

# Conflict of interest

## – facilitated meeting notes

### Facilitator's notes



Allow

**2**  
hours

This is an estimate only. You may wish to cover this topic in two or more sessions.

#### You'll need

- A laptop or other device with internet access and a screen to project on to.
- The ability to play videos with sound.
- Optional PowerPoint presentation (available for download at [rea.govt.nz/resources](http://rea.govt.nz/resources)).
- Your agency's conflict of interest policy and any checklist or supporting documentation.
- REA 'Conflict of interest – guidance and resources for licensees' notes for staff (supplied).
- A copy of the Code of Conduct (supplied).
- A copy of Form 2 (supplied).

#### Preparation

Brainstorm some examples of conflict of interest situations your agency has experienced in the past. Familiarise yourself with the information in this pack. Watch the video prior to showing your staff so you can generate discussion questions.

## Introduction to **your meeting**

**5**  
mins

#### Advise attendees that:

- conflict of interest situations come up often – it's important you know how to handle them so you can best protect yourself and the consumer
- the Real Estate Agents Act 2008 (the Act) sets out specific procedures that must be followed when a conflict of interest arises
- conflict of interest rules and obligations apply across all sectors of real estate – residential, rural, commercial and business broking
- they will need to consider other factors such as fairness and transparency under rule 6.4 and their obligations to the vendor
- they should talk to their supervising agent or branch manager about the agency's policy as these can be complex situations
- it's useful to think about how someone, separate to your workplace or situation, would view the steps you have taken, when managing conflict of interest
- today's session(s) can be counted as 2 hours towards non-verifiable training (if all sessions are attended).

#### In today's session, we're going to:

- show the REA video about conflict of interest
- discuss the importance of understanding what a conflict of interest is and when it may come up
- consider various situations, whether they involve a conflict of interest and how you can manage them
- discuss our experiences with conflict of interest
- run some activities including a case study, scenario situations and a quiz
- discuss where to go for further resources and support.

#### The aims of today's session are to:

- understand why conflict of interest is important
- learn from each others' experiences about dealing with conflict of interest situations
- know where to go for more information and support about handling conflict of interest issues.



## Watch and discuss **the video**



### Conflict of interest - **REA educational video (5 mins)**

REA has developed an educational video to help licensees understand their obligations when managing conflict of interest situations.

The conflict of interest video is about 5 minutes long. You may wish to pause the video to discuss some points. Here are some suggested times to pause and discuss the video.

#### **Suggested times in the video where you can pause for discussion**

- **0:51** Who is a 'related person'?
- **1:51** What three things must you do when buying a property through your agency?
- **2:40** In what situation can a vendor void a signed sale and purchase agreement?
- **3:38** Can you waive the independent valuation if the vendor tells you they don't need it?

**Find the conflict of interest video at:** [rea.govt.nz/conflict](http://rea.govt.nz/conflict)

#### **Discuss the video (15 mins)**

##### **Suggested questions to generate discussion:**

- What was your key take-away from the video?
- Why do you think it's important to disclose whether you or someone related to you will benefit financially from the transaction? What can happen if you don't?
- What does section 136 of the Act cover, and why is it important?

## STEP 2

# Activity – discuss examples where the group has had conflict of interest situations

15  
mins

### The purpose of this activity is to:

- share stories and, more importantly, **learnings**
- help everyone feel more comfortable about discussing conflict of interest issues
- make participants aware that they may face conflict of interest situations throughout their career and it's okay to reach out for support, both within and outside the agency.

Facilitate a discussion about conflict of interest issues or challenges you may have faced in the past, either as individuals or as an agency.

We suggest larger groups break into groups of four to seven people for this exercise, so everyone gets a chance to share examples. After 10 minutes, ask each group to share one key example or learning with the wider group.

Invite everyone to share their experiences. Be sure to cover off **how, if at all, they might handle it differently** if they were to face the situation again.

