

SCHEDULE 1

Regulation 5

Sch. 1

RULES OF PROFESSIONAL CONDUCT

1 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.

2 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.

3 Fiduciary obligations

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

4 To only undertake work within competence

A licensee must only accept instructions to perform conveyancing work if the licensee is competent to perform the conveyancing work concerned.

5 To perform work promptly

A licensee must only accept instructions to perform conveyancing work if the licensee reasonably expects to be able to carry out the conveyancing work concerned reasonably promptly.

6 To act in the client's best interests and according to the 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.

7 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.

8 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.

9 Conflicts of interest

A licensee must not accept instructions to perform or continue to perform conveyancing work for a client if doing so would place the licensee's interests in conflict with the client's interests.

10 Acting for more than one party to a transaction

- (1) A licensee may only act for more than one party to a transaction if the licensee discloses in writing to each party that the licensee is intending to act for the others, and each party consents in writing to the licensee so acting.
- (2) 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 them, the licensee must cease to act for all of the parties.
- (3) The disclosure referred to in subrule (1) must indicate that, as a consequence of acting for more than one party to the transaction—
 - (a) the licensee may be prevented from—
 - (i) disclosing to each party all information within the licensee's knowledge that is relevant to the transaction; and
 - (ii) giving advice to one party which is contrary to the interests of the other; and
 - (b) the licensee will cease to act for all parties if the licensee would, otherwise, be obliged to act in a manner contrary to the interests of one or more of them.

Sch. 1

11 Confidentiality

A licensee must not, at any time, 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.

12 Noting of instructions, enquiries and telephone conversations

- (1) A licensee must keep, in the form of a file note, a written record 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 this rule may be kept in the electronic form, provided it can be produced in a permanent legible form in the English language.

13 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) A service provider is considered to be independent of a licensee if—

- (a) the licensee receives no rebate, discount, commission or benefit for referring a client or customer to the service provider; and
- (b) the licensee does not have a personal or commercial relationship with the service provider.

Sch. 1

- (3) The following are examples of a personal or commercial relationship—
 - (a) a family relationship;
 - (b) a business relationship;
 - (c) a fiduciary relationship;
 - (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.
- (4) If the service provider is not independent of the licensee, the licensee must disclose to the client or prospective client—
 - (a) the nature of the relationship, whether personal or commercial, the licensee has with the service provider; and
 - (b) the nature and value of any rebate, discount, commission or benefit the licensee may receive, or expects to receive, by referring the client or prospective client to the service provider.
- (5) In this rule—

service provider means a person who provides a service in relation to a conveyancing transaction (for example, a building inspector, pest inspector, valuer, surveyor, insurer, mortgage originator, mortgage broker, law practice or another licensee).

14 Soliciting through false or misleading advertisements or communications

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

15 Termination of licensee's services

A licensee must complete the conveyancing work in respect of 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 14 days written notice to the client.

16 Transfer of conveyancing work

If—

- (a) a licensee ceases to act for a client before completing the conveyancing work in respect of which the licensee has accepted instructions to perform for a client; and
- (b) the client instructs another licensee or a law practice to take over the performance of the client's conveyancing work—

Sch. 1

the first-mentioned licensee must, within 14 days after receipt of a direction in writing from the client, deliver to the second-mentioned licensee or the law practice all relevant documents to which the client is entitled and any information that is necessary for the proper performance of the client's conveyancing work.

17 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, the first-mentioned licensee must give each client 14 days written notice of the following—
 - (a) the intended transfer of documents to the licensee or law practice acquiring the business, unless a contrary direction is received from the client;
 - (b) the client's right to give to the first-mentioned licensee a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.

- (2) If the licensee holds money on behalf of the client in trust or under the licensee's control, the notice referred to in subrule (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 licensee or law practice acquiring the business, unless advised by the client to the contrary;
 - (c) the client's right to give to the first-mentioned licensee a contrary direction as to the manner in which the licensee should deal with the account on the client's behalf.

18 Conducting another business

- (1) 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 of 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.

Sch. 1

19 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*).
- (2) The licensee must not act for the lender in the transaction to which the loan or security document relates.
- (3) The licensee must not advise a proposed signatory to a loan or security document in any circumstances where 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.

20 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.
- (2) Without limiting the generality of subrule (1), when advising a proposed signatory who is to be a borrower in a loan or security document (*the borrower*), the licensee must, where 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 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.
- (3) A licensee giving independent advice to a proposed borrower must obtain the borrower's written acknowledgment of the independent advice.

- (4) Without limiting the generality of subrule (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, where 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;
 - (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 conveyancer's costs, the costs of selling the property and the costs of maintaining the property;
 - (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.
- (5) A licensee giving independent advice to a proposed guarantor must obtain the guarantor's written acknowledgment of the independent advice.
- (6) In any case, a licensee advising a proposed signatory (whether a proposed borrower or a proposed guarantor) must advise the proposed signatory of the following—
- (a) that the licensee does not profess any qualification to give financial advice;
 - (b) that if the proposed signatory has any questions about any financial aspect of the transaction or the loan or security document, the proposed signatory

Sch. 1

Sch. 1
rule 20(4)(f)
amended by
S.R. No.
46/2010
reg. 6(1).

should consult an accountant or other financial counsellor of the proposed signatory's choice before signing the document.

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

Conveyancers (Professional Conduct and Trust Account and General) Regulations 2008
S.R. No. 49/2008