Real Estate and Business Agents Act 1978* section 4(1);

**listed** has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

**prescribed financial market** has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

**principal**, of a licensee, means —

- (a) if the licensee is a firm, a person who is a partner in the firm;
- (b) if the licensee is a body corporate, a security holder or director of the body corporate;
- (c) if a business is conducted by the licensee as trustee for a trust, any unit holder or beneficiary of that trust;

**real estate or business agent** means an agent as defined in the *Real Estate and Business Agents Act 1978* section 4(1);

**real estate or business sales representative** means a sales representative as defined in the *Real Estate and Business Agents Act 1978* section 4(1);

**security holder**, of a body corporate, does not include a security holder of a body corporate that is —

- (a) listed on a prescribed financial market; or

**Settlement Agents Code of Conduct 2016**

Conflict of interest

**Part 4**

Specific

**Division 2****r. 22**

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- (b) a bank authorised under any law of the Commonwealth or the State to carry on banking business; or
- (c) a building society authorised to act under any law of the State; or
- (d) authorised by the law of another State, of a Territory or of the Commonwealth to apply for and obtain, in its own name, a grant of probate or of letters of administration of the estate of a deceased person;

**substantial holder**, in relation to a financial institution that is a body corporate or listed registered managed investment scheme, means a person who has a substantial holding, as defined in *Corporations Act 2001* (Commonwealth) section 9, in the body corporate or listed registered managed investment scheme, as if the percentage in paragraph (a) of that definition were 20% rather than 5%.

**22. Disclosure notice to be given**

- (1) A licensee must not act, or continue to act, as a settlement agent for a client in a related transaction, unless —
  - (a) the licensee fully informs the client, in a disclosure notice, of the nature of the related transaction; and
  - (b) the client agrees in writing to the licensee acting, or continuing to act, as a settlement agent for the client.
- (2) In subrule (1), a related transaction is a transaction in which a licensee is acting as a settlement agent and that —
  - (a) has been negotiated by a real estate or business agent or developer in which the licensee or a principal of the licensee has a financial interest; or
  - (b) has been negotiated by any of the following who have a financial interest in the licensee —
    - (i) a real estate or business agent;
    - (ii) a developer;
    - (iii) a real estate or business sales representative;

**Settlement Agents Code of Conduct 2016****Part 4** Conflict of interest**Division 2** Specific**r. 22**

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or

- (c) has been negotiated by a real estate or business sales representative employed in or engaged by any of the following who have a financial interest in the licensee —

- (i) a real estate or business agent;
- (ii) a developer;

or

- (d) in relation to which finance has been provided or is proposed to be provided by any of the following financial institutions —

- (i) a financial institution that is the same legal entity as the licensee;
- (ii) a financial institution in which the licensee is a partner, director or substantial holder or has an interest as a beneficiary or unit holder of a trust;
- (iii) a financial institution that is a partner, director or substantial holder of the licensee or has an interest in the licensee as a beneficiary or unit holder of a trust.



**Settlement Agents Code of Conduct 2016**  
Appointment of licensee and payment of fees **Part 5**

**r. 23**

## **Part 5 — Appointment of licensee and payment of fees**

### **23. Costs disclosure**

- (1) Before being appointed to act as a settlement agent in relation to a transaction by a client as required under section 43 of the Act, a licensee must give a costs disclosure in writing to the client.
- (2) The costs disclosure must disclose the amount (*service amount*) that the client will be charged by the licensee to provide the services that the licensee has agreed to provide to the client in relation to the transaction.
- (3) The service amount must include all fees, commissions, charges and general office disbursements to be charged by the licensee to provide the services that the licensee has agreed to provide to the client in relation to the transaction.
- (4) The following may also be set out or estimated in the costs disclosure but must not be included in the service amount —
  - (a) duty chargeable under the *Duties Act 2008*;
  - (b) any other tax, duty, fee, levy or charge under a written law;
  - (c) fees payable to financial institutions;
  - (d) commissions chargeable by —
    - (i) an agent as defined in the *Real Estate and Business Agents Act 1978* section 4(1); or
    - (ii) a developer as defined in the *Real Estate and Business Agents Act 1978* section 4(1); or
    - (iii) any other third party.

### **24. Payment not to exceed service amount unless unforeseen significant change occurs**

- (1) A licensee is not entitled to receive payment for a service that exceeds the service amount for that service disclosed in a costs disclosure given under rule 23 unless subrule (2) applies.

