**Conveyancers (Professional Conduct) Regulations 2018**

**S.R. No. 63/2018**

**table of provisions**

*Regulation Page*

Part 1—Preliminary 1

1 Objective 1

2 Authorising provision 1

3 Commencement 1

4 Definition 2

Part 2—Rules of professional conduct for licensees 3

5 Prescribed rules of professional conduct for licensees 3

6 Honesty, fairness and professionalism 3

7 Skill, care and diligence 3

8 Fiduciary obligations 3

9 To only undertake work within competence 3

10 To perform work promptly 4

11 To act in client's best interests and according to client's instructions 4

12 To regularly communicate with client 4

13 To confirm client's oral instructions in writing 4

14 Prescribed forms for section 49(3) 4

15 Acting for more than one party to a transaction 5

16 Confidentiality 5

17 Noting of instructions, enquiries and telephone conversations 5

18 Referral to service provider 5

19 Soliciting through false or misleading advertisements or communications 7

20 Undertakings 7

21 Termination of licensee's services 8

22 Transfer of conveyancing work 8

23 Transfer of conveyancing business 9

24 Conducting another business 10

Part 3—Loan and security documents 12

25 Independence of licensee advising on loan or security documents 12

26 Advising proposed signatories on loan or security documents 13

Schedule 1—Forms 18

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Endnotes 22

statutory rules 2018

S.R. No. 63/2018

***Conveyancers Act 2006***

**Conveyancers (Professional Conduct) Regulations 2018**

The Lieutenant-Governor as the Governor's deputy, with the advice of the Executive Council, makes the following Regulations:

Dated: 22 May 2018

Responsible Minister:

MARLENE KAIROUZ

Minister for Consumer Affairs, Gaming and Liquor Regulation

ANDREW ROBINSON

Clerk of the Executive Council

Part 1—Preliminary

1 Objective

The objective of these Regulations is to prescribe the rules of professional conduct for conveyancers.

2 Authorising provision

These Regulations are made under section 188 of the **Conveyancers Act 2006**.

3 Commencement

These Regulations come into operation on 26 May 2018.

4 Definition

In these Regulations—

***law practice*** has the same meaning as in the Legal Profession Uniform Law (Victoria);

***the Act*** means the **Conveyancers Act 2006**.

Part 2—Rules of professional conduct for licensees

5 Prescribed rules of professional conduct for licensees

For the purposes of section 45 of the Act, the rules of professional conduct for licensees are the rules set out in these Regulations.

6 Honesty, fairness and professionalism

(1) A licensee must act honestly, fairly and professionally with all parties in a transaction.

(2) A licensee must not misinform or otherwise mislead or deceive any parties in negotiations or a transaction.

7 Skill, care and diligence

A licensee must exercise reasonable skill, care and diligence in the performance of conveyancing work or carrying on a conveyancing business.

8 Fiduciary obligations

A licensee must comply with the fiduciary obligations arising out of the performance of conveyancing work or carrying on a conveyancing business.

9 To only undertake work within competence

A licensee must not accept instructions to perform conveyancing work unless the licensee is competent to perform the conveyancing work concerned.

10 To perform work promptly

A licensee must not accept instructions to perform conveyancing work unless the licensee reasonably expects to be able to carry out the conveyancing work concerned reasonably promptly.

11 To act in client's best interests and according to client's instructions

A licensee must act in the client's best interests and according to the client's instructions at all times unless it would be contrary to the Act or these Regulations or otherwise unlawful to do so.

12 To regularly communicate with client

A licensee must regularly communicate with a client to ensure that the client is kept up to date with the progress of the client's matter.

13 To confirm client's oral instructions in writing

A licensee must ensure that oral instructions (other than those of a trivial nature) received from a client are confirmed with the client in writing as soon as possible after they are received.

14 Prescribed forms for section 49(3)

For the purposes of section 49(3) of the Act—

(a) if a licensee is acting, or will act, for more than one party to a transaction, the prescribed form for a disclosure is Form 1 in Schedule 1; and

(b) if a licensee pays or receives, or is to pay or receive, a commission in respect of a transaction, the prescribed form for a disclosure is Form 2 in Schedule 1.

