



Standards of Business Practice

THE REAL ESTATE INSTITUTE OF QUEENSLAND LTD
ABN 49 009 661 287

Effective 26 June 2007(V3)

The Real Estate Institute of Queensland Ltd

Standards of Business Practice

**Code of Conduct Applicable To
Members of The Real Estate Institute of Queensland Ltd**

Objective

The objective of The Real Estate Institute of Queensland's Standards of Business Practice is to increase the accountability of Members in carrying on the business of a real estate agent or auctioneer in Queensland.

The objective is to be achieved by:

- (a) setting standards for Institute Members in dealing with each other and with the public that surpass statutory requirements; and
- (b) establishing principles for fair trading by Institute Members in real estate and auctioneering practice; and
- (c) providing for a system for resolving complaints against Institute Members about real estate agency and auctioneering practice.

Application of the Standards

The Standards of Business Practice apply to Members of The Real Estate Institute of Queensland Ltd. They complement and are in addition to the statutory Codes of Conduct contained in the *Property Agents and Motor Dealers Act (Qld)*.

Where any conflict arises between these Standards and any statute law, the provisions of the statute law shall prevail.

Consumers may make complaints against Institute Members under these Standards and in accordance with the Institute's Constitution but consumers' rights to initiate parallel complaints in any other competent jurisdiction is not limited by such action.

Definitions:

"Act" means the Property Agents and Motor Dealers Act 2000.

"Auctioneer" means an auctioneer licensed in accordance with the *Property Agents and Motor Dealers Act 2000*.

"Client" means a person who appoints an Institute Member to perform an activity mentioned in the Act, section 128(1).

"Constitution" means the Constitution and By-Laws of The Real Estate Institute of Queensland Ltd lodged with the Australian Securities and Investment Commission.

"Customer" means a person with whom a Member of the Institute deals on behalf of a client.

"Institute" means The Real Estate Institute of Queensland Ltd ABN 49 009 661 287.

"Member" means a business entity or person whose name is entered in the Register as a Member of the Institute.

“**Register**” means the register of Members of The Real Estate Institute of Queensland Ltd kept under the *Corporations Act*.

“**Terms and Conditions of Sale by Public Auction for Real Property**” means the terms and conditions of sale by public auction published by the Institute.

“**Tribunal**” means:

- (a) for resolution of a complaint by a Member against another Member - the Professional Standards Tribunal;
- (b) for resolution of a complaint by a consumer against a Member - the Real Estate Industry Consumer Complaints Tribunal.

Note:

The Professional Standards Tribunal and the Real Estate Industry Consumer Complaints Tribunal have been established by The Real Estate Institute of Queensland Ltd. They have no relationship with the Commercial and Consumer Tribunal established under the Commercial and Consumer Tribunal Act 2003 or any other statutory tribunal.

General

Article 1. -Standards to be available for inspection

Members shall make their clients and customers aware of these Standards of Business Practice and make them available for inspection.

Article 2. - Members must obey the law

The business of a Member shall be conducted in strict accordance with all relevant statutory and regulatory requirements including but not limited to:

Property Agents and Motor Dealers Act 2000 and Regulations (Qld).

Residential Tenancies Act (Qld).

Fair Trading Act (Qld).

Trade Practices Act (Cwth)

Article 3. - Members must observe Institute rules

Members shall observe the Constitution of The Real Estate Institute of Queensland Ltd.

Article 4. - Denial of services

A Member shall not deny professional services, nor be party to any plan or agreement to discriminate against any person, on the basis of race, creed, colour, sex, familial status, age, or national origin.

Article 5. - Controversy

Members shall conduct their businesses so as to avoid controversy.

Article 6. - Professional fairness and courtesy

6.1 A member must act with fairness and courtesy.

6.2 The obligation identified in article 6.1 includes, but is not limited to:

6.2.1 where a Member (Second Member) is, or becomes, aware that a prospective buyer has inspected a property with another Member (First Member) and the Second Member subsequently inspects the same property with the prospective buyer; and

6.2.2 where a Member's opinion is sought regarding a competitor.

Article 7. - False statements about competitors

Members shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

Article 8. - Reporting Alleged Breaches

Members shall promptly report any alleged breaches of the Standards of Business Practice by another Member to The Real Estate Institute of Queensland Ltd. specifying the particulars of any alleged breach in writing together with originals or copies of any relevant documents.

