



Land Agents Registration Act Code of Ethics Regulations 2017

His Excellency, Tom Marsters

Queen's Representative

Order in Executive Council

At Avarua, Rarotonga this

21st

day of

November

2017

Present:

His Excellency the Queen's Representative in Executive Council

Pursuant to section 31(2)(i) of the Land Agents Registration Act 2009, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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Regulations

- 1 Title**
These regulations are the Land Agents Registration Act Code of Ethics Regulations 2017.
- 2 Commencement**
These regulations come into force on the day after the date on which these regulations are made.
- 3 Application**
These regulations bind all land agents and former land agents.

4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Land Agents Registration Act 2009**Board** means The Land Agents Registration Board**independent advice** (see clause 25) means advice given by a land agent who,—

- (a) in respect of the matter on which the advice is given, has no conflicting duty to any other client or person; and
- (b) is not involved in a law practice that employs the land agent in respect of whose services the independent advice is required

informed consent means consent—

- (a) given by the client after the matter in respect of which the consent is sought and the material risks of, and alternatives to, the proposed course of action have been explained to the client; and
- (b) in respect of which the land agent believes, on reasonable grounds, that the client understands the issues involved

practice means a land agents practice, whether conducted by 1 land agent, or a partnership of land agents**regulated services** is all activity of a land agent appearing for or representing or advising any other person in relation to land matters whether for payment or not.

- (2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

Part 1**Standards of professional competence and conduct****5 Standards of professional competence**

- (1) A land agent must exercise reasonable skill, care, competence, and diligence at all times when undertaking regulated services.
- (2) A land agent must not accept instructions to provide regulated services unless the land agent is competent to perform the work required and has the capacity to carry out the work.
- (3) The land agent must not give the impression that he or she can advise on issues that require the communication of an opinion on difficult or uncertain issues of law. Clients should be advised about or referred to appropriate lawyers for assistance.
- (4) All regulated services must be undertaken in a prompt and timely manner.
- (5) Upon being engaged a land agent shall confirm the instructions and provide to client and up-date when appropriate a description of the services to be provided and the fees or method of calculating fees that the client may expect.

6 Standards of professional conduct

- (1) A land agent shall—

- (a) at all times act in good faith and must conduct himself or herself with honesty, fairness, and professionalism in all of his or her dealings, whether with clients, practitioners, or third parties:
 - (b) use Land Division processes only for proper purposes and must not use, or knowingly assist in using, the law or land transaction processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation:
 - (c) remain current in reading relevant judgments and practice directions together with such other material, new legislation, land tenure and other studies as may be recommended to the profession by the court or the Board:
 - (d) remain aware of and discuss where appropriate with clients and their family the value of alternative dispute resolution.
- (2) A land agent shall not—
- (a) engage in any conduct likely to bring the profession or the Board into disrepute:
 - (b) threaten, expressly or by implication, to make any accusation against a person or to disclose something about any person for any improper purpose:
 - (c) engage in any conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of the practitioner's practice, including, but not limited to, the following—
 - (i) naming his or her practice in such a way so as to mislead others as to its nature or structure or tending to give the impression that it is affiliated with a public or other entity with which it is not affiliated; or
 - (ii) misrepresenting the structure of the practice or status of the land agent; or
 - (iii) holding himself or herself out in such a way as to suggest knowledge or expertise that he or she does not have.

7 Undertakings

- (1) A land agent must honour all undertakings, whether written or oral, that he or she gives to any person in the course of practice.
- (2) This rule applies whether the undertaking is given by the land agent personally or by any other member of the land agent's practice.
- (3) This rule applies unless the land agent giving the undertaking makes it clear that the undertaking is given on behalf of a client and that the land agent is not personally responsible for its performance.

8 Obligation to keep records

A land agent must ensure that written records are kept of all of his or her dealings with a client and with others with whom he or she has professional dealings during the course of any particular transaction, including, but not limited to,—

- (a) confirming verbal instructions in writing;

- (b) keeping written records of all dialogue, phone conversations, inquiries, correspondence (including emails), and other exchanges arising in the context of each transaction;
- (c) complying with all obligations under any law current or in future, concerning electronic registration.

9 Certification

- (1) Every land agent must take all reasonable steps to ensure that any document prepared or given by him or her under any legislation is correct and complies with all relevant requirements or court directions.
- (2) If a land agent subsequently discovers that a document given or replied upon by the land agent was or has become inaccurate or incomplete to a material extent, he or she must immediately take reasonable steps to correct the certificate or arrange to facilitate the correction.
- (3) A land agent shall file within a reasonable time appropriately consult and share any court or other orders or surveys that it is expected the land agent or the client should file or deliver.