15 Acting for more than one party to a transaction

If a licensee who is acting for more than one party cannot continue to act for all of the parties without acting in a manner contrary to the interests of one or more of the parties, the licensee must cease to act for all of the parties.

16 Confidentiality

A licensee must not use or disclose any confidential information obtained while acting on behalf of a client unless—

(a) the client authorises the disclosure; or

(b) the licensee is permitted or compelled by law to disclose the information.

17 Noting of instructions, enquiries and telephone conversations

(1) A licensee must keep a written record, in the form of a file note, of the following—

(a) all instructions received from the licensee's clients and advice given;

(b) all telephone conversations made or received in connection with conveyancing work;

(c) all enquiries made in connection with conveyancing work and responses given.

(2) A record required to be kept under subregulation (1) may be kept in an electronic form, provided it can be produced in a permanent legible form in the English language.

18 Referral to service provider

(1) A licensee who refers a client or prospective client to a service provider must not falsely represent to the client or prospective client that the service provider is independent of the licensee.

(2) For the purposes of subregulation (1), a service provider is not independent of a licensee if—

(a) the licensee receives a rebate, discount, commission or benefit for referring a client or customer to the service provider; or

(b) the licensee has a personal or commercial relationship with the service provider.

**Example**

A personal or commercial relationship includes—

(a) a family relationship; or

(b) a business relationship; or

(c) a fiduciary relationship; or

(d) a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.

(3) In this regulation—

***service provider*** means a person who provides a service in relation to a conveyancing transaction, including but not limited to the following—

(a) a building inspector;

(b) a pest inspector;

(c) a valuer;

(d) a surveyor;

(e) an insurer;

(f) a mortgage originator;

(g) a mortgage broker;

(h) a law practice;

(i) another licensee.

19 Soliciting through false or misleading advertisements or communications

(1) A licensee must not solicit clients or customers through advertisements or other communications which the licensee knows or ought to know are false or misleading.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(2) A licensee must not include any matter, including any statement, slogan or logo, on stationery or business cards used in connection with conveyancing work which the licensee knows or ought to know is false or misleading.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

20 Undertakings

(1) A licensee who has given an undertaking in the course of conveyancing work must comply with that undertaking and ensure the timely and effective performance of the undertaking, unless released by—

(a) the recipient; or

(b) a court of competent jurisdiction.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(2) A licensee must not seek from another licensee, or that other licensee's employee, associate or agent, undertakings in respect of a matter, that would require the cooperation of a third party who is not a party to the undertaking.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

21 Termination of licensee's services

A licensee must complete the conveyancing work for which the licensee has accepted instructions to perform for a client unless—

(a) the licensee and the client have otherwise agreed; or

(b) the client terminates the services of the licensee; or

(c) the licensee terminates the provision of services to the client by giving written notice to the client as soon as practicable.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

22 Transfer of conveyancing work

(1) This regulation applies if—

(a) a licensee ceases to act for a client before completing the conveyancing work for which the licensee has accepted instructions to perform for a client; and

(b) the client instructs another licensee or a law practice (***new licensee or law practice***) to take over the performance of the client's conveyancing work.

(2) A licensee to which this regulation applies must, as soon as practicable and no more than 14 days after receipt of a written direction from the client, deliver to the new licensee or law practice—

(a) all relevant documents to which the client is entitled; and

(b) any information that is necessary for the proper performance of the client's conveyancing work.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(3) A licensee is not required to comply with subregulation (2) if the licensee's account for legitimate work done to the date of transfer has not been paid by the client.

23 Transfer of conveyancing business

(1) If a licensee intends to transfer the whole or any part of the licensee's conveyancing business (including clients' work in progress) to another licensee or a law practice (***transferring licensee or law practice***), the licensee must give each client 14 days written notice of the following—

(a) the intended transfer of documents to the transferring licensee or law practice, unless a contrary direction is received from the client;

(b) the client's right to give to the licensee a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(2) If the licensee holds money on behalf of the client in trust or under the licensee's control, the notice referred to in subregulation (1) must also advise the client of the following—

(a) the balance of money held on the client's behalf;

(b) the licensee's intention to transfer the relevant account to the transferring licensee or law practice, unless advised by the client to the contrary;