Article 9. - Facts to be placed before Tribunal

Should a Member be asked to co-operate in any way in connection with a disciplinary investigation or proceeding pertaining to alleged unethical practice, the Member shall place all pertinent facts before the Tribunal.

Article 10. - Disputes to be submitted to Tribunal

In the event of a dispute between the principals of Member offices regarding the fee or commission earned or to be earned in connection with a real estate transaction, the dispute shall be submitted for arbitration in accordance with the Institute's Constitution.

Note:

Article 10 does not require Members to arbitrate in those circumstances when all parties to the dispute advise the Tribunal in writing that they agree not to arbitrate before the Tribunal.

Article 11. - Frivolous complaints

Members shall not knowingly or recklessly file false or unfounded complaints.

Article 12. - Obstruct proceedings through legal action

Members shall not obstruct the Tribunal's investigative or professional standards proceedings by instituting or threatening to institute actions for defamation against any party to a professional standards proceeding or their witnesses based on the filing of a complaint, or testimony given before any tribunal.

Article 13. - Impeding investigations

Members shall not intentionally impede the Institute's investigative or disciplinary proceedings by filing multiple complaints based on the same event or transaction.

Sales and Property Management

Article 14. - Soliciting

Members shall not solicit a listing which is currently listed solely or exclusively with another real estate agent. However, if the listing agent, when asked by the Member refuses to disclose the expiration date and nature of such listing Members may contact the owner to secure such information and, in any case may discuss the terms upon which the Member might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

Members shall not harass the public by attempting to obtain appointments to act resulting from information published in death or funeral notices.

Notes:

When Members are contacted by the client of another real estate agent regarding the creation of an exclusive relationship to provide the same type of service, and Members have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon or after expiration of any existing exclusive agreement.

The fact that an exclusive agreement has been entered into with another real estate agent shall not preclude or inhibit any Member from entering into a similar agreement to become effective after the expiration of the prior agreement.

Article 15. - Interfering with another Member's appointment

Members shall not engage in any practice or take any action inconsistent with the agency or other exclusive relationship recognised by law that other real estate agents have with clients.

Notes:

This Article is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other real estate agents involving commission, fees, compensation or other forms of payment or expenses.

This Article does not preclude Members from making general announcements to prospective clients describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another real estate agent. A general telephone canvass, general mailing or distribution addressed to all prospective clients in a given geographical area or in a given profession, business, club, or organisation, or other classification or group is deemed "general" for purposes of this standard.

This Article is intended to recognise as unethical two basic types of solicitations:

- *First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another real estate agent and*
- *Second, electronic, mail or other forms of written solicitations of prospective clients whose properties are exclusively listed with another real estate agent when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other such sources of information.*

This Article does not preclude Members from contacting the client of another agent for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to agency). However, information received through a Multiple Listing Service or any offer of conjunction may not be used to target clients of other real estate agents to whom such offers to provide services may be made.

Article 16. - Open listings

Members are free to enter into contractual relationships or to negotiate with sellers/lessors, buyers/tenants or others who are not subject to a sole or exclusive agreement but shall not knowingly obligate them to pay more than one commission except with the client's informed written consent.

Article 17. - Disclosure of services to be provided

Members shall fully disclose in writing, to (and are advised to seek written acknowledgment from) each party to a transaction, the scope of service the Member will be providing to them. Members shall also disclose their role to other real estate agents involved in the transaction.

Article 18. - "Free" services

Members may use the term "free" and similar terms in their advertising and in other representations provided that at the same time all terms governing availability of the offered product or service are clearly disclosed or stated to be available.

Members shall not offer gifts or items as being "free" when the true costs are disguised in the selling price of the property.

Notes:

Members may represent their services as "free" or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the Member to obtain a benefit from a third party is clearly disclosed at the same time.

Article 19. - Skilled and conscientious service

A Member is obliged to render a skilled and conscientious service, in conformity with standards of competence which are reasonably expected in the specific real estate disciplines in which the Member engages.

Article 20. - Conjunctual sales

Members shall conjunct on properties with other real estate agents except when a client has given written instructions to the contrary. Conjunctual arrangements shall be evidenced in writing and specify the amount of commission which would be paid if the property were to be sold at the listed or reserve price.