10 Conduct for which land agent may be disciplined

The kinds of conduct, including criminal offences, for which a land agent or former land agent may be disciplined are as follows—

- (a) engaging in an offence under the Act or under any Act when acting as a land agent;
- (b) breach of this code of ethics;
- (c) negligence or incompetence in a land agent's professional capacity of such a degree or so frequent as to reflect on the land agent's fitness to practise, or as to bring the land agent profession into disrepute;
- (d) conviction of an offence punishable by imprisonment where the conviction reflects on the land agent's fitness to practise, or tends to bring the land agent profession into disrepute.

11 Fines for breach of regulations or of this code

Pursuant to the Act sections 21 and 31(2)(j) for any breach of this Act or regulations not otherwise having consequences provided for in the Act, the Board may impose the maximum fine provided for in the Act section 31(2)(j).

12 Duty to report

- (1) A land agent who has reasonable grounds to suspect that another land agent or a lawyer has been guilty of misconduct must make a confidential report or complaint to the Board or to the Cook Islands Law Society complaints' system, at the earliest opportunity.
- (2) A land agent must not use, or threaten to use, the complaints or disciplinary process for an improper purpose.

13 Unauthorised provision of land agent services

If a land agent learns that a person is committing an offence by failing to comply with registration requirements of the Act, the land agent must immediately report the matter to the Board and, unless it is contrary to the interests of the land agent's client, refuse to deal with that person.

14 Prevention of crime or fraud

A land agent must take all reasonable steps to prevent any person perpetrating a crime or fraud through the land agent's practice, including taking reasonable steps to ensure the security of and access to electronic systems and passwords.

15 Assisting in fraud or crime

A land agent must not—

- (a) advise a client to engage in conduct that the land agent knows to be fraudulent or criminal; or
- (b) assist any person in an activity that the land agent knows is fraudulent or criminal; or
- (c) knowingly assist in the concealment of fraud or crime.

Part 2**Duties in respect of clients****16 Relationships with clients**

- (1) A land agent must at all times treat a client with respect and courtesy.
- (2) A land agent must at all times act in accordance with the client's instructions unless to do so would be contrary to law or in conflict with these rules.

17 Communication

- (1) A land agent must communicate regularly with the client and keep the client well informed of matters relevant to the client's particular transaction.
- (2) A land agent must disclose all matters concerning the client's affairs to the client unless to do so would be unlawful.
- (3) A land agent must respond to inquiries from the client in a timely manner.
- (4) A land agent must inform the client if there are any material and unexpected delays in a matter.

18 Provision of information

All information that a land agent is required to provide to a client under these rules must be provided in a manner that is clear and not misleading given the identity and capabilities of the client and the nature of the information.

19 Prior information to clients

- (1) Before entering into an arrangement with any new or existing client, a land agent must provide the following information, in writing, to that client—
 - (a) the basis upon which the land agent calculates his or her fee, including, but not limited to,—
 - (i) whether the fee is fixed for specific types of work and, if so, what that fee is;
 - (ii) whether the fee is calculated on a per hour basis and, if so, the range within which the client might reasonably expect the fee to fall;
 - (iii) whether the fee (subject to the authorisation required by rule 42) may be deducted from funds held in trust on behalf of the client;

- (iv) whether there are likely to be any additional disbursements or other expenses associated with the work and, if so, the range within which the client might reasonably expect those disbursements or expenses to fall:
- (b) when payment of fees and disbursements is to be made:
- (c) the maximum amount of cover for any 1 claim available under professional indemnity insurance; or to disclose there is no such insurance:
- (d) advice on the existence and availability of the Board's complaints service and how the Board may be contacted in order to make a complaint (ie currently in writing through the Solicitor-General, Crown Law office or to the Registry of the Court).

20 Electronic provision of information

- (1) A requirement in these rules to provide a client with information is satisfied by providing the information—
 - (a) in writing; or
 - (b) in an acceptable electronic form.
- (2) Unless a client otherwise instructs, an electronic form is acceptable where the information is readily accessible to the client concerned and is available for subsequent reference.
- (3) This rule applies whether or not a particular rule states that information is to be given in writing.

