

RICS Practice Standards, Global

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# Real estate agency and brokerage standards

1st edition, guidance note



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# RICS Real estate agency and brokerage standards

RICS guidance note

1st edition

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# RICS guidance notes

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**This is a guidance note. It provides advice to RICS members on aspects of their work. Where procedures are recommended for specific professional tasks, these are intended to represent 'best practice', i.e. procedures which in the opinion of RICS meet a high standard of professional competence.**

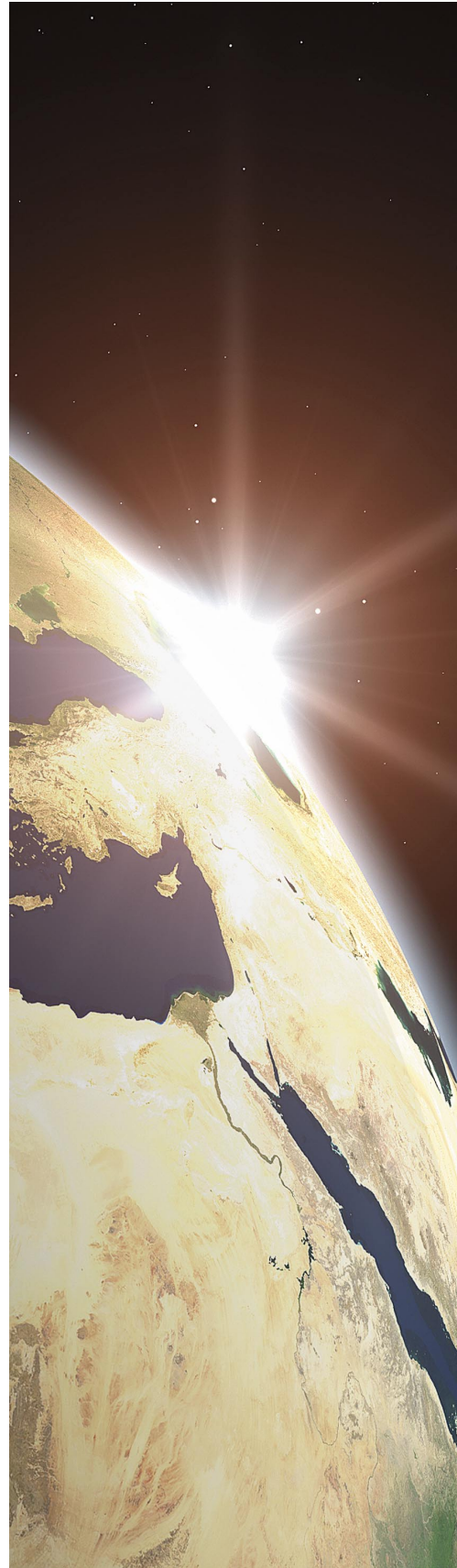
Members are not required to follow the advice and recommendations contained in the note. They should, however, note the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal is likely to take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the surveyor had acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

Alternatively, it does not follow that members will be found negligent if they have not followed the practices recommended in this note. It is for each surveyor to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this note, they should do so only for a good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice. Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In addition, guidance notes are relevant to professional competence in that each surveyor should be up-to-date and should have knowledge of guidance notes within a reasonable time of their coming into effect.



# Introduction

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The RICS *Real Estate Agency and Brokerage Standards* provide best practice guidance for real estate agents and brokers in all world regions. Their purpose is to ensure that clients receive objective advice, delivered in a professional manner that is consistent with internationally recognised standards. The standards set a framework for best practice in the execution and delivery of real estate agency services, subject to specific local legislative requirements and local market specifics. The standards offer generic guidance applicable to commercial, residential and rural transactions, including sales, acquisitions, leasing and letting. The guidance underpins the Real Estate Agency Code and its core principles and also provides guidance that will help to meet relevant laws and ethical codes in all world regions.

**Please note:** where the term ‘seller’ is used this is intended to include anyone seeking to dispose of an interest in real estate. This includes landlords wishing to let real estate and tenants wishing to assign, sublet or surrender tenancies or leases. Where the term ‘buyer’ is used this is intended to include anyone seeking to acquire an interest in real estate. This includes tenants seeking a lease.

Where the term ‘real estate agent’ (or ‘agent’) or ‘real estate agency’ (or ‘agency’) is used this is intended to include anyone acting as a broker or carrying out brokerage services.

# Real Estate Agency Code

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The Real Estate Agency Code comprises high level principles. Together the principles outline a culture of fairness and transparency which should underpin all activities undertaken by real estate agents within whichever country they practice.

The Code allows real estate agents flexibility in how they achieve the required outcomes. There is no intention to impose a prescriptive set of rules. Agents may work differently with different clients, and different agents are likely to work in different ways.

Agents, and companies providing agency services, must approach all their activities in accordance with the overarching principles.

The Code and the associated standards apply to the selling, buying, letting and renting of real estate – commercial, residential and rural.

A number of the principles apply to agents' conduct towards the public generally, both clients and non-clients. However, whilst everybody who deals with agents is entitled to be treated properly, it is acknowledged that agents have particular duties and responsibilities towards their clients.

Many agents already belong to professional bodies, which have their own professional standards, and this Code and the supporting standards consolidate existing best practice.

In order for the Code and the associated standards to operate effectively, both individual agents, and companies who provide real estate agency services, must take responsibility for compliance with the core principles. Senior managers of companies which provide agency services must ensure that internal systems and procedures are in place to support these principles.

Agents adopting the Code undertake:

1. To conduct business in an honest, fair, transparent and professional manner.
2. To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
3. To ensure that clients are provided with terms of engagement which are fair and clear, incorporate details of complaints handling procedures and, where existing, an appropriate redress scheme and meet all other legal requirements and relevant codes of practice.
4. To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
5. Not to discriminate unfairly in any dealings.
6. To ensure that all communications are fair, clear, timely and transparent in all dealings with clients.
7. To ensure that all advertising and marketing material is honest, decent and truthful.
8. To ensure that any client money is held separately from other monies, and is covered by adequate insurance.
9. To have appropriate professional indemnity/errors or omissions insurance, to ensure customers do not suffer loss as a result of any negligent act.
10. To ensure that it is made clear to all parties for whom you are acting, the scope of your obligations to each party.
11. Where provided as part of the service, to give a realistic assessment of the likely selling, buying or rental price or associated cost of occupancy, to the client based on market evidence and using best professional judgment.
12. To ensure that any property viewings are carried out in accordance with the client's wishes, having due regard for the security and personal safety of all parties.



