



ACT
Government

Justice and Community Safety

GUIDE TO THE OBLIGATIONS OF OWNERS CORPORATION MANAGERS

This guide is designed to assist owners corporation managers
to understand their obligations under the
Agents Act 2003 (ACT).

MARCH 2012

OFFICE OF REGULATORY SERVICES

Office of Regulatory Services

The Office of Regulatory Services (ORS) was formed to provide a single coordinated approach to regulation and enforcement of a number of activities previously provided by several areas of the ACT Government.

The ORS encompasses the functions of the:

- Office of Fair Trading
- Registrar-General's Office
- ACT WorkCover
- Parking Operations
- Parking Review.

The ORS brings together capability from across the government to undertake licensing, registration and accreditation, dispute resolution and consumer and trader assistance, compliance and enforcement/litigation and education.

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- Fair Trading
- Business and Industry Licensing
- Births, Deaths and Marriages
- Land Titles
- Rental Bonds
- WorkCover
- Parking Operations
- Parking Review
- Transport Regulation

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Contents

INTRODUCTION	1
DEFINITIONS.....	2
OWNERS CORPORATION MANAGERS.....	4
APPOINTMENT	5
CODE OF CONDUCT	7
LICENSING REQUIREMENTS.....	9
APPLYING FOR A LICENCE.....	10
AGENCY AGREEMENTS	11
TRUST ACCOUNTS.....	12
OCCUPATIONAL DISCIPLINE.....	18
ADMINISTRATORS.....	20
RULES OF CONDUCT	22

INTRODUCTION

In the ACT, many owners corporations engage a person or corporation to help manage their units plan. These people are known as owners corporation managers (Managers).

Under the *Unit Titles (Management) Act 2011*, an owners corporation may appoint any of the following persons as an owners corporation manager:

- a person holding a licence as a real estate agent under the Agents Act
- a person holding a conditional real estate licence under the Agents Act who acts, or intends only to act, as the manager of an owners corporation
- a member of the corporation
- someone else who is not a manager of another owners corporation, and whose income as manager of the corporation will not be the person's primary source of income.

It should be noted that there is no general requirement to appoint a manager for a units plan.

This guide is designed to assist managers to understand their obligations under the Agents Act.

DEFINITIONS

The definitions below will be useful for understanding the terms used in this guide.

ACAT: The ACT Civil and Administrative Tribunal. ACAT is a consolidated ACT tribunal that incorporates several divisions.

ADI: Authorised deposit-taking institution (*Banking Act 1989* (Cth)).

ADI business day is defined in section 104 of the *Agents Act 2003* as, for a trust account, a day when the branch of the authorised deposit taking institution is kept open for business.

Agents Act denotes the *Agents Act 2003*.

Agents Regulation denotes the *Agents Regulation 2003*.

Executive Committee: The committee elected at an Owners Corporation's Annual General Meeting to run the day-to-day business of the Owners Corporation.

Owners Corporation: All registered owners of the units within a units plan are members of the Owners Corporation. The membership of the Owners Corporation changes with the buying and selling of individual units.

Manager is defined in section 49 of the *Unit Titles (Management) Act 2011*:

An owners corporation may, by ordinary resolution, appoint any of the following as manager:

(a) a person holding a licence as a real estate agent under the *Agents Act 2003*

Note: The Commissioner for Fair Trading may issue a conditional real estate licence to a person who acts, or intends to act, only as the manager of an owners corporation (see *Agents Act 2003*, s 34).

(b) a member of the corporation

(c) someone else who is not a manager of another owners corporation, and whose income as manager of the corporation will not be the person's primary source of income.

Note: For the making of appointments (including acting appointments), see the *Legislation Act*, pt 19.3.

Owners corporation managing agent is defined in the dictionary of the *Agents Act 2003* as a person appointed as manager of an owners corporation for a units plan under the *Unit Titles Act 2001*.

Police certificate is defined as a police check.

Trust money is defined in section 102 of the *Agents Act 2003* as trust money if it is received:

- (a) by a licensed agent in relation to the business for which the agent is licensed on behalf of someone else
- (b) on the basis that the money is to be paid to the other person or as the other person directs.

Units plan: The documents that have been approved for a unit title property development by the ACT Planning and Land Authority and registered by the Registrar-General.

Unit Titles Act denotes the *Unit Titles Act 2001*.