(c) the client's right to give to licensee a contrary direction as to the manner in which the licensee should deal with the account on the client's behalf.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

24 Conducting another business

A licensee who engages in the conduct of another business concurrently with the conduct of the licensee's conveyancing business must ensure the following—

(a) that the other business is not of such a nature that the licensee's involvement in it would be likely to impair, or conflict with, the licensee's duties to clients in the conduct of the conveyancing business;

(b) that separate and independent files, records and accounts are maintained in respect of the conveyancing business and the other business;

(c) that the licensee ceases to act for a client of the conveyancing business if the licensee's interest in the other business is likely to conflict with the client's interests.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

Part 3—Loan and security documents

25 Independence of licensee advising on loan or security documents

(1) A licensee must provide competent and independent advice in advising a proposed signatory to a document creating a loan or a security interest (***loan or security document***).

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(2) The licensee must not act for the lender in the transaction to which the loan or security document relates.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(3) The licensee must not advise a proposed signatory to a loan or security document if the interests of any signatory or proposed signatory to the document conflict with those of the licensee or with those of any other client of the licensee.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

26 Advising proposed signatories on loan or security documents

(1) A licensee must advise a proposed signatory to a loan or security document of those matters that the licensee, in exercising the professional skill and judgment called for in the circumstances of the particular case, considers appropriate.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(2) Without limiting subregulation (1), when advising a proposed signatory who is to be a borrower in a loan or security document (***the borrower***), the licensee must, if necessary, advise the borrower of the following—

(a) that by signing the document the borrower will be liable for regular payments of interest and repayment of the amount of the loan at the due date;

(b) that if the borrower fails to make any payment on time, the lender can charge a higher rate of interest and the lender's costs of rectifying that failure;

(c) that if the borrower fails to comply with any of the terms and conditions of the loan including the obligations to pay principal or interest—

(i) the lender may sue the borrower personally; and

(ii) the lender may take possession of the borrower's property and, after notice, sell it to recover the amount owing together with interest and other costs including the conveyancer's costs, the costs of selling the property and the costs of maintaining the property; and

(iii) if the proceeds of sale of the borrower's property are insufficient to satisfy the debt to the lender, the lender may sue the borrower for the deficit;

(d) that if the National Credit Code applies, additional obligations, rights and remedies may apply as set out in the loan or security document.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(3) A licensee giving independent advice to a proposed borrower must obtain the borrower's written acknowledgment of the independent advice.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(4) Without limiting subregulation (1), when advising a proposed signatory who is to be a third party mortgagor, guarantor, surety mortgagor or indemnifier providing security for the borrower (***the guarantor***), the licensee must, if necessary, advise the guarantor of the following—

(a) that if the borrower fails to make any payment on time, the guarantor will be liable to remedy that failure, and that could involve the guarantor in payment to the lender of all amounts owed by the borrower to the lender including principal, interest, default interest and the lender's costs of rectifying the default;

(b) that if the guarantor fails to remedy any failure by the borrower to comply with the terms and conditions of the loan in any way, including the obligation to pay principal, interest, default interest, or other charges—

(i) the lender may sue the guarantor personally; and

(ii) the lender may take possession of the guarantor's property secured to the lender and, after notice, sell it to recover the amount owing together with interest and other costs including the conveyancer's costs, the costs of selling the property and the costs of maintaining the property; and

(iii) if the proceeds of sale of the guarantor's property are insufficient to satisfy the debt to the lender, the lender may sue the guarantor for the deficit;

(c) if the guarantor is a proposed signatory to a loan or security document under which the guarantor's liability can be increased, of that fact and the extent of the possible increase, and of any restriction or limitation of the guarantor's rights or obligations in relation to the security and any other party to the transaction or document;

(d) that the lender may exercise the lender's rights against the guarantor even if the lender has not pursued the borrower;

(e) that the liability of the guarantor is limited to a specified sum, or is unlimited (whichever is the case) and may be affected by cross guarantees;

(f) that if the National Credit Code applies, additional obligations, rights and remedies may apply as set out in the loan or security document.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(5) A licensee giving independent advice to a proposed guarantor must obtain the guarantor's written acknowledgment of the independent advice.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(6) In any case, a licensee advising a proposed signatory (whether a proposed borrower or a proposed guarantor) must advise the proposed signatory that—

(a) the licensee does not profess any qualification to give financial advice; and

(b) if the proposed signatory has any questions about any financial aspect of the transaction or the loan or security document, the proposed signatory should consult an accountant or other financial counsellor of the proposed signatory's choice before signing the document.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 120 penalty units.