### Examples of questions that may help to generate discussion

#### You might like to think about some of these in advance:

- Describe a situation where you could have handled a conflict of interest situation better. What happened, what went wrong and what were the learnings? How were you supported through it?
- Describe a situation where you weren't sure whether a conflict of interest existed or not. How did you confirm it was a conflict? What steps did you take next?
- If you were the vendor and your listing agent wanted to buy your house, how would you feel? What information would you want to know or what protection would you want to have in place?





## Activity – conflict of interest scenarios

30  
mins

This scenario-based activity can be run in one or more groups. Read out the questions and give people time to write down their answers. After they have discussed each scenario, ask them to share their responses. If you're working with one small group, discuss each question in turn.

### Scenarios

- 1** Jasper, a licensee, recently had a death in his family and has been named as the executor of the deceased's estate. He wants to sell the deceased's property through his agency and isn't sure if he needs to tell his manager about this and disclose it to potential purchasers. Does Jasper have a conflict of interest to disclose? What steps should he take next?

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- 2** Tane works in commercial real estate by day and runs a small landscaping company with his business partner, Rob, in his spare time. Rob is looking to diversify his investments and is interested in buying a commercial development opportunity that Tane has listed for sale. Would this be considered a conflict of interest? Why/why not? What steps should Tane take next?

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- 3** Isabelle works as Peter's assistant and is interested in buying a property that Peter has listed for sale. The property will be sold by auction. Isabelle and Peter both agree that they need to fill out Form 2 and get an independent valuation, but they are confused by the process. Isabelle wants to provide the independent valuation and Form 2 at the auction, but Peter insists they should fill out Form 2 with a provisional value and only get the valuation if she wins the auction. What would you do in Peter and Isabelle's shoes? How do you think Form 2 works at an auction?

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### Answers

- 1** Jasper does not need to disclose the fact that he is an executor of the estate if he is not receiving any financial benefit from the sale of the property (section 136). He would, however, be required to disclose this information if there was an arrangement in place to provide him with proceeds from the sale. Jasper would also have disclosure obligations if he is a beneficiary or is related to a beneficiary or creditor who will receive money from the sale. In the interest of fairness and transparency, Jasper should share this information in accordance with rule 6.4.

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- 2** Yes, this would be considered a conflict of interest. Rob is a 'related person' because he is Tane's business partner (this relationship is outlined in section 137). Section 134 of the Act applies if the licensee or a related person wishes to buy (or acquire an interest) in a property. Tane must obtain the consent of his client, which must be given on the prescribed form (Form 2) and be accompanied by a valuation.

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- 3** REA suggests that Form 2 and the valuation are completed before the auction as obligations under section 134 apply regardless of the method of sale. Peter, as the licensee, should be upfront with the vendor and ask them how they want to proceed. The valuation can be presented after the auction if the vendor agrees that this can happen. The vendor can insist that Peter provides the independent valuation before they provide their consent by completing Form 2.

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**4** Julia works at agency A, and her sister is interested in a property being listed with agency B. The two agencies often work together but do not share any databases. They have a conjunctive agreement in place stating that Julia will receive a portion of the commission if her sister purchases the property. Would Julia need to complete Form 2? If her sister buys the property, is Julia allowed to receive a commission? Who pays for the independent valuation?

**5** Rangī has 30 years' experience in rural real estate and is currently selling a farm on behalf of a vendor. Rangī has many connections in the local community, including a close friendship with Anjay. Rangī's and Anjay's families often go on holiday together, they volunteer in the local fire service together and they are both on the board of the local school. Anjay is interested in buying the farm that Rangī has listed for sale. Do the conflict of interest rules apply? What steps should Rangī take if Anjay submits an offer for the farm? What might the vendor think if Anjay buys the property?

**4** Yes, Form 2 would need to be completed as Julia, through her conjunctive agreement, is doing real estate agency work on behalf of the vendor and her sister is a 'related person' under section 137. Julia is able to receive commission from the sale but will need to pay for the valuation, as she is the licensee with the related person.