Unit Titles Management Act denotes the *Unit Titles (Management) Act 2011*.

Unit Titles (Management) Regulation denotes *Unit Titles (Management) Regulation 2011*.

OWNERS CORPORATION MANAGING AGENTS

Under the Agents Act, an owners corporation managing agent (managing agent) means a person appointed as manager of an owners corporation for a units plan under the Unit Titles Management Act.

If you are appointed as a manager to act on behalf of an owners corporation for a units plan, and derive income from the management of that units plan, you may need a licence.

You will need a licence if you:

- are appointed as manager of an owners corporation for a units plan under the Units Titles (Management) Act; and
- are **not** a member of the owners corporation ;and
- you derive your primary income from acting as a manager of the owners corporation or you derive income from acting as a manager to more than one owners corporation.

This means that the obligations previously only applicable to real estate (and other) agents will now apply to a specific group of managers. In general, people who provide owners corporation management services and act as a manager *of a business* must adhere to the licensing, reporting and trust accounting requirements for real estate agents, as well as observe the Code of Conduct for managers and the Rules of Conduct for licensed agents.

Real estate agents who already provide these services will not have to do anything differently because they are already licensed to provide these services.

People who currently provide owners corporation management services but who don't hold a real estate agent's licence will need to apply for a licence if they are not a member of the owners corporation or they derive their primary income from acting as a manager.

APPOINTMENT

An owners corporation manager may be an individual, partnership or corporation. The executive committee of an owners corporation may engage a manager to carry out the administrative functions of the owners corporation, or any particular aspect of those functions.

Under the Unit Titles Management Act, the appointment of *any* owners corporation manager requires an ordinary resolution of the owners corporation. However, the scope of a managers functions will depend on what the owners corporation decides in a general meeting.

Term of Appointment: Owners corporation manager cannot be appointed for a term longer than three years. The contract must include information about remuneration, functions to be exercised on behalf of the owners corporation and any other conditions agreed to.

Ending an Appointment: An owners corporation may end an owners corporation manager's appointment for reasons similar to those that apply to ending a service contract, namely for:

- a remedial breach under the Unit Titles Management Act, if a notice has been given under section 55 of the Unit Titles Management Act
- misbehaviour
- bankruptcy
- a conviction that would result in imprisonment of at least one year (but before ending a manager's appointment because of a conviction, the owners corporation must be satisfied that the conviction affects the manager's suitability as a manager of the owners corporation).

Further, the owners corporation must end the appointment of a manager if the manager is absent for any period other than approved leave for 14 consecutive days or 28 days in a 12 month period. They must also end the appointment of a manager if physical or mental incapacity substantially affects the exercise of the manager's functions.

Remedial Breaches: The Unit Titles Management Act specifies the circumstances in which a manager commits a remedial breach of the owners corporation manager's appointment. These circumstances can include a failure to exercise the manager's functions, contravention of the code of conduct or gross negligence/misconduct in carrying out the manager's functions.

Obligations of Owners Corporation Managers

If an owners corporation believes on reasonable grounds that a manager has committed a remedial breach, it may give written notice to the manager stating that it believes that the manager has committed a remedial breach. The notice must include details of the remedial breach committed, sufficient for the manager to identify the function the manager failed to exercise or the contravention of the code of conduct or gross negligence or misconduct action.

Within 14 days after the notice is given to the manager, the manager must either give the owners corporation written representation explaining why the manager's actions do not amount to a remedial breach or remedy the breach. An owners corporation may end the manager's appointment if the manager does not comply with the notice or if it does not accept the manager's representation.

CODE OF CONDUCT

A code of conduct is a set of principles and expectations that are considered binding on any person who is a member of a particular group.

The *Unit Titles Management Act* contains a code of conduct at Schedule 1, Part 1.2 that applies to managers.

The Code of Conduct requires:

1) Knowledge of the Unit Titles Management Act 2011 and the Code of Conduct

A manager must have a good working knowledge and understanding of the Act, including this code, as relevant to the manager's functions.

2) Acting honestly, fairly and professionally

A manager must act honestly, fairly and professionally in exercising the manager's functions. A manager must not try to unfairly influence the outcome of an election for the owners corporation executive committee.

3) Acting with skill, care and diligence

A manager must exercise reasonable skill, care and diligence in exercising the manager's functions.