# Glossary of terms

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**Appraisal:** In the context of this guidance note it is the term used for valuation in some jurisdictions outside the UK.

**Broker:** person acting as an intermediary between the parties buying and selling real estate. In many jurisdictions this is a licensed activity.

**Buyers:** anyone seeking to acquire an interest in real estate. This includes tenants seeking a lease.

**Client:** anyone instructing a real estate agent to act on their behalf for the buying or selling of real estate.

**Companies providing agency services:** companies undertaking real estate agency or brokerage (see above).

**Conflict of interest:** where an agent acts for clients who have competing interests, or where an agent's personal interests conflict with those of their client.

**Customer:** clients of real estate agents and potential buyers, sellers, landlords and tenants

**Dual agency:** where you have a contractual agency relationship with both the seller and the buyer at the same time.

**Interest in real estate:** real estate held under any form of tenure.

**Market evidence:** details of properties with the same or similar characteristics, in the same or similar location to the client's property, that have been sold within a reasonable timeframe, and the price or rent achieved.

**Multiple agency:** where you have competing contractual relationships simultaneously with several sellers or buyers.

**Multiple listing systems (MLS):** multiple listing systems (MLS) are extensively used in the US for real estate agents acting for sellers to share information about properties with other agents who may represent potential buyers and/or who may wish to introduce prospective purchasers on a commission sharing basis.

**Professional work:** formal valuation and/or advice regarding the physical condition of a building upon which a client relies, and which could lead to a claim of financial loss in the event of being carried out negligently.

**Real estate agency:** any person who, in the course of a business (including a business in which he or she is employed), is instructed to dispose of or acquire an interest in real estate. The term also includes those carrying out brokerage services.

**Real estate agent (or agent):** company or individual employed to buy, sell, let or rent real estate. The term also includes those acting as brokers.

**Related party:** an employee or principal of the agent's business, or any related party such as but not limited to: a spouse, civil partner, parent, child, sibling, uncle, aunt, nephew, niece, grandparent or grandchild. (This list is not exhaustive.)

**Sellers:** anyone seeking to dispose of an interest in real estate. This includes landlords wishing to let real estate and tenants wishing to assign tenancies or leases.

**Sub-agency:** instruction of a separate or related firm to provide estate agency services to the client on his or her behalf. This does not include multiple listing systems.

**Vulnerable customers:** customers who agents believe require special treatment as a result of physical, mental, or emotional impairment, or for any other reason.

# 1 Ethics

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There are a number of global ethical codes relating to international real estate agency. There are also many country specific and professional body specific codes. The formal code that applies to you will depend upon the country and the sector within which you practise. If you are a member of a professional body then you should also refer to the code of practice or conduct for that body.

This chapter considers the overarching ethical responsibilities of real estate agents notwithstanding your country of practice and provides guidance to help you to meet the following core principles of the Real Estate Agency Code:

1. To conduct business in an honest, fair, transparent and professional manner.
2. To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
4. To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
5. Not to discriminate unfairly in any dealings.

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## 1.1 Introduction to ethics and professionalism

The real estate agent has both legal and ethical responsibilities. The legal responsibilities are set out within either public or private laws for the respective country.

Ethical obligations impose a higher level of responsibility and may have not only legal but moral obligations. The resolution of issues often involves a subjective decision based on your own personal ethical values and those ethical rules set out in professional codes of conduct. Laws may also set out the legal responsibilities regarding your conduct.

Professional ethics set out the standards of performance and service the general public can expect to receive from a professional real estate agent. The Real Estate Agency Code sets out the standards of performance and service the general public can expect to receive from you as a real estate agent and ensures that you act professionally at all times. There are many definitions of professionalism. A good example is as follows:

‘Professionalism is the giving of one’s best to ensure that clients’ interests are properly cared for,

but in doing so the wider public interest is also recognised and respected.’

(H Land FRICS, Professional Ethics and the Rules of Conduct of the RICS, CPD Study Pack, College of Estate Management)

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## 1.2 Your general duty of care as a real estate agent

The Real Estate Agency Code requires that agents carry out work with due skill, care and diligence. This means that you should:

- use your best endeavours to achieve the best possible outcome for your client, within the limitations of the market conditions and the observation of ethical codes
- not release or misuse any information confidential to your client without their express permission, or unless legally required to do so
- not appoint a sub-agent without the express permission of your client (unless you are using a multiple listing system approach), and ensure that any sub-agent complies with this code
- ensure that all staff are appropriately trained and supervised for the tasks assigned to them

- not accept an instruction which is beyond your field of experience, unless you secure the assistance of a specialist in that particular field.

You must always ensure that you carry out all services with reasonable care and skill. What is 'reasonable' is measured by the standards of a reasonably competent and experienced member of the real estate agency profession. The duty of care and skill applies to every aspect of your services.

### **1.2.1 Your duty of care when acting for the seller**

Your duty of care exists throughout the period of your instruction. This includes exercising reasonable care and skill in advising on an appropriate asking price or rent for the property (see section 3.1) through employing the marketing strategy and to your advice to your client on whether or not to accept a particular offer.

### **1.2.2 Your duty of care when acting for the buyer**

Again, your duty of care will exist throughout the period of your instruction. Where you are instructed by a potential buyer to seek a suitable property for them you must take reasonable care to ensure that information which you pass on to your client is not misleading. The test of what is reasonable will be determined by the individual circumstances.

### **1.3 Dealing with conflicts of interest**

A conflict of interest is anything that impedes your ability to focus on the best interests of the client. This is a matter for your judgment – not the client's. You must make every attempt to avoid any conflict of interest that might not be in the best interest of a seller or a buyer for whom you are acting. The Real Estate Agency Code requires that you mitigate conflicts of interest and deal with them openly and fairly and immediately they arise.