**Settlement Agents Code of Conduct 2016****Part 5** Appointment of licensee and payment of fees**r. 25**

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- (2) A licensee may receive payment for a service that exceeds the service amount if —
- (a) there is an unforeseen significant change in the scope of the work required to provide the service; and
  - (b) the licensee informs the client in writing of that change; and
  - (c) the client agrees to the licensee continuing to provide the service; and
  - (d) the amount by which the payment exceeds the service amount is reasonable having regard to that change.

**25. Fees for referrals**

If a licensee reasonably believes that the licensee or a person nominated by the licensee will receive a fee or any other benefit as a result of the licensee referring a client to a person who provides another service, then the licensee must disclose in writing to the client the fee or benefit to be received at the time the referral is made.

**26. Appointment to act**

- (1) An appointment to act (whether contained in a separate appointment document, an offer to purchase or a contract for sale) is to be in Form 1, or contain the information in Form 1.
- (2) A licensee who is unable to accept an appointment to act must notify the person who sought to make the appointment as soon as practicable.
- (3) Any change made to the appointment to act must be in writing and may be made by way of amendment to the original document that appointed the settlement agent.

**27. Consumer may request an itemised bill**

A licensee must comply with the *Australian Consumer Law (WA)* section 101.

**Settlement Agents Code of Conduct 2016**  
Specific duties of licensee **Part 6**

**r. 28**

## **Part 6 — Specific duties of licensee**

### **28. Retaining copies of documents**

A licensee who has acted as a settlement agent for a client must take all reasonable steps to ensure that a copy of each disclosure notice and Form 1 given to the client is retained by the licensee or on behalf of the licensee for a period of 6 years beginning on the day the document is given to the client.

### **29. Licensees duties in arranging a settlement**

- (1) A licensee must, when acting for a client in arranging a settlement, as soon as practicable after receiving instructions to act for the client, ensure that —
  - (a) all necessary searches and inquiries are made at the relevant offices and authorities; and
  - (b) a settlement statement is forwarded to the client to arrange the settlement.
- (2) The licensee must also ensure that amended settlement statements are forwarded to the client as may be necessary.
- (3) Without limiting subrule (1), a licensee must, as soon as practicable after receiving instructions to act in arranging a settlement and before the settlement takes place, take all reasonable steps to ensure that the following are verified —
  - (a) the identity of each person who claims to be, or to act for, a person disposing of real estate in the real estate transaction being completed at the settlement;
  - (b) each person's authority to dispose of the real estate, or to act for the person disposing of it.

### **30. Legal advice**

- (1) When acting as a settlement agent for a client a licensee must, if it is necessary or prudent, recommend to the client that the

**Settlement Agents Code of Conduct 2016****Part 6** Specific duties of licensee**r. 31**

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client seek the advice of a lawyer in respect of a transaction or part of a transaction.

- (2) When acting as a settlement agent for a client a licensee must not, directly or indirectly, discourage, attempt to discourage or impede the client from seeking legal advice or representation.

**31. Change of settlement agents**

- (1) A client is entitled to change the client's settlement agent or instruct a lawyer to act for the client at any time without giving a licensee a reason.
- (2) When acting as a settlement agent for a client a licensee must facilitate the client's change of settlement agent or instruction of a lawyer in a professional and helpful manner.

**Settlement Agents Code of Conduct 2016**

## Money

**Part 7****r. 32**

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**Part 7 — Money****32. Proper accounts to be kept**

- (1) When acting as a settlement agent for a client a licensee must take all reasonable steps to ensure that proper accounts are kept evidencing the licensee's dealings with the client's money.
- (2) When acting as a settlement agent for a client a licensee must make the accounts available for inspection —
  - (a) by the client, at the reasonable request of the client; and
  - (b) as required in accordance with the Act.

**33. Money and documents held on client's behalf**

- (1) When acting as a settlement agent for a client a licensee must ensure that the client is promptly notified if the licensee receives money, documents of title or securities on behalf of the client.
- (2) When acting as a settlement agent for a client a licensee must ensure that the following directions, if given by the client or another settlement agent or a lawyer instructed by the client, are complied with promptly —
  - (a) a direction to provide for the payment of money held by the licensee on the client's behalf;
  - (b) a direction to deliver documents of title, securities or other documents held by the licensee on the client's behalf.

**Settlement Agents Code of Conduct 2016****Part 8** Repeal and transitional**r. 34**

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**Part 8 — Repeal and transitional****34. *Settlement Agents' Code of Conduct 1982 repealed***

The *Settlement Agents' Code of Conduct 1982* is repealed.