21 Completion of work

- (1) A land agent must always complete the work in respect of which he or she has accepted instructions unless—
 - (a) the land agent and client otherwise agree; or
 - (b) the client terminates the services of the land agent; or
 - (c) the land agent terminates the services to the client for good cause and after giving reasonable notice to the client specifying the grounds for termination.
- (2) For the purpose of this rule, **good cause** includes—
 - (a) instructions that would or may require the land agent to breach any professional obligation:
 - (b) the inability or failure of the client to pay a fee on the agreed basis or, in the absence of an agreed basis, a reasonable fee at the appropriate time:
 - (c) the client misleading or deceiving the land agent in a material respect:
 - (d) the client failing to provide instructions to the land agent in a sufficiently clear or timely way.

22 Transfer of agent work

- (1) Subject to any statutory provisions to the contrary, upon changing agents a client has the right, either in person or through the new agent or legal representative, to uplift all documents, records, funds, or property held by the former land agent on the client's behalf. The land agent must act upon any written request to uplift the documents without undue delay subject only to any lien that the former land agent may claim.
- (2) If the matter in issue is urgent, a former land agent who holds a lien over documents must make the documents available to the client's new practitioner on receipt of an undertaking from the new practitioner that the former land agent's fee will be paid in priority to the fee of the new practitioner.
- (3) Where a client changes practitioners and funds, documents, or property of the former client are the subject of an undertaking given by the former land agent to a third party, the former land agent may decline to release the funds, documents, or property concerned to the new practitioner or client until the former land agent is discharged from the undertaking to the third party.
- (4) Subject to the former land agent's legal right to a lien, the interests of the client must be foremost in facilitating the transfer of the client's documents and records.
- (5) This rule does not prevent—
 - (a) the inclusion in the arrangement between the land agent and the client of a term authorising the land agent to retain copies of the client's documents and records; or
 - (b) a land agent from retaining copies of the client's documents and records on termination of the arrangement so long as it is reasonably considered that it will or may be necessary to refer to the documents or records for the purpose of defending any complaint or claim by the client or other proceedings against the practice.

23 Use of confidential information prohibited

- (1) A land agent must not use information, whether held by the land agent or by the practice, that is confidential to a client (including a former client) for the benefit of any other person or of the land agent.
- (2) For the purposes of this rule, confidential information is presumed to be held by a practice when any land agent who is a member of the practice has been a member of another practice that held the confidential information when that land agent was a member, unless the land agent concerned can demonstrate that he or she is not aware of the relevant confidential information.

24 Duration of duty of confidence

- (1) A land agent's duty of confidence commences from the time a person makes a disclosure to the land agent and continues indefinitely after the person concerned has ceased to be the land agent's client.
- (2) Following the death of a client or former client, the right to confidentiality passes to the client's personal representatives.

- (3) Where an incorporated client goes into receivership, liquidation, or voluntary administration, the duty of confidentiality owed to the corporation under the direction of the receiver, liquidator, or administration remains but confidentiality relating to the business and affairs of shareholders and directors of the client (if the land agent acted for those parties) remains with those individuals.

25 When disclosure is permitted

- (1) A land agent may disclose confidential information relating to the business or affairs of a client (including a former client) to a third party where—
- (a) the client expressly or impliedly authorises the disclosure (and where the information is confidential to more than 1 client, all clients have authorised the disclosure); or
 - (b) the information relates to the anticipated commission of a crime or fraud; or
 - (c) it is necessary to protect the interests of the client in circumstances where, due to incapacity, the client is unable effectively to protect his or her own interests; or
 - (d) the land agent reasonably believes that the land agent's services have been used by the client to perpetrate or conceal a crime or fraud and disclosure is required to prevent, mitigate, or rectify substantial injury to the interests, property, or reputation of another person that is reasonably likely to result, or has resulted, from the client's commission of the crime or fraud; or
 - (e) disclosure is necessary for the land agent to seek guidance from a lawyer or from another land agent in respect of a proper course of professional conduct, and in such case that lawyer or other land agent is bound to maintain the confidence of the client; or
 - (f) disclosure is necessary for the effective operation of the land agent's practice, including arranging insurance cover or collection of professional fees; or
 - (g) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the land agent by the client.
- (2) Where the land agent discloses information under this rule, it should be only to the appropriate person or entity and only to the extent reasonably necessary for the permitted purpose.

26 Claims against land agent

- (1) When a land agent becomes aware that a client has or may have a claim against him or her, the land agent must immediately—
- (a) advise the client to seek independent advice; and
 - (b) inform the client that he or she may no longer act unless the client, after receiving independent advice, gives informed consent.
- (2) A land agent may resume acting for a former client where the matter in dispute has been resolved.