You must disclose any interest in the property promptly and in writing. You should have regard to the particular circumstances of the situation in which you are involved before deciding whether to disclose any interest.

In the event of multiple agency for one of the parties, you must pay equal respect to your clients' interests and also work in this situation with the

highest possible degree of transparency. Conflicts of interest should be avoided but where this is impossible you should cease your activities for all clients involved.

In the interests of best practice you should disclose all interests but in all cases you should consult your client, take their instructions and keep a full note of the discussion and instructions in the file.

### **1.4 Understanding discrimination**

You must not discriminate against any existing or potential party to a transaction. You must not:

- discriminate on the basis of gender, age, race, creed, religion, disability, sexual orientation, or national origin, or
- favour any party because they are likely to instruct you on other property matters, or use services offered by you or your related parties.

You must ensure that you do not discriminate unfairly against any party:

- in the terms on which a property is offered
- by refusing to sell or lease the property or
- in your treatment of persons in need of property for occupation or investment purposes.

### **1.5 Vulnerable customers**

Vulnerability can include anything that may have an impact on a person's ability to make a sound and reasoned decision.

You must ensure that you do not discriminate against vulnerable customers – either explicitly or implicitly – by your actions. Customers can include actual and potential buyers, sellers, landlords and tenants, as well as your client.

Assessing the potential vulnerability of a consumer can be a sensitive matter and may require you to make a judgment. Staff should understand their obligations in this area and, if you are a manager, you should have in place appropriate procedures and relevant training to deal with these matters.

You must be willing and able to offer appropriate advice about the transaction process to all potential and actual customers. You should not make assumptions about the degree of knowledge that a person has. Be prepared to set out all the necessary information, explain what you will do,

and what others (e.g. legal advisers, surveyors, financial advisers, lenders) will do.

If, in your opinion, the customer may be vulnerable you should take this into account in any information or guidance you give to them – particularly if any decision they make is based solely on that information or advice.

If a customer makes a decision that may have legal connotations, you should explain that they should discuss this with their legal advisers. You might also consider speaking to the customer's legal advisers if you are concerned about any decisions that are being taken.

## **1.6 Responsibility for others**

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If you employ staff you may be responsible for their actions as well as your own. You should:

- (a) train staff initially and on a continuous basis, and keep records of that training and who received it
- (b) maintain awareness of the legislation and relevant codes of practice
- (c) supervise staff adequately
- (d) be careful about appointing sub-agents and/or co-agents to the extent that is possible when multiple listing systems are used and/or the cooperation of other agents is invited on a commission sharing arrangement
- (e) be aware of who your related parties are and satisfy yourself they are aware of any legal and ethical requirements and can be relied upon to comply with them
- (f) ensure that there is documentary evidence showing that all staff have been given proper instructions and training about complying with relevant laws and these standards.

## 2 Securing instructions

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Prior to accepting an instruction (commencing work), you must clarify for whom you will be working and how you will be paid, thereby spelling out unequivocally whose interests you will be representing.

You will act with partiality usually to represent the interests of one of the contracting parties (unless you are operating in a brokerage situation).

This chapter gives advice on the securing of instructions from either a seller or a buyer. Following this guidance will help you to meet the following principles in the Real Estate Agency Code:

1. To conduct business in an honest, fair, transparent and professional manner.
3. To ensure that clients are provided with terms of engagement which are fair and clear, incorporate details of complaints handling procedures and, where existing, an appropriate redress scheme and meet all other legal requirements and relevant codes of practice.
4. To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
10. To ensure that it is made clear to all parties for whom you are acting, the scope of your obligations to each party.

The first part of this chapter provides general guidance regarding the securing of instructions. The chapter is then divided into:

- A Acting for sellers
- B Acting for buyers
- C Sub-agents.

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### 2.1 Introduction

The relationship between you and your client will be based on terms of engagement or a contract, which will determine the rights and duties of both parties. If the contract does not set out specific terms these may, in some countries, be implied by law.

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### 2.2 Before taking instructions

#### 2.2.1 Conflict of interest checks

Before taking instructions from a client you must check that you will not have any conflict of interest. You can read more about conflicts of interest and personal interests in section 1.3 above. You should declare any other possible conflict of interest and gain the potential client's written permission for you to act for them in these circumstances.

In jurisdictions where dual agency is accepted this should be only as an exception to the rule, and only if both contracting parties have given their express consent.

As a general rule you should not undertake dual agency.

#### 2.2.2 Confirming the identity of your client

Money laundering is an international concern and individual countries have implemented regional and international regulations in slightly different ways. You should refer to the specific legislation for your country. However, as general guidance, you must use every reasonable effort to confirm the identity of your client before accepting instructions. You should refer to the RICS guidance note 'Protecting Against Money Laundering' (2010) for further guidance.

## 2.3 Sharing information with your potential client

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### 2.3.1 Terms of engagement

You must give written confirmation to your client of their instructions for you to buy, sell or let a property on their behalf. This should include details of your fees and expenses, of your business terms and the duration of your instructions. You must give your client these details before they are committed or have any liability towards you. Terms of engagement should clearly state the scope of the business you will carry out and specify what activities are not included, for example formal valuations, building surveys, technical surveys.

Terms of engagement can include a single document or a number of documents, which are to be read in conjunction with each other. You must ensure that your terms are fair and the documentation is written in plain, intelligible language. You should also have regard to sections 1.4 and 1.5 of these standards to ensure you do not discriminate and that you recognise the needs of vulnerable customers.

If you use standard terms of engagement you should ensure that you give clients an opportunity to negotiate individual terms.

Your terms of engagement must state that a copy of your complaints handling procedure is available on request.

You should sign and date your terms of engagement before they are given to your client. You should also ask your client to sign a copy and provide them with a copy for their records. You should take all reasonable steps to satisfy yourself that your client is entitled to instruct you. Any future changes to your terms of engagement must be agreed with your client and promptly confirmed in writing and signed by yourself and your client.