4) Acting in the owners corporation's best interests

A manager must act in the best interests of the corporation unless it is unlawful to do so.

5) The manager to keep the owners corporation informed of developments

A manager must keep the owners corporation informed of any significant development or issue about an activity carried out for the owners corporation.

6) Ensuring that their employees comply with the Act and the Code

A manager must take reasonable steps to ensure that the manager's employees comply with the Act, including this code, when exercising the manager's functions.

7) The manager is not to engage in fraudulent or misleading conduct

A manager must not engage in fraudulent or misleading conduct in exercising the manager's functions.

8) The manager is not to engage in unconscionable conduct

A manager must not engage in unconscionable conduct in carrying out the manager's functions.

Examples:

- taking unfair advantage of the manager's superior knowledge relative to the owners corporation
- requiring the owners corporation to comply with conditions that are unlawful or not reasonably necessary
- exerting undue influence on, or using unfair tactics against, the owners corporation or the owner of a unit in the units plan

These examples are not exhaustive.

9) To avoid conflicts of interest between owners corporations

A manager for an owners corporation (*the first corporation*) must not accept an engagement for another owners corporation if accepting the engagement may place the manager's duty to, or the interests of the first corporation in conflict with the manager's duty to, or the interests of, the other owners corporation.

10) To ensure goods are obtained or supplied at competitive price

A manager must take reasonable steps to ensure the goods and services the manager gets for, or supplies to, the owners corporation are obtained or supplied at competitive prices.

11) To provide records required under the Act to owners corporations on request

If an owners corporation or its executive committee asks the manager, in writing, to show that the manager has kept the owners corporation's records as required under the Act, the manager must comply with the request within a reasonable time.

The *Agents Regulation 2003* (Agents Regulation) contains the Rules of Conduct at Schedule 8 applying to all licensed agents, including real estate agents and owners corporation managers. The Agents Regulation rules are very similar to the Code of Conduct in the Unit Titles Management Act, above. The Agents Regulation rules are reproduced at the end of this guide.

LICENSING REQUIREMENTS

If you act as an owners corporation manager, you may need a licence under the Agents Act.

Only a small number of owners corporation managers will be required to be licensed under the Agents Act. In general, these are people who act as an owners corporation manager as a business. Individual managers working for a licensed real estate agent or licensed owners corporation manager will not be required to hold a licence.

Who is exempt?

A licence will not be required for the following owners corporation managers:

- a person who is appointed as an owners corporation manager and is also the treasurer of the owners corporation
- a member of the owners corporation appointed as owners corporation manager
- a person who manages only one owners corporation and whose primary income is not derived from the position.

Eligibility

Under the Agents Act, an individual is eligible for a licence if that person:

- is an adult
- has the qualifications required for the licence (no qualifications for owners corporation managing agents have been determined at this time)
- is not disqualified due to being convicted of an offence involving dishonesty, having been bankrupt any time in the last three years, being mentally incapacitated or other reasons for disqualification as set out in section 27 of the Agents Act
- is not disqualified from being registered by the Office of Regulatory Services.

A partnership is eligible to be licensed if each person in the partnership is an adult, and not disqualified from being licensed or registered.

A corporation is eligible to be licensed if the Commissioner for Fair Trading is satisfied that no director of the corporation is disqualified from being licensed and at least one director of the corporation holds a licence of the same kind.

APPLYING FOR A LICENCE

An application for an owners corporation managing agent licence must be accompanied by:

- a statement setting out the place that, if the licence is issued, will be the applicant's main place of business
- a police certificate dated not earlier than two months before the day the application is made for each of the following people: the applicant; any partners of the applicant; if the applicant is a corporation - each director of the corporation.

Term of Licence

A licence is issued for the period of up to one year stated in the licence.

Renewal of Licence

A licensed owners corporation managing agent may apply to the Commissioner for Fair Trading to renew the licence. The Commissioner for Fair Trading must renew/refuse the licence within six weeks of receiving the application.

Under the Agents Regulation it is a condition of a licence that a licensee (the owners corporation managing agent) satisfies requirements for continuing professional development set by the Commissioner for Fair Trading. While those people who hold licences under the Agents Act are already subject to this requirement, owners corporation managers who become holders of conditional licences as a result of the amendments will be required to undertake such training in each year they hold the licence. The content of such training is still being determined, but it is likely to focus on matters such as recent changes to the law, dispute-resolution, and sinking fund sizing/management.