(7) In this regulation, ***National Credit Code*** has the same meaning as in the National Consumer Credit Protection Act 2009 of the Commonwealth.

Schedule 1—Forms

Form 1

Regulation 14(a)

DISCLOSURE FOR ACTING FOR MORE THAN ONE PARTY TO A TRANSACTION

Section 49(3)

Part 1—About this form

A conveyancer who intends to act for more than one party (client) to a conveyancing transaction must disclose the arrangement by completing this form and giving a copy to each party for their signature.

This form must be completed and signed before a conveyancer acts for more than one party regardless of whether this is before or at the time the conveyancer is retained or while the conveyancer is acting for a party.

Part 2—Important notice to a party to a conveyancing transaction

A conveyancer is prohibited from acting for more than one party to a conveyancing transaction unless the conveyancer discloses in writing to each party that they intend to act for other parties to the transaction, and each party consents in writing to the conveyancer doing so.

This is the form that a conveyancer must use to make that disclosure and obtain that consent.

A party to a conveyancing transaction who consents to the conveyancer acting for more than one party should note that—

(1) If the conveyancer cannot continue to act for all of the parties without acting in a manner contrary to the interests of one or more of the parties, the conveyancer must cease to act for all of the parties.

(2) The conveyancer—

(a) may be prevented from—

(i) disclosing to each party all information within the conveyancer's knowledge that is relevant to the transaction; and

(ii) giving advice to one party which is contrary to the interests of another; and

(b) will cease to act for all parties if the conveyancer would otherwise be obliged to act in a manner contrary to the interests of one or more of the parties.

Part 3—Conveyancer and transaction details

I, [*insert full name*],

of [*insert name of licensee's conveyancing business and licence no.*]

of [*insert address of licensee's conveyancing business*]

intend to act for more than one party to a conveyancing transaction as detailed below.

Description of transaction [*e.g. insert address of property/business*].

Name of other \*party/\*parties [*insert name(s) of other party(ies) for which you seek to act*]

Conveyancer's signature: Date:

Part 4—Party's consent

\*I**/\***We, [*insert party's full name*],

of [*insert party's address*]

\*consent/\*do not consent to the conveyancer named above acting for more than one party to the conveyancing transaction as detailed above.

Party's signature: Date:

*\*Delete if not applicable.*

Form 2

Regulation 14(b)

DISCLOSURE OF CLIENT TO NON-INDEPENDENT SERVICE PROVIDER

Section 49(3)

Part 1—About this form

A conveyancer who intends to refer a client or a prospective client to a service provider who is not independent of the conveyancer, must disclose the referral arrangement by completing this form and giving it to the client or prospective client.

A service provider is not independent of a conveyancer if the conveyancer—

(a) receives a rebate, discount, commission or benefit for referring a client to the service provider; or

(b) has a personal or commercial relationship with the service provider.

This form must be completed and signed before a conveyancer makes the referral regardless of whether this is before or at the time the conveyancer is retained or while the conveyancer is acting for the client.

Part 2—Disclosure of referral

Goods/services to which the referral relates:

Name of service provider:

Note:

A service provider provides a service for a conveyancing transaction. Examples include a building inspector, pest inspector, valuer, surveyor, insurer, mortgage originator, mortgage broker, law practice or another licensee.

Service provider's relationship with conveyancer:

□ Personal

□ Commercial

Note:

A personal or commercial relationship includes a family relationship, a business relationship, a fiduciary relationship and a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.

Type of referral fee:

□ Rebate

□ Discount

□ Commission

□ Benefit—specify

□ Other—specify

Amount of referral fee: $

Is the referral fee part of a repeat referral arrangement?

□ Yes

□ No

Signature of conveyancer: Date:

Signature of client/s: Date:

*\*Delete if not applicable.*

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Endnotes

**Penalty Units**

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2017 is $158.57 and from 1 July 2018 is $161.19.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.