SEVEN WAYS YOU CAN EASILY BREAK THE LAW IN REAL ESTATE

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Most of us don't set out to deliberately break the law. But it's something that is surprisingly easy to do. Perhaps we sometimes drive a little too fast, or use the company's photocopier to run off brightly-coloured flyers for our son's school play. Little things that don't seem to carry much weight in the grand scheme of things, but they can have consequences.

In real estate there are many ways to break the law just as easily. Here are seven of the 'simplest' ones. Five arise from the Real Estate Agents Authority (Professional Conduct and Client Care) Rules 2012, referred to here as the 'Code'. The other two are from the Real Estate Agents Act 2008, referred to in this article as the 'Act'.

1 Not explaining the impact of marketing choices to clients

You've appraised a wonderful property that you're really keen to put on the market. It's highly desirable, and likely to sell quickly. Your company offers a commission incentive to licensees for properties listed with a substantial marketing campaign. The vendors aren't sure they really want an auction or that they feel it's necessary to spend the $5,000 marketing budget you've proposed, but they go along with it because you've assured them it's going to give them the best possible result.

In fact, the main reason you've suggested the marketing campaign is because when the property sells, you will earn a substantially higher listing commission than you would otherwise.

By not explaining this to the vendors, you are in breach of Rule 10.5 of the Code. The vendors are entitled to know how their decision affects you.

This rule applies to several other situations as well. For example, your boss might have promised you a $10,000 bonus when you get to your 20th sole agency listing. If listing this property would achieve that goal, you must disclose the situation to the vendors, before asking them to sign the agency agreement.

2 Not explaining that a client is not obliged to pay for marketing

I love a good vendor-funded marketing campaign. And as a salesperson, I worked hard to encourage vendors to contribute financially. But it must be entirely their choice, and they must know that they don't have to pay. This is a requirement under Rule 10.6(d) of the Code.

Always explain to vendors exactly what they can expect by way of marketing activities funded by the agency (or yourself), before you list their property. Many people believe that the agency will be providing a costly advertising campaign as part of the agency agreement. If you don't explain the situation at the outset, your vendors may be significantly disappointed quite early in the relationship. And they are unlikely to thank you for not telling them what to expect from the beginning.

3 Not explaining when an agency agreement ends

Sole agencies are always subject to a finite end date, usually 90 days after the agency agreement is signed. Of course, we list properties expecting to sell them well within that timeframe, thereby bringing the agency contract to an end. Vendors usually understand that. But you need to explain it to them anyway, otherwise you'd be in breach of Rule 10.6(b) of the Code. But properties don't always sell...

Most agency agreement forms have the provision for the agency to continue marketing the property under the terms of a general agency once the sole agency has expired. It's right there in the fine print. But many vendors don't actually read or think about the fine print. It's your job as a licensee to point this out, and explain what it means in practice. Which requires more than just a statement such as: "After the agency expires, we can continue marketing the property." You need to explain the terms of a general agency, including that the vendor can appoint other agents, and market the property privately.

4 Not making people aware of complaints procedures

Every agency is required to have in-house procedures for complaints and dispute resolution. These are in addition to those provided by the REAA. You must advise all prospective clients and customers (usually prospective vendors and purchasers, but also including prospective lessors and lessees) of these procedures, and make them available. Failure to do this would be a breach of Rule 12.2 of the Code.
In addition, you need to make prospective and actual clients and customers aware of the Authority's complaints process (available on the REAA website), and that they can access this without first following the agency's process. This is detailed in Rule 12.3. You must also explain that they can use both processes simultaneously or separately, if they wish.

5 Not giving the relevant REAA Approved Guide

If you are marketing residential property (including lifestyle blocks), you need to be very familiar with the REAA NZ Residential Property Agency Agreements Guide, and the REAA NZ Residential Property Sale and Purchase Agreements Guide.

The first must be given to vendors before you list their property for sale, and the second must be given to purchasers and vendors, before they sign an offer or agreement for sale and purchase of real estate. In both cases, you need to get a signed acknowledgement of receipt of the guide. This applies even if you are dealing with experienced buyers and sellers. Section 133 of the Real Estate Agents Act 2008 doesn't discriminate in such a fashion.

6 Not giving copies of written offers to the agent

Whenever you present a written offer to purchase a property to a vendor, you must provide a copy of that offer to your branch manager or supervising agent. This applies even if the offer is rejected by the vendor, subsequently withdrawn by the prospective purchaser, or you are unable to negotiate a satisfactory agreement between the parties. Rule 11.5 of the Code doesn't specify a time for this, however we can take it as read that the expectation is that the copy will be provided promptly.

7 Not notifying the Registrar of the REAA of a change in circumstances

Finally, the REAA requires that you notify any change in your circumstances to the Registrar. Such changes include, but are not limited to, a change in your landline or mobile phone number, change of business address, change of name (through marriage, divorce, or other means), or a change of employment. This is covered in Section 67 of the Act. The maximum penalty for failure to notify the REAA of such changes within 10 days is $10,000 for an individual, or in the case of a company, $50,000. (See Section 145 of the Act.)

Many of these issues are disclosure-related. Whenever you disclose something to a vendor or purchaser, follow it up in writing, and keep a copy of that written document. Obviously, any notifications you send to the REAA will be in writing. It's valuable evidence just in case you're ever called to account for your actions.

You may not be deliberately breaking the law, but if you fail to do each of the above when required, you may be held accountable. Just as exceeding the speed limit while driving doesn't automatically get you a fine, you just never know when you'll be caught out.

Any of the above breaches could potentially result in a charge of unsatisfactory conduct, which may be dealt with by a Complaints Assessment Committee (CAC). The CAC has the power to fine individual licensees up to $10,000, or make a number of other orders. In addition, any unsatisfactory conduct findings are recorded in the Public Register of Licensees for three years.

Is it worth being named, shamed, and fined? Personally, I'd rather just stay within the law!

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