AGENCY AGREEMENTS

No commission or expenses without agency agreement

An owners corporation manager is not entitled to commission or expenses from the owners corporation for which the agent acts (principal) for services provided by the agent for the principal unless:

- the services were carried out under a written agreement signed by the principal and the agent (*an agency agreement*)
- the agency agreement
- identifies the rebates, discounts, commissions and expenses that the agent may receive
- estimates the amount of any rebates, discounts, commissions and expenses
- the agency agreement complies with the agents regulations
- a copy of the agency agreement signed by the agent was given to the principal within 48 hours after the agreement was signed by the principal.

TRUST ACCOUNTS

Under the Agents Act, all licensed agents, including all licensed owners corporation managing agents, must hold trust money in a trust account kept at an authorised deposit-taking institution in the ACT.

If an agent does not received or hold trust money, they may be able to apply to the Commissioner for Fair Trading for an exemption from the requirements.

For owners corporation managing agents, *trust money* is money received by them in relation to the business for which they are licensed on behalf of an owners corporation, and on the basis that the money is to be paid to the owners corporation or as the owners corporation directs.

This mandatory obligation for owners corporation managing agents requiring them to keep trust accounts is due to the special relationship between the agent and the principal (the owners corporation for whom they act). As it is a relationship based on trust and a transfer of authority, there is a duty of care that should be kept in mind when dealing with money that does not form part of the owners corporation's own accounts.

Trust money is money belonging to an owners corporation but managed by the agent for a specific purpose or purposes which have been decided by the owners corporation. Trust money must be appropriately kept in a separate trust account.

A licensed agent may keep more than one trust account.

Under Part 7 of the Agents Act which deals with Trust Accounts, *licensed agent* includes the following:

- a person who is no longer a licensed agent but holds trust money received while licensed
- the personal representative of a licensed agent who died while holding trust money, if the representative holds the trust money
- the liquidator of a corporation that went into liquidation while being a licensed agent and holding trust money, if the corporation holds the trust money.

All owners corporation managing agents must manage trust money held, including:

- providing quarterly statements on trust moneys to the Office of Regulatory Services
- having trust accounts audited each financial year unless an audit period is otherwise specified by the Commissioner
- managing their records, including recording the material details of every transaction.

What about administrative and sinking funds?

An owners corporation must open and maintain an administrative fund for the general administration of the owners corporation. An owners corporation may, by special resolution, establish other funds for particular purposes (a *special purpose fund*). If there are four or more units in the units plan, an owners corporation must open and maintain a sinking fund.

An owners corporation managing agent may be responsible for administering an administrative fund, special purpose fund, or sinking fund for an owners corporation.

Administrative and sinking funds are not to be treated as trust money and are not required to be maintained as trust accounts.

Where a managing agent acts on behalf of an owners corporation, the owners corporation is still the legal owner of the administrative, special purpose or sinking fund. The interest on administrative and sinking funds continues to belong to the owners corporation and banking transactions must be done in the owners corporation's name.

Opening a trust account

Licensed agents are required to have one or more trust accounts. When opening a trust account, they are required to notify the authorised deposit-taking institution in writing that it is a trust account required under the Agents Act.

The trust account must be made under a name that includes the name of the agent, or, if the agent carries on business under a business name or in partnership, under the business name or the name of the partnership.

The words 'Trust Account' must appear in the name of the trust account and all cheques drawn on the trust account.

A licensed agent is required to notify the Commissioner for Fair Trading, in writing, of the details of each trust account held by the agent and, if the agent opens a new trust account, of each new trust account. These details must be given to the Commissioner for Fair Trading within two business days after the day the agent becomes a licensed agent or the agent opens a new trust account.

Dealing with Trust money

A licensed agent must:

- deal with trust money as directed by the person for whom the money is held on trust
- not use the money to pay the debts of the agent (and not attach or take in execution trust money under a court order or court process at the request of the creditor of the agent)
- pay the money into the trust account by the next ADI business day after they receive it
- only pay amounts out of the trust account by electronic transfer or by cheque (cheques must be crossed and expressed payable to a person specified in the cheque)
- for money that is paid by direct deposit or electronic funds transfer into another account kept by the agent, pay money into a trust account on the next ADI business day after the day the agent becomes aware of the payment.