### 2.3.2 Fees, charges and taxes

You must provide full and clear written details of your fees and expenses to your potential client as stated in section 2.3.1. This should include:

- (a) details of the circumstances in which the client will become liable to pay you a fee or commission

- (b) details of the amount of your fee
- (c) particulars of any payments which do not form part of your payment for carrying out estate agency work but which will, or may in certain circumstances, be payable by the client to you or any other person, and particulars of the circumstances in which these payments will become payable (e.g. marketing expenditure, travel expenses or a fee payable if the client withdraws the property from the market), and
- (d) particulars of the amount of any payment falling within (c) above or, if you do not know the amount at the time the information is given, an estimate of that amount together with details of how it will be calculated.

You should make clear reference to whether your commission or fee and/or any expenses are exclusive or inclusive of any relevant taxes.

### 2.3.3 Dual fee liability

Where a property has been marketed with another agent or a buyer or tenant client has used another agent you should make clear any circumstances where they may be required to pay a fee to both yourself and to any other agent and advise of this in writing.

### 2.3.4 Timings

You should specify in your terms of engagement the point at which your entitlement to your commission or fee is to be triggered, for example, on completion of the sale, purchase or lease.

### 2.3.5 Penalties

You may have a legal right to interest on late payment. You should check relevant legislation to determine this and include the relevant information in your terms of engagement.

### 2.3.6 Cooling off period

A client may have a legal right to cancel an agency contract within a certain period of signing. If this is a legal right in your country this should be clearly stated in your terms of engagement or any contract document that you ask your client to sign.



## **2A Acting for sellers**

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### **2.4 Terms of engagement**

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In addition to the items set out in section 2.3 when acting for a seller you should also provide written particulars of any services you or anyone else connected with you or your firm may intend to offer the prospective buyer or tenant.

You can read more about the requirements relating to providing services to other parties in section 2.5.3.

### **2.5 Types of agency**

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There may be different types of agency agreement that you are able to enter into with a client. This may depend upon whether you are the only agent acting for the client or whether others will also be working on the same assignment for the client. You should clearly identify and define the nature of the agency agreement within your terms of engagement.

#### **2.5.1 Finalising terms of engagement**

As stated in section 2.3.1 your terms of engagement should be signed by both yourself and your client. You may choose to include matters such as agreed marketing expenditure and commission rates in a separate letter, together with general marketing advice.

It is your decision which individual clauses are included in your terms of engagement, other than those prescribed by relevant legislation.

#### **2.5.2 Commissioning other documentation**

When marketing a property there may be specific legislative requirements regarding documentation that must be provided at the point of marketing or during the marketing process. There may not be any defined form of procurement for these documents but you must make it clear how these will be produced within your terms of engagement. In some cases they may be produced in-house and in others must be externally produced. You should, of course, satisfy yourself of the ability of any external provider to meet the necessary timescales. The way by which payment should be made for these documents should also be clearly set out.

### **2.5.3 Offering services to other parties**

You should advise your client in writing if you intend to offer services to buyers and what these services would be. The term 'services' can mean 'any services that could be offered to a prospective buyer in connection with an acquisition of real estate'. You should be mindful of any specific legislation regarding offering services to other parties.

You should notify your client in writing at the time when communication commences between you and the client or as soon as is reasonably practicable. This should be before the client enters into a contract with you if you, or any connected person (see section 1.3) wishes at any stage to offer services to prospective buyers of a property you are selling for a client. You should also gain your client's written agreement.

### **2.6 Special types of sale or lease**

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If you receive instructions to deal with a sale or lease you should ensure that your client has the right to dispose of an interest in the property.

This can be particularly relevant for the sale of a deceased person's real estate or following a repossession by a lender.

If there is reason for doubt you should ensure that you have sight of relevant paperwork confirming your client has this right.

## **2B Acting for buyers**

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### **2.7 Securing instructions**

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This section relates to the situation where you are acting for a buyer seeking a property.

The same general principles apply when securing terms of engagement with a buyer to those when acting for a seller. You must confirm your terms in writing.

Before confirming terms you should communicate with the client and discuss their requirements and the reasons for these in reasonable detail.

You should act within the limit of your experience, knowledge and competence to meet your client's requirements.

You should agree with your client the level of feedback they wish to receive and whether they would like to receive details of all properties that you consider or a shortlist. You should also consider whether they wish to view properties with you and, if not, how you will present information to them (e.g. online videos and photographs).

You should also confirm the details of your fee and the details of the service you will provide (e.g. from property search to completion of the purchase). This might include both a commission based on the purchase price and any time related retainer.

You should clearly state whether any time related retainer, should it exist, is refundable and, if so, under what conditions. An example might be where the buyer does not decide to buy a property within a specified time limit (typically three months to a year) or on successful completion of the transaction (i.e. when your transaction fee is paid). You should also clearly state whether expenses are to be charged and if so how these are calculated.

Transaction fees should be agreed in a way that will provide transparent evidence that you will negotiate the best deal for your client. Transaction fees based on a percentage of the agreed purchase price may not give this evidence. An alternative structure could be an agreed percentage of the eventual purchase price or an agreed percentage of the discount that you are able to achieve through negotiation – whichever is the greater.

## **2.8 Dealing with conflicts of interest**

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You can read more about dealing with conflicts of interest in section 1.3. This section provides specific guidance relating to issues that may arise when acting for more than one buyer. It may be that your clients are interested in similar properties, which can then create a potential conflict of interest for you. Where you are asked to act for a buyer seeking properties similar to other clients for whom you are acting you should advise your new potential client of this in writing (email, letter or fax) before accepting instructions and ask for their written confirmation that they would still like you to act on their behalf.

## **2.9 Terms of engagement with buyers**

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The terms of engagement with buyers should follow the guidance discussed in section 2.3.1.

## **2C Sub-agents**

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### **2.10 Instructing sub-agents**

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If you wish to appoint a sub-agent you must firstly obtain your client's authorisation. This would not apply, however, under a multiple listing system such as that adopted in the US.

The appointment of a sub-agent without authorisation may be considered a breach of your duty to your client.

