

Authorised Version

Estate Agents (Professional Conduct)
Regulations 2018
S.R. No. 49/2018

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Authorised Version

STATUTORY RULES 2018

S.R. No. 49/2018

Estate Agents Act 1980

**Estate Agents (Professional Conduct)
Regulations 2018**

The Governor in Council makes the following Regulations:

Dated: 1 May 2018

Responsible Minister:

MARLENE KAIROUZ

Minister for Consumer Affairs, Gaming and Liquor
Regulation

ANDREW ROBINSON
Clerk of the Executive Council

Part 1—Preliminary

1 Objective

The objective of these Regulations is to prescribe rules of professional conduct for estate agents and agents' representatives.

2 Authorising provision

These Regulations are made under section 99 of the **Estate Agents Act 1980**.

3 Commencement

These Regulations come into operation on 26 May 2018.

4 Revocation

The Estate Agents (Professional Conduct) Regulations 2008¹ are **revoked**.

5 Definitions

In these Regulations—

estate agency practice means the business of—

- (a) selling, buying, exchanging, letting or taking on lease of, or otherwise dealing with or disposing of;
- (b) negotiating for the sale, purchase, exchange, letting, or taking on lease of, or any other dealing with or disposition of;
- (c) collecting rent for—

any real estate or business on behalf of any other person;

principal means—

- (a) in relation to an estate agent, the person who engages the services of the estate agent to act on the person's behalf;
- (b) in relation to an agent's representative, the person who engages the services of the estate agent, for whom the agent's representative is performing the functions of an estate agent, to act on the person's behalf;

the Act means the **Estate Agents Act 1980**.

Part 2—Conduct of estate agents and agents' representatives

6 Knowledge of the law

An estate agent and an agent's representative must have a working knowledge of—

- (a) the Act and any regulations made under the Act; and
- (b) any other laws relevant to the functions performed by the estate agent and agent's representative.

7 Confidential information

An estate agent and an agent's representative must not at any time use or disclose any confidential information obtained while acting on behalf of a principal, unless authorised by the principal or required by law to do so.

8 Commissions

- (1) An estate agent or an agent's representative must not—
 - (a) accept commission from the seller of real estate or a business when engaged to purchase that real estate or business on behalf of a purchaser; or
 - (b) accept commission from the purchaser of real estate or a business when engaged to sell that real estate or business on behalf of the seller; or
 - (c) accept commission from a landlord when engaged by a person to obtain a tenancy of the landlord's real estate or business on behalf of that person; or

- (d) accept commission from a person who wishes to obtain a tenancy agreement when engaged to obtain a tenancy for the real estate or a business on behalf of the landlord of the real estate or business.
- (2) An estate agent or an agent's representative must not—
- (a) in the case of an estate agent, induce or attempt to induce a person to enter into a contract or agreement with the agent; or
 - (b) in the case of an agent's representative, induce or attempt to induce a person to enter into a contract or agreement with the licensed estate agent for whom the agent's representative is performing the functions of an estate agent—

that could make the person liable to pay commission to more than one estate agent in relation to the sale or lease of any real estate or business, without giving clear written advice to the person of the potential liability to pay more than one commission.

9 Acting in accordance with principal's instructions

An estate agent or an agent's representative must act in accordance with the lawful instructions of a principal, except if it is contrary to good conduct as an estate agent or agent's representative.

10 Fairness and honesty

- (1) An estate agent or an agent's representative must at all times act fairly, honestly, in good faith and to the best of the estate agent's or agent's representative's knowledge and ability in performing the functions of an estate agent or agent's representative.

- (2) An estate agent or an agent's representative must not mislead a tenant about a landlord's instructions.
- (3) An estate agent or an agent's representative must not mislead a purchaser or prospective purchaser about a seller's instructions.

11 Acting in principal's best interests

An estate agent or an agent's representative must always act in a principal's best interests except if it is unlawful, unreasonable, improper or contrary to the instructions of the principal, for whom the estate agent or agent's representative is acting, to do so.

12 Potential conflict of interest

- (1) An estate agent must not accept an engagement from, or act for, a person if it would place the agent's interests in conflict with those of the person.
- (2) An agent's representative must not act for a principal if it would place the agent's representative's interests in conflict with those of the principal.
- (3) If an estate agent or an agent's representative recommends a supplier of goods and services to a principal, the estate agent or agent's representative must disclose to the principal—
 - (a) in the case of an estate agent, any personal or commercial relationship between the estate agent or the agent's representative and the supplier of the goods and services; or
 - (b) in the case of an agent's representative, any personal or commercial relationship between the agent's representative, the licensed estate agent (for whom the agent's representative is

performing the functions of an estate agent)
and the supplier of the goods and services.