ADI business day, for a trust account, means a day when the branch of the authorised deposit taking institution is kept open for business.

Agents to notify of overdrawn trust accounts

Where a licensed agent finds out that the agent's trust account has become overdrawn, they must tell the Commissioner for Fair Trading in writing within five business days after the day the agent finds out that the account has become overdrawn.

The agent must provide to the Commissioner:

- details of the overdrawn account
- the amount by which the account is overdrawn
- the reason for the account being overdrawn.

Obligations of authorised deposit-taking institutions

An authorised deposit-taking institution with which a trust account is kept must not enforce any liability that the licensed agent may have towards the authorised deposit-taking institution against any amount held in the account whether by way of claim, set-off, counterclaim, charge or otherwise.

Interest on trust accounts

On the tenth ADI business day in each month, the authorised deposit-taking institution of the trust account must:

- work out the interest at the specified rate on the daily balances of the trust account during the previous month
- pay to the territory an amount equal to the total of the amounts of the interest worked out.

The *specified rate*, for a particular day, is 70% of the yield of the authorised deposit-taking institution's accepted bills published by the Reserve Bank of Australia for the day.

Closing trust accounts

When closing a trust account, a licensed agent must tell the Commissioner for Fair Trading, in writing, of the closure within 10 business days after the day the account is closed.

Change of owners corporation managers

Where there is a change of owners corporation managing agent, the former agent is required to give a statement and records to the owners corporation. Not later than 14 days after the person stops being the managing agent, they must give the owners corporation:

- a certified true copy of the owners corporation accounts
- the records about the management of the owners corporation.

Quarterly Statements

At the end of each quarter (three months beginning the first day of the audit period for the agent and each following period of three months) a licensed agent must prepare a quarterly statement for the Office of Regulatory Services.

The quarterly statement must:

- be prepared within 15 days after the end of each quarter
- be made as at the close of business on the last day of business to which the statement relates
- state the name of each person on whose behalf the licensed agent held trust money

- state the amount of trust money held in the agent's trust accounts on behalf of the person
- state the amount of the trust money held in cash by the agent held on behalf of the person
- state the amount in each trust account kept by the agent (in working out this amount, include cheques drawn on the account but not presented as taken to have been paid)
- be kept for up to five years after the end of the quarter to which the statement relates
- must be audited by a qualified auditor within three months after the end of the audit period, or longer if allowed by the Commissioner for Fair Trading.

Where a licensed agent (including a former licensed agent or personal representative of a licensed agent) held no trust money during the audit period, the agent must give the Commissioner for Fair Trading a statutory declaration to that effect within three months after the end of the audit period.

Records

Under the Agents Act, an owners corporation managing agent is required to keep records of every transaction (*records* include documents and information in electronic form). Records are also required under other laws, such as the *Territory Records Act 2002*.

A managing agent must record the material details of every transaction, including all trust account transactions, they conduct.

A managing agent must keep records for five years beginning on 30 September after the making of the record at the managing agent's main place of business; or, if the Commissioner for Fair Trading has agreed in writing that the record may be kept at another place - that place.

When an owners corporation managing agent receives trust money (in cash or cheque non electronically credited/transferred and not paid directly into their account) they must give a receipt to the person who gave them the money, and keep a copy of that receipt. The receipt must also describe on its face the reason why the money was given to the owners corporation managing agent.

Unclaimed Trust Money

If, on 1 July of a year, a licensed agent holds trust money received by the agent more than three years before that day (*the unclaimed money*), the licensed agent must give the Commissioner for Fair Trading a statement, made up as a 1 July, about the unclaimed money by 31 July of the same year.

A *statement* must contain details of:

- the name and address of each owners corporation for whom or on whose behalf trust money is held
- the amount held for each owners corporation
- for each owners corporation - the purpose for which the money was paid to the person giving the statement of the licensed agent by whom the trust account was kept.

Former licensed agents holding trust money need to give statements about unclaimed trust money to the Commissioner for Fair Trading within three months as at the day they cease to be a licensed agent.

Personal representatives of licensed agents holding trust money need to give statements about unclaimed trust money to the Commissioner for Fair Trading within three months as at the day the licensed agent died.

