



# Real Estate

## Continuing Professional Development

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# Conjunctional sales

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## Learning outcomes

At the end of this topic, you will be able to:

- explain what a conjunctive sale is and how it is established
- explain what needs to be agreed in a conjunctive agreement
- explain the duties of the licensees from both agencies in a conjunctive agreement situation
- explain best practice when licensees are approached by customers, clients or other agencies in potential conjunctive sale situations
- explain professional behaviour in conjunctive sale situations.

## Introduction

A conjunctive sale happens when a real estate agency cooperates with another real estate agency or licensee to complete the sale or lease of a property, space, or business.

There are two types of conjunctive sales – a one-off arrangement between two different agencies **or** an ongoing relationship between agencies.

Conjunctive arrangements can provide clients with a wider range of potential customers. However, these situations can be challenging for all involved and have led to disputes or conflict in the past.

It is important that licensees and agencies follow best practice guidelines to avoid issues in conjunctive sale situations and ensure that the best interests of the client remain at the forefront of any actions taken.

In this topic we'll look at what needs to be agreed between the agencies before a conjunctive arrangement is established, and what is required of the agencies while the agreement is in place. We'll also consider professional conduct in conjunctive sale situations.

## Sole Agency Agreement

Under a sole agency agreement, one real estate agent (and the licensees they employ or engage) has the exclusive right to market and organise the sale, lease, or purchase of the property, business or space on behalf of the client.

The client signs a sole agency agreement with one licensed agent for a set period of time. Only the licensed agent named on the agency agreement (and the licensees they employ or engage) can carry out the real estate agency work detailed in the agency agreement over the period of the sole agency.

The terms in the agreement will determine what happens once if the sole agency is terminated.

## Agency agreements involving more than one agency

Although clients mostly chose to work with one agency, in some cases using more than one agency can be beneficial to the client. There are a range of ways one agency can work with another. We will define them here.

### General Agency Agreements

Under a general agency agreement, the client may engage more than one real estate agent (and the licensees they employ or engage) to work on a transaction at the same time.

A client may also market and organise the sale, lease (or purchase) of the property, business or space privately without being liable to pay commission under a general agency agreement.

The client needs to sign a general agency agreement with each different real estate agent they engage.

Although the client signs a separate agreement with each agency, they should only pay a commission to the agency which introduces the buyer and effects the sale. The agency should advise the client if there is a risk of them paying two commissions.

### Joint (Sole) Agency Agreements

A joint agency is an arrangement where a client uses two (or more) real estate agencies to market a property for sale and the agencies agree to split the fee between them if one of them sells the property. The arrangement can appeal to clients, particularly when the property market is flat or when the prospects of selling a particular property are lower than usual.

It is generally accepted that for a joint agency to have any validity the following must occur:

- the agency agreements of both agencies must start and end on the same dates
- both agency agreements must acknowledge the other agency
- the commission arrangements must be clear, and
- it should be noted how a multi-offer situation will be handled through the joint sole agency.

A joint agency may involve a conjunctive sale between the agencies or may allow either agency to make the sale without having to conjunct. The terms must be clear before the joint agency is entered into.

Terms in a joint agency can vary. The arrangement may be 'winner takes all', in which case the agency which sells the property will get all the commission and the other agency will get nothing. No conjunctive sale takes place as the selling agency draws up the Sale and Purchase Agreement and negotiates the sale without the help of the licensee from the other agency.

However, if the commission is to be split, a conjunctive sale will take place. The arrangement might be 50/50 which means, regardless of which agency sells the property, there will be an even split in commission. This arrangement can cause issues if a licensee from one agency perceives they have made more of a contribution towards the sale than the other.

A good compromise is a 70/30 split (or thereabouts). Licensees from both agencies are motivated to work because they know that, whoever sells the property, they will get some commission. However, the larger share goes to the agency that sells the property.