**5** No, this would not be a conflict of interest as Anjay is not considered to be a 'related person'. However, Rangī should share his relationship with Anjay with the vendor in writing prior to Anjay making an offer in the interests of fairness and transparency.



## Activity – highlight the consequences of failing to disclose conflicts of interest

15 mins

Tell the group the purpose of this activity is to get them to think about the potential consequences for all parties within a transaction when conflicts of interest aren't disclosed.

This activity involves dividing participants into two groups (if possible). Pose a question and give each group time to think about possible answers. Each group will write down their answers and present them to the wider group.

- 1**
  - Q** What are the possible consequences for the licensee and agency if they don't follow the conflict of interest process?
  - A** Breaches of the conflict of interest sections of the Act are treated seriously by Complaints Assessment Committees (CACs) and the Real Estate Agents Disciplinary Tribunal (Disciplinary Tribunal). If a complaint is made about a licensee, they are likely to have a finding of unsatisfactory conduct or misconduct made against them. The finding can result in fines, the vendor or client claiming their commission back, orders to undergo further training and, in serious situations, cancellation or suspension of a licence. There are also significant personal consequences including stress and emotional upheaval of having a complaint made against them. It may also result in reputational damage for both the licensee and the agency, particularly as consumers are now more likely to share their experiences on social media.

- 2** **Q** What are the possible consequences for the vendor if the conflict of interest isn't disclosed to them?
- A** If you do not disclose the conflict of interest to the vendor, you take away their right to cancel the contract. This is an important right for the vendor to hold a licensee to account. The second impact is an emotional impact – the feeling that they've been cheated by their agent. Even if the vendor received a fair price for their property, there is likely to be a perception that the process wasn't fair. The conflict of interest section exists to protect the vendor from situations where a licensee has information about that property or the transaction that the licensee or a related person could use to their advantage. If the process isn't followed, the vendor may not understand the likely market price for their property and could sell their property for less than it's worth.
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- 3** **Q** What are the possible consequences for the buyer if the conflict of interest isn't disclosed to them?
- A** We commonly hear from buyers that the process wasn't fair. This impacts on perceptions of real estate agents and the industry. Where conflicts aren't disclosed and buyers later find out about them, they are likely to be suspicious about the entire transaction and left feeling cheated. This is especially the case where the listing licensee is the vendor, and the buyer may have told the listing agent information that they would not have told the vendor directly.



## Discuss the case study



### Case: C18115

You can read about this complaint and decision in the REA decisions database which you can find at the top of the [rea.govt.nz](http://rea.govt.nz) homepage.

#### Facts

A sale and purchase agreement was entered into for a section of land. The purchaser was a previous client of the licensee. During due diligence, the purchaser discovered that there were problems that made building on the property difficult and that different resource consents would be required in addition to the ones obtained by the vendor.

The licensee and his wife had previously mentioned to the purchaser that they were interested in buying or building a new home. The purchaser approached the licensee and his wife to see if they would be interested in purchasing the property as he was no longer interested. By this stage, there was a binding contract in place for the purchaser to buy the property, which the purchaser said he could nominate to the licensee and his wife. They agreed

and a nomination agreement was executed to the licensee's wife (not the licensee himself), and the transaction settled.

The licensee and vendor eventually met, and the vendor found out the licensee was a real estate agent with the agency. The conflict of interest sections of the Act were not complied with for the transaction. The licensee then informed his agency of the situation, and the agency reported him to REA under rule 7.2.

## Suggested questions to ask

- Do you think this was a conflict of interest? Why/why not?
- At what point do you think the licensee should have disclosed his interest?
- What do you think the outcome was?

## The Disciplinary Tribunal's reasoning

The Disciplinary Tribunal concluded that the licensee's actions amounted to misconduct under section 73(b) of the Real Estate Agents Act 2008 (the Act). The licensee was also in breach of rules 5.1, 6.1, 6.3 and 9.1 of the Code of Conduct by failing to disclose that his wife was the nominated purchaser, not obtaining the vendor's consent and not providing an independent valuation.