Within six months after receiving statements about unclaimed money, the Commissioner for Fair Trading must prepare a written notice stating that, if the money is not paid out of the trust account in which it is held within three months after the day the notice is notified, the person holding the money will be required to pay it to the public trustee.

Exempt unclaimed money

For licensed agents, where unclaimed money is exempted by regulations (*exempt unclaimed money*), the licensed agent must keep a written record of any exempt unclaimed money held by them. The regulations may state that the agent does not need to provide statements of the exempt unclaimed money to the Commissioner for Fair Trading.

Complaints and disputes

Failure to account properly may result in a claim for compensation. A person (the claimant) who suffers financial loss because of a licensed agent's failure to account is entitled to claim compensation for the loss. A claim in relation to a licensed owner's corporation managing agent is limited to \$50,000 for a single claim where the cause of action on which the claim is based arose after the commencement of this provision.

OCCUPATIONAL DISCIPLINE

If the Commissioner for Fair Trading believes on reasonable grounds that a ground for occupational discipline exists in relation to an agent the Commissioner may apply to the ACT Civil and Administrative Tribunal (ACAT) for an occupational discipline order in relation to the agent.

Grounds for occupational discipline

If an owners corporation managing agent contravenes their obligations under the Acts or Regulations, including a breach of the Code of Conduct for managers or the Rules of Conduct for agents, the Commissioner for Fair Trading may take disciplinary action against them.

Types of disciplinary action ACAT may make

ACAT may make one or more of the following orders against an agent:

- reprimand them
- require them to give a written undertaking
- require them to complete a stated course of training to the satisfaction of the regulatory body or another stated person
- give them a direction (*note* For directions that may be given, see section 67 of the *ACT Civil and Administrative Tribunal Act 1998*)
- cancel or suspend their licence or registration
- *disqualify them from applying for a licence, or registration, of a stated kind for a stated period or until a stated thing happens*
- direct the Office of Regulatory Services to:
 - put a condition on their licence or registration
 - remove or amend a condition put on their licence or registration
 - require them to pay to the Territory or someone else a stated amount (not more than any amount prescribed by regulation)
 - if they gained financial advantage from the action that is the ground for occupational discipline - require them to pay the Territory an amount assessed as the amount of financial advantage gained by them.

If ACAT cancels an agent's licence or registration, ACAT may disqualify them from applying for a licence or registration for a stated period or indefinitely.

Suspension of licences

ACAT may cancel or suspend any other licence held by the agent or prohibit the agent administering an administrative or special purpose fund under the Unit Titles Management Act.

ADMINISTRATORS

When administrators may be appointed

The Commissioner for Fair Trading may appoint someone to administer the business of a licensed owners corporation managing agent or former licensed owners corporation managing agent if any of the following occurs:

- the agent's licence is suspended or cancelled
- the agent is disqualified from holding a licence
- the agent's licence has expired
- the agent surrenders the licence under section 39 of the Agents Act
- the agent is missing and cannot be located after making reasonable enquiries
- the agent dies.

The Commissioner for Fair Trading may appoint someone to administer the business of a person who is not a licensed agent if the person is:

- carrying on business as an agent
- pretending to be a licensed agent.

Agents not to be involved in business under administration

While the appointment of an administrator is in force, the agent must not be involved in the direction, management or conduct of the agent's business unless the administrator otherwise directs in writing.

Notice to authorised deposit-taking institutions

On the appointment of an administrator for an agent, the Commissioner for Fair Trading must give the person in charge of the branch of the authorised deposit-taking institution with which the agent maintains a trust account a written notice:

- telling the person about the appointment
- revoking the agent's authority to withdraw money from the account.

The revocation of the agent's authority to withdraw money from a trust account has the effect that

- the agent may no longer withdraw money from the account
- any authority given by the agent to someone else to withdraw money from the account ceases to have effect
- only the administrator, or a person authorised by the administrator by written notice given to the authorised deposit-taking institution, is authorised to withdraw money from the account
- the authorised deposit-taking institution may not pay any money out of the account without the written authority of a person mentioned in paragraph above.

The Commissioner for Fair Trading must give a copy of a notice under section 141 of the Agents Act to the agent, but a failure to comply with this does not affect the validity of the notice.

Functions of administrators

Anything done by an administrator appointed in relation to an agent is taken to have been done by the agent, and the agent (not the administrator or the Territory) may be civilly liable.