Even where a real estate agent appoints a sub-agent with the specific authorisation of the client, there may be no direct legal relationship between client and sub-agent and you could find that you are responsible for the sub-agents actions and for payment of their fees. You should check relevant legislation regarding this.

You must ensure that any sub-agent holds adequate and relevant insurances.

# 3 Acting for the seller: marketing the property

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This chapter provides guidance on advising the seller on the marketing of the property. It follows the sequence of events from undertaking a market assessment to agreeing a price or rent with a buyer. Following this guidance will help you to meet the following principles in the Real Estate Agency Code:

1.	To conduct business in an honest, fair, transparent and professional manner.
2.	To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
6.	To ensure that all communications are fair, clear, timely and transparent in all dealings with clients.
7.	To ensure that all advertising and marketing material is honest, decent and truthful.
11.	Where provided as part of the service, to give a realistic assessment of the likely selling, buying or rental price or associated cost of occupancy, to the client based on market evidence and using best professional judgment.
12.	To ensure that any property viewings are carried out in accordance with the client's wishes, having regard for the security and personal safety of all parties.

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## 3.1 Advising on the property price or rent for marketing purposes

You should provide realistic and justifiable advice in regard to the likely selling price or rent based on your best professional judgment. Any figure you provide must be given in good faith and must reflect current market conditions. When advising on rent you should take into account the likely lease terms that would be acceptable to the market. You must be able to support any figure you provide with comparables of similar properties in similar situations.

This advice is not a formal valuation of the property. It is important that you make clear to the seller that you are providing an estimate of anticipated market price or rent and not a valuation or appraisal. If required by the client, you may instruct a formal valuation on your client's behalf.

You should only provide advice on an appropriate price or rent if you have a thorough knowledge of the market.

## 3.2 Providing market advice

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Before you provide advice on the likely selling price or rent you will need to:

- inspect the whole property inside and out
- where measurements are taken you should take all reasonable steps to ensure that these are accurate using the basis of measurement generally adopted in the markets in which the property will be offered. Sales or leasing details should indicate the method of measurement used (e.g. net useable area; gross external area; heated floor area; net lettable area)
- review the general condition of the property (although you are not undertaking a condition survey it is important to gauge the general condition)
- ask the client questions to establish that they are the legal owner and any relevant issues that may impact on the marketing strategy you adopt.

When advising on a suitable asking price or rent for a property you should obtain comparable data, details of sales or lettings of other similar properties in the area.

You must also take account of the current market and whether prices or rents have been falling or rising since the comparable sale or letting and by how much in order to be able to adjust the comparable data you have collected accordingly. You should also try to establish as many facts about the comparable transactions as possible in order to ensure that it was an open market agreement and not one that was influenced by any special factors, for example, a special purchaser (one with a personal motivation to purchase that particular property), a seller needing to sell very quickly, issues about the condition of the property and any other factors that could have influenced the sale price. You should also take full account of any requirements of your professional body or legislation.

### **3.3 Reporting your advice to the client**

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You should always confirm your recommended selling price or rent to the seller in writing even if you have discussed this with them verbally. Where the property is to be leased this should include your recommended lease terms.

This should form part of your marketing strategy and advice (discussed in section 3.6.1). The report shall be clear, fair and contain transparent information with a reference to the current market conditions. It should also identify the estimated period to complete the sale or lease.

### **3.4 Keeping records**

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You should keep full and detailed records of all of the evidence you used to reach your opinion of an appropriate price or rent.

This should include all the comparative data you have used, the adjustments you made to this and the reasons for these adjustments and the sources of the data you have collected. A full report of your inspection of the property and the measurements you took must also be kept. Records should be kept for an appropriate period of time relating to limitation periods in your area of practice.

## **3.5 Methods of sale**

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There may be a number of different methods of sale that can be adopted for the sale of a property. You should undertake careful consideration of the most appropriate method and your recommendation to the seller should depend upon the circumstances of the property, the market and your client.

You should obtain legal and/or tax advice where appropriate.

## **3.6 Marketing properties**

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You must not put any property on the market without your client's permission and you should ensure that your client is the person with the legal right to dispose of an interest in the property.

### **3.6.1 Agreeing the marketing strategy**

You must agree an appropriate marketing strategy with your client and review this regularly with them.

Your adopted marketing strategy must be property and country specific. You should explain clearly to your client the reasons for the strategy that you recommend.

### **3.6.2 Providing relevant documentation**

You must ensure that any documentation that should be available when marketing a property has been obtained prior to commencement of marketing. This may include information on the energy performance of the property.

### **3.6.3 Describing the property**

You should take reasonable steps to ensure that all statements made about a property whether oral, pictorial or written are correct and not misleading.

#### **3.6.3.1 Preparing sales particulars**

A member of staff who has personally inspected the property should draft sales or leasing particulars and/or enter relevant and accurate information in a suitable multiple listing system. It may be useful to adopt a pro forma (either hard copy or electronic) for inspections, to ensure consistency of approach and this should be completed during the inspection and not afterwards.

You should disclose any material facts about the property including issues such as contamination or other issues that will clearly be of significance for potential buyers.

### **3.6.3.2 Confirming details with your client**

You should ensure that marketing particulars are checked. Before marketing, draft particulars should be sent to your client for approval and verification of accuracy.

If, during the marketing process, the facts on which the particulars are based alter, then you should amend them accordingly.

You should ensure that any previously interested parties and any potential buyer, inspecting or making an offer for the property after the date of the change, is given corrected and up-to-date marketing particulars and information.

## **3.7 Online marketing**

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There is increasing use of the internet for the marketing and promotion of properties for sale. When using online marketing you should ensure – as far as practicable – that you adopt the same standards of promotion and marketing as set out in section 3.6.

## **3.8 Advertisement signs and boards at the property**

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‘For sale’ or ‘To let’ or similar signs and boards can be an excellent marketing tool for you as a real estate agent although they are used more in some countries than others.

### **3.8.1 Owner’s permission**

Before erecting a sign or board you must obtain your client’s written permission to do so. You should advise the seller of the size and design and agree the location with the seller.