Article 21. - Dealings to be conducted through listing agent

All dealings concerning property listed solely or exclusively with another real estate agent for sale or lease, or with buyer/tenants who are subject to a sole or exclusive agreement, shall be conducted through the client's agent, and not with the client, except with the consent of the client's agent.

Article 22. - Agreements to be in writing

Members shall ensure that agreements regarding real estate transactions are in writing in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of the parties to the agreement. A copy of each final agreement shall be furnished to each party upon their signing or initialling, and shall be dealt with in accordance with the instructions of the parties involved.

Article 23. - Compensation from more than one party

A Member shall not accept compensation from more than one party to a transaction without the written consent of his or her client(s), even if permitted by law.

Article 24. - Market conditions

Members shall take all reasonable steps to be informed regarding the essential facts, which affect current market conditions in order to be in a position to advise their clients and/or to assist customers in a responsible manner.

Notes:

If Members provide valuations, appraisals or market forecasts in a volatile market, agents shall identify that volatility to the relevant consumer and shall warn the consumer to keep that volatility in mind when evaluating the agent's valuations, appraisals or market forecasts.

Article 25. – Two Tier Marketing

Members must not engage in the practice of setting different tiers of pricing, with higher prices being charged to consumers who are, for example, resident outside the particular area of the property or who are otherwise unaware of material facts such that they are prepared to pay prices for the property that are higher than the prices that those who are aware of those facts would be prepared to pay.

Article 26.– False or Misleading Representations

Members must not make false or misleading representations about properties, including the reasonable values of those properties, the features of those properties or any other matter that is material to the sale, purchase or lease of the property by a consumer.

Article 27. - Misleading or deceptive conduct

Members shall not engage in any conduct which is misleading or deceptive or is likely to mislead or deceive.

Notes:

Members should also bear in mind that it is generally no defence to an action for misleading or deceptive conduct for a real estate agent to claim that the consumer concerned should have checked the information provided by the agent or for the agent to claim that the consumer has failed to make reasonable enquiries.

Members must not induce potential buyers of property to believe that the stated price of a property is a fair market value when the price has been inflated by matters irrelevant to the value of the property, such as marketing fees, commissions and profits.

Article 28.– Unconscionable Conduct

Members shall ensure that they do not participate in any harsh or unconscionable conduct with respect to the marketing, sale, rent or leasing of properties.

Article 29. - Signs

Having regard to local government regulations, signs giving notice of property for sale, rent, lease, or exchange shall not be placed on a property without the consent of the seller/lessor. Signs in respect of the sale, rent, lease, development or exchange shall not be placed on any property by other than the listing agent unless authorised by the seller/lessor. Members shall not interfere with another real estate agent's sign.

Article 30.– Bait Advertising

Members must not engage in bait-advertising.

Notes:

Offering properties at discounted prices in a land development when the properties have in fact not been discounted at all or where the properties will not be available at that discounted price in reasonable quantities or for a reasonable time is considered to be bait advertising.

If the purpose of the advertising of properties at discounted prices is to in fact lure potential buyers to purchase more expensive properties, the conduct of the agent may amount to bait-advertising.

A Member shall not provide a potential buyer of a property:

- *an estimate of the value of that property; or*
- *advice as to the amount that the seller might be prepared to sell the property for;*

when the Member is aware that the value or amount referred to by that Member is less than the amount that the seller might be prepared to accept.

Article 31. - Property not to be advertised without consent of seller/lessor

A Member shall not advertise a property if such advertising has been restricted at the request of the seller/lessor.

Article 32. - Property to be advertised at agreed price

In any advertisement, the advertised or offered price of a property shall be that which was agreed upon in writing with the seller/lessor and which is not unlawful.

Article 33. - Advertising not to misrepresent

Members shall ensure a true representation in all advertising. Properties and services shall not be advertised without identifying the Member office and, where applicable, the individual Member.

Article 34. - Representations about Properties

All representations made by a Member regarding the description of a property, including the property's features, fixtures and characteristics, must be true and must not amount to express or implied representations that are false.