Remuneration of administrators

An administrator may be paid remuneration by the Territory. This amount is recoverable by the Territory as a debt from the agent in relation to whom the administrator is appointed.

RULES OF CONDUCT

Below are the general rules applying to all licensees (including owners corporation managing agents) and registered salespeople contained in the Agents Regulation at Schedule 8.

1) Knowledge of Act and other laws

An agent must have a knowledge and understanding of the Act, and any other laws relevant to the kind of licence or certificate of registration held (including, laws relating to residential tenancy, fair trading, trade practices, anti-discrimination and privacy) that may be necessary to allow the agent to lawfully exercise his or her functions as agent.

Note: A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

2) Fiduciary obligations

An agent must comply with the fiduciary obligations arising as an agent.

3) Honesty, fairness and professionalism

- (i) An agent must act honestly, fairly and professionally with all parties in a transaction.
- (ii) An agent must not mislead or deceive any parties in negotiations or a transaction.

4) Skill, care and diligence

An agent must exercise reasonable skill, care and diligence.

5) High pressure tactics, harassment or unconscionable conduct

An agent must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.

6) To act in client's best interests

An agent must act in the client's best interest at all times unless it would be contrary to the Act or otherwise unlawful to do so.

Note: A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulations (see Legislation Act, s 104).

7) Confidentiality

An agent must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer, unless—

- the client or customer consents to the disclosure
- the agent is permitted or compelled by law to disclose the information.
- to act in accordance with client authority

An agent must not act as an agent or represent him or herself as acting as an agent on behalf of a person without the written consent of the person.

8) To act in accordance with client's instructions

An agent must act in accordance with a client's instructions unless it would be contrary to the Act or otherwise unlawful to do so.

Note: A reference to an Act includes a reference to the statutory instruments made or in force under the Act; including any regulations (see Legislation Act, s 104).

9) Licensee must ensure employees comply with the Act

An agent who is the licensee-in-charge at a place of business of a licensee must take reasonable steps to ensure other licensees or registered persons employed in the business conducted there comply with the Act.

Note: A reference to an Act includes a reference to the statutory instruments made or in force under the Act; including any regulation (see Legislation Act, s 104).

10) Conflicts of interest

An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests.

11) Referral to service provider

- (i) An agent who refers a principal or prospective buyer to a service provider must not falsely represent to the principal or prospective buyer that the service provider is independent of the agent.
- (ii) A service provider is considered to be independent of an agent if—
 - (a) the agent receives no rebate, discount, commission or benefit for referring a client or customer to the service provider; and

(b) the agent does not have a personal or commercial relationship with the service provider.

Examples of personal or commercial relationship include:

- a family relationship
- a business relationship
- a fiduciary relationship
- a relationship in which 1 person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.

Note: An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (iii) If the service provider is not independent of the agent, the agent must disclose to the principal or prospective buyer:
- the nature of any relationship, whether personal or commercial, the agent has with the service provider
 - the nature and value of any rebate, discount, commission or benefit the agent may receive, or expects to receive, by referring the client or customer to the service provider.

12) Licensee not to recommend engagement of services of solicitor acting for other party

An agent must not recommend that a principal or prospective buyer engage the services of a solicitor or firm of solicitors, if the agent knows that the solicitor or the firm of solicitors acts or will be acting for the other party to the agreement concerned.

13) Inducements

An agent must not offer to provide to any other person any gift, favour or benefit, whether monetary or otherwise, to induce any other person to engage the services of the agent as agent in relation to any matter.

14) Soliciting through false or misleading advertisements or communications

An agent must not solicit clients or customers by advertisement or other communication that the agent knows or should know are false or misleading.

15) Insertion of material particulars in documents

An agent must not give or tender to any person for signature a document, unless at the time of giving or tendering of the document all material particulars have been inserted in the document.

16) Representations about the Act

- (i) An agent must not falsely represent to a person the nature or effect of a provision of the Act.
- (ii) An agent must not, either expressly or impliedly, falsely represent, whether in writing or otherwise, to a person that a particular form of agency agreement or any term of the agreement is required by the Act.

Note: A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulations (see Legislation Act, s 104).

17) Agency agreements must comply with regulation

An agent must not enter into an agency agreement unless the agreement complies with any applicable requirements of this regulation, as required by the Act, section 100 (No commission or expenses without agency agreement).

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