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REAL ESTATE AND BUSINESS AGENTS ACT 1978

**CODE OF CONDUCT FOR
AGENTS AND SALES
REPRESENTATIVES 2011**

Western Australia

Code of Conduct for Agents and Sales Representatives 2011

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Real Estate and Business Agents Act 1978

Code of Conduct for Agents and Sales Representatives 2011

Made under section 101 of the Act by the Commissioner.

1. Citation

This is the *Code of Conduct for Agents and Sales Representatives 2011*.

2. Commencement

This Code comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Code is published in the *Gazette*;
- (b) the rest of the Code — on 1 November 2011.

3. Terms used

In this Code —

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

agent means an agent or a sales representative;

commission includes fees, charges, reward, or other remuneration, whether monetary or otherwise;

principal in relation to a sales representative means the principal of the agent by whom the sales representative is employed.

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4. General duty to principal

An agent must act in the best interests of his or her principal except where it would be unreasonable or improper to do so.

5. Certain inducements prohibited

- (1) An agent must not knowingly induce or attempt to induce a person to breach a contract of sale, letting or agency.
- (2) An agent must not knowingly induce or attempt to induce a person to enter into an agency contract which would make that person liable to pay commission to more than one agent in relation to a sale or a lease of any real estate or business.

6. Acting within authority and instructions

- (1) An agent must not act as agent or represent himself or herself as acting as agent on behalf of a person without written authority.
- (2) An agent must act in accordance with the instructions of a principal, except where it would be unreasonable or improper to do so.
- (3) An agent must not advertise that any real estate or business is for sale or lease or erect or display a notice of sale or leasing without written authority.
- (4) An agent must not —
 - (a) advertise or offer for sale or lease any real estate or business at a price or on terms different from that, authorised by the principal; or
 - (b) advertise or offer to purchase or lease any real estate or business at a price or on terms different from that authorised by the principal.

7. Duty to behave fairly

- (1) An agent must act fairly and honestly.

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- (2) An agent must not knowingly mislead or deceive any parties in negotiations or a transaction.
- (3) An agent must not engage in harsh or unconscionable conduct.

8. Duties to manage, to supervise, to attend at place of business

- (1) An agent must properly supervise the agency business carried on by the agent and take reasonable steps to ensure that sales representatives and other employees of the agency business comply with the provisions of the Act, this Code and other relevant statutes, rules and regulations where applicable to them.
- (2) The person in bona fide control of the agency business carried on by a corporation must properly supervise the agency business carried on by the corporation and take reasonable steps to ensure that sales representatives and other employees of the agency business comply with the provisions of the Act, this Code and other relevant statutes, rules and regulations where applicable to them.
- (3) The person in bona fide control of the agency business carried on by a firm must properly supervise the agency business carried on by the firm and take reasonable steps to ensure that sales representatives and other employees of the agency business comply with the provisions of the Act, this Code and other relevant statutes, rules and regulations where applicable to them.
- (4) An agent who personally carries on an agency business, the person in bona fide control of the agency business carried on by a corporation and the person in bona fide control of the agency business carried on by a firm must —
 - (a) personally manage the agency business full-time; and
 - (b) carry out the principal managerial duties of the agency business; and

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- (c) frequently attend at the offices at which the agency business is conducted.

9. Standard of service

An agent must exercise due skill, care and diligence.

10. Duties as to details of the transaction

- (1) Prior to the execution by the agent's principal of any contract relating to the sale or lease of any real estate or business the agent must make all reasonable efforts to ascertain or verify the facts which are material to that transaction which a prudent agent would have ascertained.
- (2) If an agent ascertains a fact which is material to a transaction in which the agent's principal is involved the agent must promptly communicate that fact to any person who may be affected by it unless it is clear that person was already aware of that fact.
- (3) When an agent receives instructions to offer real estate for sale he or she shall promptly obtain a copy of the certificate of title for the real estate and, after obtaining it, refer to that copy for the names of the registered proprietor.
- (4) Without limiting the generality of subsection (1), an agent must, as soon as practicable after receiving instructions to act for a person in arranging a disposal, by way of sale, exchange or otherwise, of real estate and before a contract for that disposal is executed, make all reasonable efforts to verify —
 - (a) the identity of each person who claims to be, or to act for, a person who is to dispose of all or any of the real estate; and
 - (b) each person's authority to dispose of the real estate, or to act for the person disposing of it, as the case requires.

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An agent engaged to sell or purchase any real estate or business must advise his or her principal as to what the agent considers to be the current market price of that real estate or business and, if requested, give reasons for that opinion.

12. Conflict of interest

- (1) An agent must not accept an engagement to act, or continue to act, where to do so would place his or her interest in conflict with that of the principal.
- (2) An agent shall not without the prior written consent of the principal, directly or indirectly, purchase or take on lease or be in any way concerned or interested, legally or beneficially, in the purchase or taking on lease of any real estate or business which the agent is engaged to sell or lease.
- (3) An agent who directly or indirectly purchases or takes on lease or is in any way concerned or interested, legally or beneficially, in the purchase or taking on lease of any real estate or business which the agent is engaged to sell or lease shall not demand, retain or receive a commission unless the principal has agreed in writing to pay the commission at the same time as or following the signing of the consent referred to in section 10(2).

13. Confidentiality

An agent must not at any time use or disclose any confidential information obtained while acting on behalf of his or her principal, except for information that an agent is required by law to disclose.

14. Communicating offers to principal

An agent must communicate all written offers to his or her principal as soon as practicable.

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15. Restrictions on commission and other benefits

- (1) An agent must not accept or demand any commission from any person other than his or her principal in respect of any service performed or to be performed by the agent, being a service in respect of which the agent received commission or is entitled to receive commission from his or her principal.
- (2) An agent must not demand, retain or receive a discount or rebate which relates to a service by a stocktaker or tradesperson, or to advertising, in connection with a transaction or a service provided by the agent unless the agent has —
 - (a) disclosed to his or her principal the full nature, extent and amount of the discount or rebate sought or to be retained; and
 - (b) obtained the written consent of the principal to the seeking or retaining of the discount or rebate by the agent.

16. Further restriction on reward for service

An agent must not demand, retain or receive a commission, reward or other valuable consideration for a service which is —

- (a) greater than the amount agreed in writing with the principal; or
- (b) unjust in the circumstances; or
- (c) not initialled on the agreement by the principal.

17. Claiming expenses from principal

- (1) If an agent is entitled to seek reimbursement from his or her principal of any expense which the agent has incurred the agent shall promptly supply to the principal all relevant information and material which the principal may reasonably require in order to be satisfied as to the amount of the expense and that the expense was properly incurred by the agent.

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- (2) An agent shall not seek or retain reimbursement of an expense which the agent has incurred in respect of advertising, sign boards, printed material and promotions unless —
- (a) the principal has agreed in writing to pay the expense; and
 - (b) the agreement specifies a maximum amount which the agent may seek or retain by way of reimbursement; and
 - (c) the maximum amount is stated on the agreement and has been initialled by the principal.

18. Disclosure required when recommending

- (1) An agent who recommends to a party to a transaction, a settlement agent, finance broker or any other supplier of goods or services, must make a written disclosure to the party of any significant relationship, connection or affinity between the agent and the supplier.
- (2) Where the relationship, connection or affinity between the agent and the supplier is capable of producing a conflict between the interests of the party to the transaction and the agent, the agent shall include in such written disclosure an explanation of the nature of the potential conflict.

ANNE MARIE DRISCOLL, Commissioner.