Notes:

Representations made by Members as to the description of a property and its characteristics must be made accurately and without any embellishment;

Real estate agents must not make false or misleading representations about investment properties, including the reasonable values of those properties, the features of those properties, the likely rental returns, the nature or effect of long term management contracts, or any other matter that is material to the sale, purchase or lease of the property by the consumer concerned.

Silence may also constitute misleading or deceptive conduct where there is a duty to reveal relevant facts. Whilst there is no general duty of disclosure in commercial dealings, the failure to disclose a fact regarding a particular characteristic of a property might be regarded as being misleading or deceptive, particularly where the recipient of a representation is entitled to believe that the relevant matter would be communicated.

Article 35. - Photographic Representation

Members must not alter or permit to be altered photographic images of properties, digitally or by other means, such that the images no longer truthfully and fairly represent that property.

Notes:

Whether the alteration of a photographic representation is misleading or deceptive will depend upon all of the circumstances. For example, digitally adjusting the exposure of a photograph so as to brighten the lighting of the photograph taken on a dull day may well be legitimate. However, removing television aerials or power poles adjacent to the property; brightening up paint work on a house or over-stating the views that might be achieved from the property may well amount to misleading or deceptive conduct.

Members may well be liable for misleading representations contained in photographs that have originated from external sources such as an advertising sub-contractor or the seller. The passing on of such photographs by agents to potential buyers can amount to misleading or deceptive conduct by a Member.

Members would be well advised to ensure that their contracts with advertising sub-contractors include provisions to ensure that the sub-contractors do not engage in misleading and deceptive conduct, including in connection with marketing representations contained in photographs.

Article 36. - Price Ranging

Members must ensure that the use of price range marketing does not mislead or deceive consumers as to the price at which the sellers of the property are actually prepared to sell the property, the price at which the sellers of the property have instructed the agent to sell the property, the price which the Member believes the property will be sold for or the market price of the property.

Notes:

The Trade Practices Act requires adequate and appropriate disclosure at all times of all relevant price information, so that prospective buyers and the general public can make informed pricing decisions;

Advertising or quoting a property at a price significantly less than the Member's estimated selling price, the reasonable market valuation or the price that the seller has indicated he or she is likely to accept constitutes misleading or deceptive conduct.

When a Member markets a property using a price range, the Member should obtain written confirmation from the seller that the seller will seriously consider all prices within the advertising range, including the price at the lower end of the range;

Price ranges advertised by a Member should not include any price that is less than a price used in a previously rejected offer unless evidence exists that the seller has now changed his or her mind and would accept that lower price;

Over-quoting the market value of a property in order to obtain a listing from a seller amounts to misleading or deceptive conduct. Further, under-quoting the potential selling price of a property so as to attract the interest of buyers also amounts to misleading or deceptive conduct. Consequently:

- a. Members, in attempting to obtain an appointment to sell, auction, buy, exchange or lease property, must not mislead or deceive a person about the property's market value;*
- b. If a Member provides a person with an opinion about the market value of the freehold or leasehold interest in that property, the Member must not accept any instructions from that person to act as the person's agent with respect to that property unless the Member provides the person with a written statement of the material facts that the Member has taken into account in forming that opinion about the property's value;*
- c. A Member must only express an opinion about the market freehold or leasehold value of a property based on reasonable grounds;*
- d. A Member must tell his or her client immediately if he or she considers that the freehold or leasehold value of the property has substantially altered from any value that the Member has previously placed upon that property;*
- e. A Member may only advertise or market a property at a price that the agent has been instructed by the seller in writing to so advertise or market that property;*
- f. A Member must not mislead or deceive potential buyers as to the terms or amount of offers that a seller may consider accepting.*

Article 37. - Property not to be used for unlawful purposes

A Member shall not knowingly permit any property for which they hold a management authority to be used for unlawful purposes.

Article 38. - Tenants' rights to be respected

Members shall, consistent with the law and the terms and conditions of their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises.

Article 39. - Offers

Members must immediately convey to their clients all expressions of interest and offers relating to a property whether they are written or oral, unless the Member has been provided with written instructions by the client to the contrary.

Notes:

Real estate agents who have the listing of the sale of a property must ensure that they promptly convey to a seller any offers to purchase the property, whether written or oral, provided to that agent by any other agent acting pursuant to a conjunctive agreement or acting directly for the buyer, unless the agent has been provided with written instructions by the seller to the contrary.