### **3.8.2 Legal consents**

You should check with the relevant statutory authority to find out whether you will need a consent to erect a ‘For Sale’ or ‘To Let’ board and whether there are any local regulations which you will need to consider.

## **3.9 Viewings**

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### **3.9.1 Communicating with your client**

You should agree the approach to viewings with your client when agreeing your marketing strategy (see section 3.6.1). Some clients may like to show potential customers around their property but others prefer you to do this by way of accompanied viewings.

Accompanied viewings can be very useful in helping you to ‘qualify’ buyers by finding out details of their personal and financial circumstances. This will be useful when advising your client regarding offers received and may be easier to obtain than in a discussion over the telephone.

If you are arranging a viewing of a property occupied by someone other than your client, you must agree the arrangements with the occupier beforehand, wherever possible.

You should refer to section 7.3 for guidance as to how to ensure safety whilst undertaking viewings.

### **3.9.2 Keys**

Lock boxes are used extensively in the US residential market. You should ensure that these have appropriate security measures for the seller.

If you are not using a lock box you should make sure that all the keys you have are coded and kept secure. You should maintain records of when you issue keys and to whom, and when they are returned. These records must be kept secure and separate from the actual keys and you should only give keys to people providing you with satisfactory identification. You must take care to ensure that after any visit you have made, the property is left secure or at least as secure as it was prior to the visit.

### **3.9.3 Keeping records**

You should keep records of all viewings of a property.

You should advise your client of the details of viewings and, in particular, feedback received, within a reasonable time. This would generally be within three working days of the viewing.

Once you have followed up on all property viewings you should advise your client of reasons why potential customers did not make offers.

### **3.10 Responding to questions from potential buyers**

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When responding to questions from potential buyers you should ensure that you advise them of all relevant issues and do not make any material omissions from the information you provide.

You should seek to ensure that only staff with personal knowledge of the property provide information beyond that stated on the written particulars.

### **3.11 Keeping your client informed**

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You should keep your client informed of any changes whilst a property is on the market and if you come across any significant information that might reasonably affect your client's instructions you must disclose that information promptly to your client.

### **3.12 Property clearance**

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Real estate agents who arrange for property clearance, should have regard to any relevant environmental requirements such as those relating to the disposal or control of waste.



# 4 Acting for the seller: agreeing the sale or lease

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This chapter provides guidance on agreeing the sale when acting for the seller. Following this guidance will help you to meet the following principles in the Real Estate Agency Code:

1. To conduct business in an honest, fair, transparent and professional manner.
2. To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
5. Not to discriminate unfairly in any dealings
6. To ensure that all communications are fair, clear, timely and transparent in all dealings with clients.

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## 4.1 Offers

You must take reasonable steps to find out from the prospective buyer his or her source and availability of the funds for buying or renting the property and other information that may affect his or her ability to buy or lease the property and pass this information to your client.

You should keep appropriate records of all offers you receive.

## 4.2 Communicating with your client

You must advise your client of all offers received as soon as reasonably possible. This confirmation should be in writing.

The details given should be sufficient to allow your client to make a fully informed judgment of all offers received (with your assistance) and each offer's respective strengths and weaknesses. You should bear in mind the seller's circumstances when providing them with information.

## 4.3 Communicating with the buyer

You should confirm to the potential buyer that you have notified your client of their offer as soon as reasonably possible. This should be confirmed in writing with confirmation of the amount of the offer and any conditions attached. If other offers are made you should advise the original potential buyer

that an additional offer has been made without disclosing the amount or any other aspects of the offer unless you have your client's consent and consent of the person making the offer to do so. You should advise buyers who make offers that it is your practice to seek your client's consent to provide details of offers to other buyers. If you disclose any offer to a prospective buyer then the offer must also be immediately disclosed to all prospective buyers with a current interest in negotiations for the property.

## 4.4 Avoiding misrepresentation

You must not misrepresent the details or existence of any offer or the status of any potential buyer to your seller client. Any statement made by an estate agent in the course of marketing a property may, if it is false or misleading, result in legal liability for either the agent or the client, or both.

## 4.5 Managing acceptance of offers

### 4.5.1 Negotiation

You should keep your client informed of your negotiations and continuously seek their instructions and submit all amended and additional offers to them.

### 4.5.2 Binding contracts

The legal system for buying and leasing property clearly differs significantly between countries. You

should make sure that contracts are drawn up and agreed as appropriate and the property taken off the market when required.

#### **4.5.3 Accepting an offer**

When your client agrees to accept an offer and any related conditions you must record these details accurately and inform the buyer. This must be confirmed in writing to both parties. You should also advise the legal advisers of the details of the terms of the sale.

#### **4.5.4 Monitoring progress**

You should maintain regular contact with the buyer throughout the process. This progress should be regularly reported to your client.

#### **4.5.5 Offering additional services**

If the buyer applies for any additional services from you, you must promptly provide your client with an accurate written list of the services applied for. This must be given at all stages before contracts for the disposal of the interest in the property has been completed.

# 5 Acting for the buyer

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This chapter provides guidance for agents acting for buyers. This does not include offering additional services to buyers through an agency when acting for a seller. In this chapter it is assumed that you have no contract with, or instructions from, the seller. You will be acting as a property search agent.

You should ensure that you solely represent the interests of the buyer in this situation.

Following this guidance will help you to meet the following principles in the Real Estate Agency Code:

1. To conduct business in an honest, fair, transparent and professional manner.
2. To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
4. To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
6. To ensure that all communications are fair, clear, timely and transparent in all dealings with clients.
10. To ensure that it is made clear to all parties for whom you are acting, the scope of your obligations to each party.

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## 5.1 Property search

You should be mindful of the main reasons why buyers use property search agents.

You should make sure that you use your local knowledge and networks to meet your client's expectations.

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## 5.2 Communication with your client

You should provide your client with regular updates of your progress in finding a property for them. This should include reports in reasonable detail delivered with reasonable frequency.

When your client wishes you to make an offer on their behalf you must communicate this to the seller or their agent within a reasonable time. You should confirm any offer in writing to the seller and send a copy to your client. The offer must state any conditions that your client wishes to place on the offer. You must confirm any further offers in writing to the seller in the same way with a copy to your client. You should include in the offer evidence that you are acting on behalf of the buyer.