The commission split should be chosen to ensure the best outcome for the client. Whatever the arrangement, it must be clear to both agents and to the client. The client must be protected from

paying two commissions so the 'payment of commission' part of each agent's agency agreement must be carefully worded. Note that Rules 9.1 and 9.10 are relevant here:

- Rule 9.1 - A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.
- Rule 9.10 – A licensee must explain to a prospective client that if he or she enters into, or has already entered into, other agency agreements he or she could be liable to pay full commission to more than one agent in the event that a transaction is concluded.

### Conjunctional sales

A conjunctional sale occurs when one agency has the sole agency agreement on the property and a completely different real estate agency finds a willing buyer or lessee for the property. By mutual agreement the two agencies agree to share commission payable on the successful sale or lease of the property at no extra cost to the client (or lessor).

There are two common, and quite different, situations where conjunction agencies apply:

- a '**one-off' agreement between the two different agencies** (Agency A and Agency B) to 'work in' on a sale and share the commission, on the basis that a licensee from Agency A introduced a buyer to a property listed by Agency B
- an **ongoing relationship between agencies** to allow reciprocal access to each other's listings, on the basis of a standard agreed commission split.

If a licensee is working with a customer (but not as a 'buyer's agent') and believes *that* customer could be interested in a listing held by another company, the licensee may contact the listing agency and ask if they will work conjunctually.

If the listing agent agrees, a commission split will be negotiated, and the buyer will be shown through the property by the listing agent and the agent from the conjunction agent. If the buyer wants to make an offer to buy the property, the Sale and Purchase Agreement will be drawn up by the listing agent and presented to the client either by both agents acting together, or by the listing agent alone.

Sometimes the conjunction agency is called the 'third party agency' or 'introducing agency' because that agency doesn't have the listing, but their licensees can introduce a buyer to the transaction.

The decision on whether (or not) to have a conjunctional agreement must be based on the client's best interests, not the licensee's own financial gain. The client should be consulted regarding the decision whether to conjunct. The advantages and disadvantages should be outlined to the client. For example, a conjunctional arrangement may result in a quicker sale and this may result in reduced personal or financial stress on the client.

If an approach to conjunct is made from another agency with an interested buyer, under Rule 9.3 the listing agent must tell the client that another agent has an interested customer and that the agency has requested a conjunct agreement between the agencies. If the client decides it is in their best interests to conjunct, under Rule 9.1 the listing agent must agree to conjunct.

**The agreement to conjunct is between the agencies, not the salespeople.** You will need to refer to your agency's policies and procedures to check if you can sign a conjunct agreement as a salesperson. Your agency may require your supervising agent or branch manager, or someone in another role, to sign the agreement.

If the listing agent refuses to conjunct, and the other agent produces an offer in writing from their buyer, Rule 10.10 makes it clear that the offer must be presented to the client.

In making any decisions whether to conjunct or not, the listing agent must always remember their obligations under Rules 6.1, 9.1, 9.3 and 10.10:

- Rule 6.1 – A licensee must comply with fiduciary obligations to the licensee's client.
- Rule 9.1 - A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.
- Rule 9.3 - A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client.
- Rule 10.10 - A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.

### **Conjunction with a third agent when there's a joint sole agency in place**

As with a normal sole agency, another agent may have an interested buyer and ask to conjunct. If there is a joint sole agency in place, the commission split becomes more complicated and needs to be addressed before a conjunct sale is entered into.

There are several questions that will need to be answered, such as

- Will the commission be split three ways?
- If the joint sole agency arrangement is 'winner takes all', can the third agent work with one of the joint agents and exclude the other?
- Which agency will get the commission if the property sells?

Whatever the arrangement, it must be made clear to all parties in advance and in writing.

### **Master agency**

A master agency agreement is more common in the commercial real estate sector. Information on this type of agency is provided in the Appendix.