Part 3

Duties in respect of other agents

27 Respect and courtesy

A land agent must treat other agents with respect and courtesy.

28 Communicating with another agent's client

- (1) A land agent must not communicate directly with a person whom the land agent knows is represented by another agent in that matter except as authorised in this rule.
- (2) A land agent may communicate directly with a person whom the land agent knows is represented by another agent where the matter is urgent and it is not possible to contact that person's agent or an appropriate agent working with or for that agent. In communicating with the other agent's client directly the land agent must act fairly towards the other agent's client at all times and must promptly notify the other agent of the details of the communication.
- (3) A land agent may communicate directly with a person if the land agent reasonably believes that that person is no longer represented by another agent. In that event the other agent must be notified in advance of the land agent's intention to communicate directly with that person.
- (4) A land agent may communicate directly with a former client who is represented by a new practitioner for the purpose of confirming the client's instructions and arranging for the orderly transfer of the client's matters to the new practitioner.
- (5) A land agent may recommend to a client that the client make direct contact with any other party.
- (6) A land agent may communicate directly with a person represented by another practitioner where the person consents to the communication and the other agent has been given reasonable notice of the intended communication. In communicating with the other agent's client directly, the land agent must act fairly toward the other agents' client at all times.

29 Payments

- (1) A land agent must not—
 - (a) stop a trust account cheque drawn on the trust account of the practice of which the land agent is a member, or a bank cheque, that in either case is payable to another practice, a lawyer, or an incorporated law firm; or
 - (b) cancel, reverse, or amend an order for payment made to another practice, a lawyer, or an incorporated law firm by way of electronic transfer from the trust account of the practice of which the land agent is a member,—

once the cheque or printed verification of the electronic transfer instructions has been handed or dispatched to the payee.
- (2) Subclause (1) does not apply where the payment—
 - (a) is induced by fraud; or
 - (b) arises from a mistake in the identity of the payee or the payee's client; or
 - (c) is made in other circumstances that are of an exceptional nature.

- (3) Where a land agent stops a payment or cancels, reverses, or amends an order for payment, the land agent must immediately advise the payee of the action that has been taken.

Part 4

Duties in respect of third parties

30 Respect and courtesy

A land agent must treat any third party with whom he or she deals with respect and courtesy.

31 Fees

Where a land agent instructs another person on behalf of a client to render services in the absence of an arrangement to the contrary, the land agent is personally responsible for payment of that person's fees, costs, and expenses.

Part 5

Conflicts of interest

32 Conflicting duties

- (1) A land agent must not act for more than 1 client on a matter in any circumstances where there is more than a negligible risk that the land agent may be unable to discharge the obligations owed to 1 or more of the clients.
- (2) Subject to subclause (1), a land agent may act for more than 1 party in respect of the same transaction or matter where the prior informed consent of all parties concerned is obtained.
- (3) Despite subclause (2), if a land agent is acting for more than 1 client in respect of a matter and it becomes apparent that the land agent will no longer be able to discharge the obligations owed to all of the clients for whom the land agent acts, the land agent must immediately inform each of the clients of this fact and cease acting for all clients.
- (4) Despite subclause (3), a land agent may continue to act for 1 client provided that any other client concerned, after receiving independent advice, gives informed consent to the land agent continuing to act for the client and no duties to any consenting client have been or will be breached.

33 Members of same practice

Rule 31 applies, with any necessary modifications, whenever land agents who are members of the same practice act for more than 1 party.

34 Conflicting interests

- (1) A land agent must not act or continue to act if there is a conflict, or a risk of a conflict, between the interests of the land agent and the interests of a client for whom the land agent is acting or proposing to act.
- (2) Where a land agent has an interest that touches on the matter in respect of which regulated services are required, the existence of that interest must be disclosed to the client or prospective client irrespective of whether a conflict exists.