You must obtain your client's consent before releasing any information regarding their personal or financial circumstances to the seller. You should only recommend that these details are provided to the seller if you feel that this will assist in successful negotiations.

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## 5.3 Properties with physical problems

You must inform the client of any potential physical problems with a property without undue delay.

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## 5.4 Dealing with conflicts of interest

If you are acting for a number of buyers seeking similar properties and have disclosed this and received agreements to continue (see section 1.3) you must take all necessary steps to ensure that you are always acting in the best interests of each of your clients and that your actions for one client will not prejudice the actions of or outcomes for the other.

You will need to ensure that you always take timely actions following requests from your clients and take these forward in accordance with the sequence of receipt of the requests.

## **5.5 Progressing purchases**

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Once an offer has been accepted you should request that this is confirmed in writing to you and send a copy to your client.

Assuming you have your client's consent to do so, you should then confirm the details of your client and their legal advisers to the seller or their agent.

You should then monitor progress, assist where possible and report information that is helpful in concluding the transaction.

## **5.6 Holding clients' money**

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If you hold money for your buyer clients you should refer to section 8.3 for guidance.

# 6 Ending the instruction

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This chapter provides guidance on ending the instruction with your client. The instruction could be ended by either yourself or your client. It may be at the natural end of your work or as a result of a decision taken by yourself or your client.

Following this guidance will help you to meet the following principles in the Real Estate Agency Code:

1. To conduct business in an honest, fair, transparent and professional manner.
2. To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
6. To ensure that all communications are fair, clear, timely and transparent in all dealings with clients.

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## 6.1 Written confirmation

If you receive instructions from your client that they wish to terminate your instruction or if you decide that you wish to cease to act for them, you must confirm in writing that you are no longer acting for them, the actual date of termination and details of any fee or charges the client owes you or may owe you.

You should also explain any outstanding liability the client may have in terms of fees.

An invoice should be issued in accordance with the relevant local legislation.

## 6.2 Invoice

Whether your instructions come to an end when you complete the work for your client or because either you or your client wish to terminate the instructions, your client may owe monies to you. You should submit an invoice clearly setting out all costs owing, including itemising the fee owing, any expenses (in accordance with your terms of engagement) and taxes.

This should be sent to your client within a reasonable time after your instructions come to an end.

If you intend to charge your client a fee for terminating the instruction, this must have been made clear in the written terms of engagement you agreed with them. The terms should specify the amount of the fee and its purpose (see section 2.3.2).

A final receipt should be sent to your client when the invoice is paid. This should confirm the final amount received.

## 6.3 If completion of the transaction does not take place

If you have negotiated a transaction that does not finally result in legal completion you may still be entitled to your fee or commission or some alternative agreed amount of remuneration. You should check your terms of engagement and relevant legislation regarding this.

## 6.4 Holding clients' money

You should refer to section 8.3 for further guidance regarding circumstances where you have held client's money and need to account for this on ending your instruction.

# 7 Safety and security

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This chapter provides guidance on safety and security, including security of data, health and safety at work, personal safety and looking after the safety of others.

Following this guidance will help you to meet the following principles in the Real Estate Agency Code:

1. To conduct business in an honest, fair, transparent and professional manner.
2. To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
12. To ensure that any property viewings are carried out in accordance with the client's wishes, having due regard for the security and personal safety of all parties.

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## 7.1 Confidentiality

You must maintain the confidentiality of matters with which you become acquainted during your instruction.

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## 7.2 Data protection

You should be aware of the local legislative requirements regarding the holding and handling of information and data in your country of practice. As an overall guide you should ensure that any personal information is:

- fairly and lawfully processed
- processed for limited purposes
- adequate, relevant and not excessive
- accurate and up to date
- not kept for longer than is necessary
- processed in line with an individual's rights
- secure, and
- not transferred to other countries without adequate protection.

As a real estate agent you should particularly consider the potential damage that could be caused to clients by the careless or unauthorised disclosure of their personal data and information. For example, the disclosure of details about times when a client's property is vacant or the failure to implement adequate security measures to prevent the unauthorised access to this information could

not only result in a breach of the security principle but could also trigger an action for compensation by the affected client.

You should also bear in mind that other issues of client confidentiality may apply to particular types of personal data, including that provided by a client. This will mean that not everyone within the firm is entitled to access the data and it should not be made available to other prospective client buyers or sellers.

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## 7.3 Health and safety

You must at all times respect the local legal requirements concerning health and safety valid in the country of practice.

Health and safety means sensible, proportionate actions to protect people.

Not taking the necessary actions to protect people from avoidable dangers in the workplace could be a legal offence.

Employers and employees also may owe a duty of care to anyone who may be affected by their actions, where effects of their actions are reasonably foreseeable.

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## 7.4 Personal safety

Working as a real estate agent introduces a range of potential areas of risk to personal safety due to the fact that you will be visiting properties, meeting people you may not know, travelling between visits



#### *7.4 Personal safety – continued*

and keeping your own personal diary of meetings and arrangements. It is critical that you take all necessary precautions to ensure both your own personal safety and the personal safety of anyone in your charge.

As with general health and safety at work, you should undertake a risk assessment when you are going to be working away from the office – either at a different office, your home, or visiting properties or undertaking viewings.

# 8 Agency management

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This chapter provides guidance on issues relating to agency management that are relevant to any size of estate agency business – from sole practitioner to large multinational agency. The main topics discussed in this chapter are:

- marketing
- how to handle clients' money – including safeguarding against money laundering
- recovering outstanding debts
- handling complaints and
- insurance (for yourself and for your business).

Whatever the size of your business, these issues carry equal importance.

Following this guidance will help you to meet the following principles in the Real Estate Agency Code:

1.	To conduct business in an honest, fair, transparent and professional manner.
2.	To carry out work with due skill, care and diligence, and ensure that staff employed have the necessary skills to carry out their tasks.
8.	To ensure that any client money is held separately from other monies, and is covered by adequate insurance.
9.	To have appropriate professional indemnity/errors and omissions insurance, to ensure customers do not suffer loss as a result of any negligent act.