**35. Transitional**

(1) In this rule —

***transitional period*** means the period of 2 months beginning on the day on which the *Settlement Agents Code of Conduct 2016* (other than rules 1 and 2) comes into operation.

(2) For the purposes of sections 34(1) and 84(2)(c)(iii) of the Act, a licensee to whom this rule applies is taken not to have acted in breach of this code.

(3) This rule applies to a licensee who during the transitional period —

- (a) fails to comply with a provision of this code; but
- (b) complies with the provisions of the *Settlement Agents' Code of Conduct 1982*.

**Settlement Agents Code of Conduct 2016****Forms      Schedule 1**

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**Schedule 1 — Forms****Form 1**

[r. 18, 19, 23 and 26]

**Appointment to act as Settlement Agent**

Please read this document before appointing a settlement agent to act for you.

**Your rights**

Your settlement agent must make a costs disclosure to you in accordance with rule 23 of the *Settlement Agents Code of Conduct 2016* before you sign this appointment to act.

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

Should you wish to appoint another settlement agent (or instruct a lawyer) before the settlement date, your first appointed settlement agent must accept your decision and facilitate 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 new settlement agent (or lawyer) may, in some circumstances, be reduced if some work has already been completed to your satisfaction and the satisfaction of your new settlement agent (or lawyer).

**Acting for more than one party**

A settlement agent may act for more than one party to a transaction if —

- the settlement agent discloses their intention to act for more than one party in Form 2; and
- each of the parties that the settlement agent proposes to act for acknowledges in writing that the party is aware that the settlement agent proposes to act for more than one party; and
- each of the parties that the settlement agent proposes to act for gives their prior written consent.

**Settlement Agents Code of Conduct 2016****Schedule 1** Forms

|   |
|---|
| <p>A settlement agent must not continue to act for a party if —</p> <ul style="list-style-type: none"> <li>• there is a real possibility that the settlement agent would be required, in order to comply with their obligations, to act contrary to the interests of one of the parties that the settlement agent acts for; or</li> <li>• the interests of a party the settlement agent acts for require withholding information or advice from any other party the settlement agent acts for.</li> </ul>   |
| <p>A disclosure notice (Form 2):</p> <p><input type="checkbox"/> is not required; or</p> <p><input type="checkbox"/> has been given to you.</p>   |
| <b>Appointment</b>  |
| <p>Description of real estate/business* transaction:</p>  |
| <p>Vendor(s):</p>   |
| <p>Purchaser(s):</p>  |
| <p>Mortgagee(s)*:</p>   |
| <p>To:<br/>[Name and address of settlement agent]</p>   |
| <p>I/We* being the vendor(s)/purchaser(s)/mortgagee(s)* named above appoint the settlement agent named above to act for me/us* in the settlement of the real estate or business transaction referred to above and —</p> <p>(1) I/We* agree to pay the service amount disclosed to me/us* under rule 23 of the <i>Settlement Agents Code of Conduct 2016</i> (or a lesser amount agreed).</p> <p>(2)* In accordance with sections 46(3) and 47(3) of the <i>Settlement Agents Act 1981</i> and rule 19 of the <i>Settlement Agents Code of Conduct 2016</i>, I/we* acknowledge that I am/we are* aware that —</p> <ul style="list-style-type: none"> <li>• the settlement agent acts, or proposes to act; or</li> <li>• another person employed in or engaged by the same business that employs or engages the settlement agent acts, or proposes to act,</li> </ul> |



**Settlement Agents Code of Conduct 2016****Forms Schedule 1**

for the following other parties to the transaction and give my/our\* written consent to the settlement agent so acting —

.....

- (3)\* The settlement agent, or another person employed in or engaged by the same business that employs or engages the settlement agent, may not act for any other party to the transaction.

**Acknowledgment of receipt of appointment form**

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

Dated: .....

Signature of

vendor(s)/

purchaser(s)/

mortgagee(s)\*:

.....

.....

**Acceptance of appointment**

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

Dated: .....

Signature of settlement agent: .....

\* Please delete where not applicable

**Form 2**

[r. 17, 18(1), 19(2), 20(1) and 22(1)]

**Disclosure Notice**

Please read this document before appointing a settlement agent to act for you.