Sections 134 and 135 of the Act outline licensee obligations in situations where their interests in acquiring property conflicts with those of their vendor or client. The purchase of a client's property must occur in the most transparent and informed way possible to promote public confidence in real estate agency work.

In this case, the licensee did not understand that he was still required to disclose his interest when it arose during the due diligence period. This is required even if a sale and purchase agreement had already been signed – these obligations continue to apply after a sale and purchase agreement becomes unconditional and until settlement. Licensees should be able to identify when there may be a conflict of interest regardless of when this occurs during the sale process.

The licensee should have alerted his agency to this conflict of interest and followed the prescribed steps of obtaining the vendor's informed consent on Form 2 and provided them with an independent valuation at the licensee's expense.

## Penalty

The licensee was censured (formally reprimanded), fined \$3,000 and ordered to undertake additional training in relation to compliance with sections 134 and 135 of the Act.

## Discussion questions

- How could the licensee have handled the situation better?
- What should the licensee have done differently to avoid this situation and subsequent decision?



# Activity – complete the REA conflict of interest quiz



Read out the questions and discuss the answers as a group.

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- 1** **Q** True or false: You don't have to disclose your interest in a property if a sale and purchase agreement has gone unconditional.
- A** False: Your disclosure obligations apply through to settlement.

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- 2** **Q** Who pays for the independent valuation for a Form 2?
- A** The independent valuation must be paid by the licensee acting on behalf of the vendor even if the person purchasing the property is a 'related person' under section 137 of the Act.

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- 3** **Q** If a licensee's cousin wishes to sell their property through their agency, would they have to disclose this to potential purchasers?
- A** Section 137 of the Act does not include a cousin as a 'related person'. The Act would not require this disclosure under section 136. However, REA suggests sharing information about the relationship under rule 6.4 to ensure transparency and fairness.

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- 4** **Q** The listing agent is also the director of several other companies that are not related to real estate work. Would the employees of the other companies need to complete the required disclosures if they were to buy/sell through the director's agency?
- A** Yes, they would still need to disclose this information and complete Form 2 as they are employees of the licensee.
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**5** **Q** If you are purchasing a property privately, do you need to disclose to the vendors that you are a licensee?

**A** No, you are not required to tell the vendor you are a licensee if you are buying a property privately.

**6** **Q** Can a licensee act as both a salesperson and a mortgage broker in the same transaction?

**A** No. While there are no issues with a licensee also being a mortgage broker, the conflict would exist if they were to act as both in the same transaction. This is outlined in rule 9.15 of the Code of Conduct.

**7** **Q** A licensee is selling an investment property that is part of their family trust. What disclosures need to be made, if any?

**A** They would have to disclose in writing to every prospective party to the transaction and inform them they or the 'related person' to them will benefit financially from the transaction. This will need to be done before or at the time they provide the prospective party with any contractual documents that relate to the transaction.

**8** **Q** Can a licensee claim a commission from both the seller and buyer in a transaction?

**A** No. Rule 9.14 states that an agent cannot receive commissions from both parties to a transaction.

**9** **Q** A vendor tells you they don't want an independent valuation. Can you waive this requirement?

**A** No, you can't contract out of this requirement.

**10** **Q** True or false: If the independent valuation comes back higher than the provisional value you have supplied on Form 2, the vendor can cancel the agreement.

**A** True. The vendor has the option to cancel the agreement or renegotiate it with you.



## Where to go for more resources and information



The [rea.govt.nz](http://rea.govt.nz) website has important information and supporting resources to help guide licensees through conflicts of interest: [rea.govt.nz/conflict](http://rea.govt.nz/conflict)

**Reminder:** It's important that licensees know they must discuss any conflict of interest situations and issues with their supervising agent or branch manager.

**For further support, call REA on 0800 367 732 or email [info@rea.govt.nz](mailto:info@rea.govt.nz).**

### Hand out the conflict of interest flyer

The flyer includes information about where to go for guidance and support so licensees can manage conflict of interest situations when they arise with confidence.