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## 8.1 Advertising and marketing your services

Any marketing material should be honest and professional and you should not seek business by improper means.

All advertisements must be fair, decent, accurate and honest and meet requirements of any relevant legislation.

## 8.2 Handling complaints

This section considers the way in which you should handle any complaints that are made to you or your organisation.

### 8.2.1 Complaints handling procedure

Real estate agents must operate a complaints handling procedure and make this available to any buyer or seller, potential or actual. Your complaints handling procedure must be in writing and should

explain how to complain to your organisation (i.e. to a senior member of the firm or to the firm's designated complaints handler) and what to do if the client feels the complaint has not been dealt with adequately.

Whenever you issue terms of engagement these should make clear to the client that you operate a complaints handling procedure.

### 8.2.2 Acknowledging the complaint

Some complaints may initially be made verbally. You should draw the complainant's attention to your complaints handling procedure which should firstly require formal complaints to be made in writing (by email, letter or fax). You must acknowledge all complaints in a timely manner. This should generally be within three working days.

### 8.2.3 Investigating the complaint

You should try to resolve any complaint internally through your published complaints handling

procedure. You should provide a formal written outcome of your investigation to the complainant within 15 working days. If the complainant remains dissatisfied you should explain how they can pursue their complaint within your organisation. You should ensure that either a member of staff who was not involved with the transaction deals with the complaint or ideally your designated complaints handler. Following this investigation you should send the complainant a formal written statement expressing your final view and including any offer made. This statement must also tell the complainant how they can take the complaint to your redress scheme and any deadline for doing this.

### **8.2.4 Keeping records of complaints**

You must record all complaints whether verbal or written at the time they are made.

## **8.3 Handling clients' money**

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There may be instances when you are asked to hold a client's money for them. This section provides guidance on safeguarding against money laundering and how to account for clients' money.

### **8.3.1 Safeguarding against money laundering**

Money laundering is the way criminals conceal the origin and true ownership of the proceeds of their criminal activities so that it appears to have come from a legitimate source, thereby changing the proceeds from 'dirty' money to 'clean'.

It is extremely important that you have procedures in place to prevent and identify money laundering within your company. You should put in place anti-money laundering controls in order to anticipate and prevent your business being used by criminals to launder money or to fund terrorism.

You should refer to the RICS Guidance Note 'Protecting Against Money Laundering' for further guidance.

### **8.3.2 Clients' accounts**

Client money should be held separately from other monies and agents must be able to account immediately for all the funds held. No deductions should be made from clients' money without written

permission from the client. You should also ensure that you obtain your client's consent at the time of any deduction or that you give your client sufficient notice prior to the deduction to object to it. You must be able to account immediately for any money that you hold on behalf of a client.

You should advise your clients in writing that you would not be liable to repay lost money through bank failure.

Money should only be withdrawn from a client account in the following cases:

- (a) where it is properly required for payment to, or on behalf of, the person entitled to ask for it
- (b) for payment of any remuneration or reimbursement of expenses in carrying out estate agency services to which the estate agent is entitled, with the agreement of the client. Such agreement should be evidenced in writing
- (c) in the exercise of any lien to which the agent is entitled
- (d) for transfer to another client account
- (e) when non-client money was used to open or maintain the account.

Bank charges should not be debited from a client account. Bank charges should be debited from your office account.

In the case of a dedicated client bank account, it is common practice to debit bank charges, however, it is advisable to get the written permission of the client in advance and to take steps to ensure that the account does not go overdrawn as a result of the charges.

A client account should at all times be in credit. There must not be any 'borrowing' from one client's fund to pay another client or those entitled to receive money from the latter's account.

If you receive clients' money in the course of real estate agency work you must keep sufficient accounts and records to show that you have paid that money into a formal client account and to show and explain readily at any time all dealings with that money.

Appropriate accounts and records must be kept.

## **8.4 Recovering outstanding debts**

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Direct deduction of fees from a client account or from sale proceeds by a lawyer is the easiest way

to avoid problems over payment. This must not, however, be done without the prior authority of the client.

If you do not receive payment of a client's invoice within the time period specified in your terms of engagement and on the invoice your first step should be to write to your client to remind them that this is outstanding and give them a further reasonable period in which to pay. If you intend to charge interest you should also refer to this in your letter.

If you still do not receive payment this should be followed up with a telephone call to make sure that the client has received the invoice and to agree when this will be paid. If you still do not receive payment you could consider taking legal advice. Alternatively, you could consider:

- negotiation – this might involve agreeing a phasing of the payment if your client is experiencing financial difficulties
- mediation
- conciliation
- arbitration.

Whichever method you use to recover outstanding debts you should continue to seek payment by way of telephone follow up and to maintain contact with your client. If you are aware that they are in financial difficulties you should try to negotiate a payment plan with them.

If you intend to take any legal action you should seek advice from your legal advisers first.

## **8.5 Insurance**

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You should ensure that you have all the necessary insurances in place for your business. The insurances you should consider will depend upon the country within which you practise. Some

insurances are mandatory in certain countries. You should check relevant legislative requirements.

### **8.5.1 Professional indemnity/errors and omissions insurance**

If you are a self-employed agent or a senior manager of a company providing agency services you should ensure that all your professional work and that of your agency staff is covered by adequate and appropriate professional indemnity insurance. This insurance will protect you from the consequences of a liability to pay damages to a third party in respect of breaches of professional duty committed in the course of professional activities. It will also protect your clients from suffering financial loss that you or your company are not able to meet.

## **8.6 Training and keeping up to date**

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You must be an expert in your sphere of activity and in the real estate market and must keep up to date regarding all issues that impact on your work. These may include:

- legislation
- regulation
- policies
- real estate market
- general economic conditions
- property values
- interest and lending rates where applicable.

Where you are managing other agents you should ensure that support is provided to allow them to also keep up to date and attend relevant training events. You should also make sure arrangements are in place to mentor junior staff and to ensure that new members of staff are introduced to the international and local standards that are applicable to the local property market.