13 Good practice of estate agents and agents' representatives

- (1) An estate agent or an agent's representative must exercise all due skill, care and diligence in performing the functions of an estate agent or an agent's representative (as the case requires).
- (2) An estate agent or an agent's representative must not engage in conduct that is unprofessional or detrimental to the reputation or interests of the estate agency industry.
- (3) An estate agent or an agent's representative must complete all work on behalf of a principal as soon as is reasonably possible.
- (4) An estate agent or an agent's representative must be timely and courteous in all dealings in the course of carrying out the duties of an estate agent or an agent's representative.
- (5) Unless a landlord otherwise instructs in writing, if—
 - (a) an estate agent is managing a rental property on behalf of a landlord, the estate agent must promptly notify the landlord of any breach of a tenancy agreement; or
 - (b) an agent's representative, who is acting for or on behalf of a licensed estate agent, is managing a rental property on behalf of a landlord, the agent's representative must promptly notify the landlord of any breach of a tenancy agreement.
- (6) If an estate agent is acting for the seller of, or if the principal of an agent's representative is the seller of, real estate or a business and a contract of sale for the real estate or business

has been entered into and, contrary to the terms of the contract, a deposit has not been received, the estate agent or agent's representative must immediately inform the seller of this fact.

14 Estate agent or agent's representative not to induce breach of contract

An estate agent or an agent's representative must not knowingly induce or attempt to induce a person to breach a contract of sale, letting or agency or a contract of any other kind relating to the estate agency practice.

15 Estate agent or agent's representative to ascertain information

An estate agent or an agent's representative must make all reasonable enquiries to ascertain the information relevant to a service or transaction relating to the estate agency practice to be provided or performed by the estate agent or agent's representative.

16 Communication of offers by estate agent or agent's representative

- (1) Unless otherwise instructed in writing by a principal, an estate agent or an agent's representative must communicate to the principal all offers to purchase, sell or lease real estate or a business, made to the estate agent or agent's representative, whether those offers were made verbally or in writing, as soon as possible after the offer has been made.
- (2) If, in accordance with the principal's written instructions, the estate agent or agent's representative is not going to inform the principal of an offer, the estate agent or agent's representative must inform the person who made the offer that the offer will not be submitted to the principal.

17 Bids and offers at public auctions of land

Despite regulation 16, an estate agent or an agent's representative must not communicate to any person any bid or offer for a property that is made after the property has been knocked down to the successful bidder at a public auction for the sale of land, unless the vendor or successful bidder at the auction refuses to sign the contract of sale following the auction.

18 Maintenance or repairs of residential rental property

- (1) This regulation applies if—
 - (a) an estate agent, or an agent's representative who is acting for or on behalf of a licensed estate agent, manages a residential rental property on behalf of a landlord; and
 - (b) the scope of the engagement to manage the property includes management of the maintenance or repair of the residential property.
- (2) The estate agent or agent's representative must promptly—
 - (a) respond to and, subject to the lawful instructions of the landlord, attend to all requests by a tenant for maintenance of, or repairs to, the property; and
 - (b) notify the tenant of the landlord's response or otherwise to a request by a tenant for maintenance of, or repairs to, the property.
- (3) If the landlord has instructed that maintenance or a repair not be carried out, the estate agent or agent's representative must inform the landlord if the landlord's failure to carry out the maintenance or repair would constitute a breach of—

- (a) any tenancy agreement in force in relation to the property; or
- (b) the **Residential Tenancies Act 1997**.

19 Acting for purchaser as buyer's agent

An estate agent, or an agent's representative acting on behalf of a purchaser as a buyer's agent, must keep the purchaser informed of each stage of the negotiation of a purchase price, as instructed by the purchaser.

Part 3—Complaints and disputes

20 Dispute resolution procedures

- (1) An estate agent must have in place written procedures for resolving complaints and disputes arising from the operation of the agent's estate agency practice.
- (2) The procedures under subregulation (1) must provide for the following—
 - (a) the position title of the person or persons to whom a complainant may give notice of a complaint;
 - (b) the contact details for the person or persons referred to in paragraph (a);
 - (c) the times and places at which notice of a complaint may be given, which must not unreasonably restrict the ability of complainants to give that notice;
 - (d) details of the dispute resolution procedure.

21 Estate agent or agent's representative to advise of dispute resolution procedures

- (1) An estate agent must advise a person that the estate agent has procedures for resolving complaints and disputes—
 - (a) before obtaining a signed written engagement or appointment from the person; or
 - (b) as soon as possible after obtaining the engagement or appointment; or
 - (c) before obtaining a signed written tenancy agreement from the person; or

- (d) as soon as possible after obtaining the signed written tenancy agreement.
- (2) An agent's representative must advise a person that the licensed estate agent for whom the agent's representative is performing the functions of an estate agent has procedures for resolving complaints and disputes—
- (a) before obtaining a signed written engagement or appointment from the person; or
 - (b) as soon as possible after obtaining the engagement or appointment; or
 - (c) before obtaining a signed written tenancy agreement from the person; or
 - (d) as soon as possible after obtaining the signed written tenancy agreement.
- (3) If a person makes a complaint to—
- (a) an estate agent about the estate agent (including the agent's representative), the estate agent must inform the person of the estate agent's procedures for resolving complaints and disputes as soon as possible after the complaint is made; or
 - (b) an agent's representative about the agent's representative or the licensed estate agent for whom the agent's representative is performing the functions of an estate agent, the agent's representative must inform the person of the licensed estate agent's procedures for resolving complaints and disputes as soon as possible after the complaint is made.

- (4) An estate agent or an agent's representative must make every effort to minimise and resolve complaints and disputes with a principal that relate to the performance of the estate agent or agent's representative.
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Endnotes

¹ Reg. 4: S.R. No. 46/2008.