Article 40. - Sold signs

Only Members who are the listing agent may claim to have "sold" the property and post a "sold" sign.

Article 41. - Inducements

Members prior to or after terminating their relationship with their current employer, shall not induce clients of that employer to cancel exclusive contractual agreements between the client and that employer. This does not preclude Members (principals) from establishing agreements with their employees governing assignability of exclusive agreements.

Auctions

Article 42. - Advertising for sale by auction

Members shall not advertise a property as being for sale by auction unless there is intended to be a genuine auction and unless a written auction authority form has been duly executed by or on behalf of the seller.

Article 43. -Terms and conditions of auction

Prior to the auction the Member shall make available for inspection the terms and conditions under which the sale of the property by auction will be undertaken. If applicable the Member shall specify in such terms and conditions of sale that the seller reserves the right to bid either personally or through an agent. During an auction, the terms and conditions of sale together with these Standard of Business Practice shall be on display and available for inspection.

Article 44. - Properties Sold Prior to Auction or Withdrawn from Auction

Members must make reasonable endeavours to inform all interested parties if a property is to be withdrawn from auction or is to be sold prior to auction.

Article 45. - Reserve Price

At the commencement of auction the auctioneer shall announce whether the seller has set a reserve price which shall not be disclosed to bidders.

Article 46. - Seller Bids

Before commencement of the bidding for a property the auctioneer shall announce whether the seller has reserved the right to bid at the auction and, if so:

- (a) Whether the Member has been appointed to bid on behalf of the seller and, in such case, that all

bids made on behalf of the seller will be made by the auctioneer; or

- (b) Whether the seller or some other person will be bidding on behalf of the seller and, in such case, shall identify that person.

Neither the Member nor any salesperson engaged by the Member shall make or assist any other person to make any bid on behalf of the seller in contravention of any announcement by the auctioneer under this Article. The Member and any salesperson engaged by the Member shall immediately advise the auctioneer of any bid which they believe to be made in contravention of this Article.

Article 47. - Identification of Seller Bids

The fact that bids are being made by or on behalf of a seller and the identity of the person making such bids must be announced by the auctioneer both at the commencement of the auction and contemporaneously with each such bid being made, and in a form and manner that will be understood by all potential bidders.

Article 48. - No Seller Bid Above Reserve price

No Member shall permit a bid to be made by or on behalf of a seller at or in excess of the seller's reserve price.

Article 49. No Reserve Auction

Where the seller does not provide the auctioneer with a written reserve prior to the auction, the auctioneer shall announce that the property is to be sold without reserve and no bid shall be made by or on behalf of the seller at the auction.

Article 50. Bidding on Behalf of Buyer

Where in advance of the auction, any contractor/employee of the Member or the auctioneer has been requested to bid for a prospective buyer, whether that buyer is present or absent, the auctioneer will announce that fact and identify those contractors/employees who will be so bidding.

Article 51. Opening or Closing Bid on Behalf of Seller

The auctioneer shall announce if the opening bid or the closing bid has been made by or on behalf of the seller.

Article 52. Bids to be Clearly Stated

The auctioneer shall ensure that the amount of any bid is clearly stated.

Article 53. Refusal of Bid

The auctioneer may refuse any bid.

Article 54. Disputed Bids

The auctioneer shall resolve any disputed bid in accordance with the terms and conditions of sale governing the auction. If such terms and conditions do not specify how disputed bids are to be resolved then the auctioneer shall resolve any disputed bid in accordance with the Institute's Terms and Conditions of Sale by Public Auction for Real Property (or any document approved by the Institute in substitute thereof).

Article 55. Announcement Immediately Prior to Sale

The auctioneer will always clearly announce when the property is about to be sold under the hammer.

Article 56. Buyer is Highest Bidder

Subject to the reserve price being reached, the highest bidder shall be the buyer.

Article 57. Purchase at reserve Price if Passed In

If the seller so instructs, the Auctioneer will announce during the course of the auction, that in the event of the property being passed in, the highest bidder will have the first right of purchase of the property at the seller's reserve price.

Article 58. - No Reference to Bids in Post Auction Advertising

If a property is passed in at auction no post-auction advertising for the property shall make any reference to any bid made for the property at the auction.

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