## What are the licensees' duties to the client and the customer?

It is important that all licensees involved in conjunctural sales remember who they are working for. Licensees must ensure they act in their client's best interests (Rule 9.1) and uphold their fiduciary duty to the client or lessor as required by law and confirmed in Rule 6.1. The conjunction agent still has a fiduciary obligation to the client, even though they don't have the listing. This is because they have an arrangement through the listing agency's listing, and will share in the commission. This means the vendor is still their client.

Although a licensee engaged by the conjunction agency may be introducing or indirectly working with the customer (buyer), their main responsibility is to the client (vendor).

It must be made clear to the buyer that the main responsibility of the licensee is to the client (vendor).

Later in the guide we'll look at the situation where the licensee acts as a 'buyer's agent', where the buyer is the licensee's client. Where the licensee is a 'buyer's agent', an agency agreement must be completed and the licensee's main responsibility is to the customer (buyer). Information on 'buyer's agents' is covered later, in the section 'Implications of acting as a buyer's agent'.

### Challenges in a conjunctural sale situation

The following challenges may occur in conjunctural sale situations in terms of the obligations a licensee has to the customer (buyer) and to the client:

#### Customer (buyer) confiding price information to the licensee

If a customer confides information to the licensee engaged by the conjunction agent, such as they will offer \$520,000 but their top price is \$550,000, this information would then be passed on to the client, to the disadvantage of the buyer. Although the licensee's main responsibility is to the client, under Rule 6.2 the licensee has a duty to act in good faith and deal fairly with **all parties** engaged in the transaction. The licensee's actions must be fair to the buyer.

You should communicate this with all potential buyers when they express an interest in the property to ensure buyers are clear about your fiduciary obligations when communicating and working with you.

Best practice is to ensure the buyer knows that you are an agent for the seller, and anything they tell you is likely to be communicated to the seller.

#### Multi-offers in a conjunctural sales situation

In a multi-offer situation, office procedure in many agencies is to have the managing agent represent the offers to the client. However, if the offers come from both the listing agency and the conjunction agency, the manager of the listing agency would not be an independent party. In a conjunctural sale situation such as this, it is good practice for a third party (such as the client's solicitor) to handle the negotiations.





## Key points

- A conjunctive sale occurs when a real estate agency or licensee cooperates with another real estate agency or licensee to complete the sale or lease of a property, space, or business.
- Licensees from the listing agency have a fiduciary obligation to the client. Although a licensee engaged by the conjunction agency may be introducing or working with a customer (buyer), their main responsibility is to the client. It is the client who is paying the commission.
- It must be made clear to the customer (buyer) that the conjunction licensee is acting on behalf of the client (vendor).
- The client should be consulted on the decision whether to conjunct, and the advantages and disadvantages should be outlined to them. The decision to conjunct or not, and the choice of commission split, must be based on what is best for the client.
- An agreement to conjunct is between the agencies, not the salespeople. Refer to your agency's policies and procedures to confirm who is permitted to sign a conjunctive agreement.

The following case study relates to a situation where arrangements for joint agency work and sharing commission are unclear.

Read the following case study and answer the questions that follow.

(**Note:** Fictional names have been used for the purpose of making the case easier to follow.)

## Case study 1

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This case relates to the sale of a rural property and a commission dispute between two licensees from different agencies; Claire is a salesperson licensee from Agency White and Luke is a salesperson licensee from Agency Green. The case is against Claire.

The case is summarised below.

### The Background

On 5 September Luke from Agency Green listed the property ('the Property') on a rural general agency agreement. The property ownership was in a company name ('Company A'). Mr Andrews signed the agency agreement as the client. He was the sole director of the company and only his signature was required for all legal documentation around the transaction. Mrs Andrews was living at the property and dealt with day to day viewings, following a relationship breakdown with Mr Andrews.

On 9 September Luke introduced Bryce, a buyer, to the property. Ten days later Bryce told Luke he would not be going ahead with the purchase.