- (3) A land agent must not act for a client in any transaction in which the land agent has an interest unless the matter is not contentious and the interests of the land agent and the client correspond in all respects.
- (4) A land agent must not enter into any financial, business, or property transaction or relationship with a client if there is a possibility of the relationship of confidence and trust between land agent and client being compromised.
- (5) A land agent who enters into any financial, business, or property transaction or relationship with a client must advise the client of the right to receive independent advice in respect of the matter and explain to the client that the land agent must cease to act for the client should a conflict of interest arise.
- (6) Subclause (5) does not apply where—
 - (a) the client and the land agent are relatives; or
 - (b) the transaction is a contract for the supply by the client of goods or services in the normal course of the client's business; or
 - (c) a land agent subscribes for or otherwise acquires shares in a listed company for which the land agent's practice acts.
- (7) In this rule, a land agent is deemed to be a party to a transaction if the transaction is between entities that are related to the land agent by control (including a trusteeship, directorship, or the holding of a power of attorney) or ownership (including a shareholding), or between parties to whom the land agent or client is related.

35 Conflicting business interests

- (1) A land agent must not engage in a business or professional activity other than the practice of land agent where the business or professional activity would or could reasonably be expected to compromise the discharge of the land agent's professional obligations.
- (2) Where a land agent provides, or intends to provide, services to clients other than regulated services, the services must—
 - (a) be associated with the provision of regulated services; and
 - (b) be provided by the land agent's practice or by an entity in which the land agent or the land agent's practice has a controlling interest.

36 Third party conflicts of interest

- (1) A land agent must not act if there is a conflict of interest or an appearance of a conflict of interest between a client and a third party to whom the land agent is related.
- (2) Where a person who is a relative of the land agent has an interest in the matter being dealt with or proposed to be dealt with on behalf of the client, the existence of that relationship and the nature of the interest must be disclosed to the client or prospective client irrespective of whether an actual conflict of interest exists.
- (3) A land agent is not precluded from acting for a client solely because another member of the land agent's practice is a relative of a person whose interests conflict with the interests of the land agent's client.

- (4) Where land agents are relatives of each other they must not act for different parties in a matter unless the clients of both land agents give their informed consent to their respective land agents acting. Where land agents who are relatives of each other are engaged by their respective clients before the relationship is established, then, in the absence of both clients' consent to their respective land agents continuing to act, the land agent engaged later in time must cease to act.
- (5) A land agent is not precluded from acting for a client because another member of his or her practice is related to the land agent acting for another party to the transaction.

37 Personal relationships

A land agent must not enter into an intimate personal relationship with a client where to do so would or could be inconsistent with the trust and confidence reposed in the land agent by the client.

38 Collateral rewards

Except in respect of arrangements under which a third party has agreed to pay or contribute to normal fees payable by a client with the knowledge and consent of that client, a land agent must not directly or indirectly offer to, or receive from, a third party any reward or inducement in respect of any advice given, referral made, product or service purchased, or work done for a client.

Part 6

Fees charged by land agents

39 Reasonableness of fee

- (1) A land agent must not charge a client more than a fee that is fair and reasonable for the services provided, having regard to the interests of both client and land agent and having regard also to the factors set out in subclause (2).
- (2) The factors to be taken into account in determining the reasonableness of a fee in respect of any service provided by a land agent to a client include the following—
- (a) the time and labour expended:
 - (b) the skill, specialised knowledge, and responsibility required to perform the services properly:
 - (c) the importance of the matter to the client and the results achieved:
 - (d) the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;
 - (e) the degree of risk assumed by the land agent in undertaking the services, including the amount or value of any property involved:
 - (f) the complexity of the matter and the difficulty or novelty of the questions involved:
 - (g) the experience, reputation, and ability of the land agent:
 - (h) the possibility that the acceptance of the particular arrangement will preclude engagement of the land agent by other clients:

- (i) any quote or estimate of fees given by the land agent:
- (j) the reasonable costs of running a practice:
- (k) the fee customarily charged in the market and locality of similar regulated services.

40 Fees in advance

A land agent who wishes to debit fees from funds held in trust or to receive funds to cover fees in advance must deliver an invoice and report before any funds are applied.

41 Final account

- (1) A land agent must render a final account, including sufficient information to identify the work undertaken and disbursements incurred, to the client or person charged within a reasonable time of concluding the agreed regulated services; sending with that report any copies of court orders or other vital documents appropriate to a client's records.

**Part 7
Miscellaneous**

42 Method of payment

Any fee, subscription, contribution, or levy required by the Act, regulations, these rules or a resolution of the Board to be paid to the Board must be paid by—

- (a) deposit into the bank account nominated by the Board for this purpose; or
- (b) cheque submitted to the Board's main office; or
- (c) any other method of payment agreed in advance with the Board.

Aukino Tairea

Clerk of the Executive Council

These regulations are administered by the Ministry of Justice.

These regulations were made on the _____ day of _____ 2017.