Name of proposed  
settlement agent:

Description of real  
estate/business\*  
transaction:

**Settlement Agents Code of Conduct 2016****Schedule 1      Forms**

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|  |
|--|
| Vendor(s):   |
| Purchaser(s):  |
| Mortgagee(s)*:   |
| Please note that one or more of the following apply:<br><input type="checkbox"/> a conflict of interest or potential conflict of interest exists between your interests and the interests of the settlement agent;<br><input type="checkbox"/> the settlement agent proposes to act for more than one party to the transaction;<br><input type="checkbox"/> another person employed in or engaged by the same business as the settlement agent acts, or proposes to act, for another party to the transaction;<br><input type="checkbox"/> the settlement agent has an interest in the transaction;<br><input type="checkbox"/> there is a relationship between the settlement agent and a related person. |
| Details of any conflict of interest or potential conflict of interest:<br>.....<br>.....<br>.....  |
| As well as you, the settlement agent proposes to act for the following parties to the transaction:<br>.....<br>.....<br>.....  |
| Another person employed in or engaged by the same business as the settlement agent acts, or proposes to act, for the following parties to the transaction:<br>.....<br>.....<br>.....  |

**Settlement Agents Code of Conduct 2016**Forms **Schedule 1**

|  |
|--|
| <p>Details of any interest that the settlement agent has in the transaction (e.g. if the settlement agent is a party to the transaction or may benefit, directly or indirectly, from the transaction):</p> <p>.....</p> <p>.....</p> <p>.....</p>  |
| <p>Details of the nature of any related transaction (see rule 22(2) of the <i>Settlement Agents Code of Conduct 2016</i>) including the name and role of any related person (e.g. real estate or business agent, real estate or business sales representative, developer, financial institution):</p> <p>.....</p> <p>.....</p> <p>.....</p>   |
| <p><b>Acknowledgment of receipt of disclosure notice</b></p> <p>I/We* acknowledge and confirm that this document was received and that I/we* have read and understood the document.</p> <p>I/we* agree to the settlement agent acting/continuing to act* as a settlement agent for me/us*.</p> <p>..... day of .....(month)..... (year)</p> <p>Signature of vendor(s)/purchaser(s)/mortgagee(s)*:</p> <p>.....</p> <p>.....</p> <p>* Please delete where not applicable.</p> |

D. HILLYARD, A/Commissioner.

M. MISCHIN, Minister for Commerce.

**Settlement Agents Code of Conduct 2016****Defined terms**

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**Defined terms**

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

| <b>Defined term</b>                               | <b>Provision(s)</b> |
|---|---------------------|
| Act.....  | 3(1)                |
| appointment to act.....                           | 3(1)                |
| beneficiary .....                                 | 21                  |
| business .....                                    | 16(1)               |
| client .....                                      | 3(1)                |
| developer.....                                    | 21                  |
| disclosure notice .....                           | 3(1)                |
| Form.....   | 3(1)                |
| listed.....                                       | 21                  |
| parties.....                                      | 18(1)               |
| person.....                                       | 19(1)               |
| prescribed financial market.....                  | 21                  |
| principal .....                                   | 21                  |
| professionally conducted .....                    | 16(1)               |
| real estate or business agent.....                | 21                  |
| real estate or business sales representative..... | 21                  |
| regulations.....                                  | 3(1)                |
| security holder.....                              | 21                  |
| service amount .....                              | 23(2)               |
| substantial holder .....                          | 21                  |
| transitional period .....                         | 35(1)               |

Western Australia

## **Licensed Valuers Code of Conduct 2016**

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**Schedule 1 — Executive Summary****Defined terms**

## 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;

***Licensed Valuers Code of Conduct 2016*****Part 1** Preliminary**r. 3**

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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.



***Licensed Valuers Code of Conduct 2016***

## General duties

**Part 2****r. 4****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.

***Licensed Valuers Code of Conduct 2016*****Part 2**            General duties**r. 9**

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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.

**Licensed Valuers Code of Conduct 2016**

## General duties

**Part 2****r. 12**

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**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**

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**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

***Licensed Valuers Code of Conduct 2016***

Employees

**Part 3**

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**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.**

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**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

**Licensed Valuers Code of Conduct 2016**

## Conflict of interest

**Part 4****r. 17**

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**

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- (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.



***Licensed Valuers Code of Conduct 2016***

Appointment of licensed valuer and payment of fees

**Part 5**

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**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**

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- (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**

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- (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).

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

**r. 26**

- (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**

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- (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.

***Licensed Valuers Code of Conduct 2016***

Repeal and transitional

**Part 7**

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**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

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**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**

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**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**

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**Defined terms**

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

| <b>Defined term</b>            | <b>Provision(s)</b> |
|--------------------------------|---------------------|
| 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)                |