On 20 September Mr and Mrs Andrews signed a general listing agreement with Claire. Claire was told by Mrs Andrews that no other agency had been given a signed listing authority at that stage.

Claire arranged a viewing of the property with Bryce for that afternoon. Following the viewing, Bryce told her he had been through the property previously with Luke. He asked Claire to draft an agreement for sale and purchase. Claire said she needed to check with her manager first as they might have to proceed through Luke and Agency Green. Bryce told her that when he went through the property with Luke, Luke had not formally listed the property.

When she got back to her office, Claire spoke to her manager, Kelvin. Kelvin said Luke had no right to take Bryce to the Property without a listing authority, therefore no double commission issues could arise. On that advice, Claire drafted an agreement for sale and purchase, which was accepted by the client.

On 25 October Luke phoned Mrs Andrews to arrange a viewing of the property with another potential purchaser (Grace). At this stage Mrs Andrews told Luke she had signed a general listing agreement with Claire.

On 27 October Mr Andrews sent a text message to Luke saying that Claire had presented them with a signed offer from an 'interested party' which they had accepted, but that it was no longer proceeding. (*Mr Andrews did not reveal who the 'interested party' was, but it was Bryce.*)

Luke presented an offer from Grace, which Mr and Mrs Andrews wanted to accept because it was \$30,000 more than the offer from the 'interested party'. However, when Mr Andrews contacted Claire to inform her that they wanted to accept Grace's offer, Claire told Mr Andrews that he could not accept Grace's offer. The reason Claire gave was that the signed agreement from the 'interested party' had already been sent to Mr and Mrs Andrew's solicitor. Mr Andrews then informed Luke that he couldn't accept Grace's offer.

Around 4 November, Luke became aware that the signed agreement presented by Claire was from Bryce, whom he had introduced to the Property prior to Claire introducing him to the Property.

In the presence of Mr Andrews, and via speaker phone, Luke called Bryce, who informed them that he had submitted an offer for the Property through Claire a few days after viewing it with her. Bryce also said he had informed Claire at the time of the viewing that he had previously viewed the Property with Luke.

Luke phoned Claire, who said she was under the assumption that Luke did not have a listing agreement for the Property at the time of his viewing with Bryce, as Bryce had informed her of this. She said that if Luke provided her with a valid and dated listing agreement there would be no further issue as to his entitlement to commission and the risk to the clients of a double commission would be avoided.

When Luke's agency, Agency Green, provided the listing agreement to Claire, Claire refused to accept that it was valid, saying that the listing details were not properly signed, and that the agreement had been backdated.

Subsequent attempts to resolve the issue between management of the two agencies were not successful.

Agency Green placed a caveat on the property prior to settlement to secure the commission which Luke considered was due to his agency, due to Luke introducing Bryce to the property.

### **The Decision**

The Committee considered that the complaint raised issues about Kelvin and Agency White and decided to inquire into them as well as Claire. Claire, Kelvin and Agency White were found to have engaged in unsatisfactory conduct under the Act.

The Committee stated that there was no attempt by Claire, Kelvin or Agency White to confirm the existence of a legitimate listing authority. On being supplied with the listing authority, both Claire and Kelvin chose to relentlessly pursue the commission regardless of any detrimental effects to the client. There was no thorough investigation by Agency White or their licensees of the prior introduction of Bryce to the Property by Agency Green. Kelvin was deemed an accessory to the actions of Claire when he failed to establish the facts.

During the investigation

- Kelvin stated that he came to an agreement at a meeting with the branch manager of Agency Green for a 50/50 split in commission. However, the Committee couldn't find evidence of this.
- Mr Andrews said he had never been informed of the risk of a double commission by either Claire, Kelvin or Agency White. He also said he told Claire that Bryce had been to the property previously with Luke.

The Committee found that the client was placed at risk of paying a double commission. They also found that none of the Licensees from Agency White acted in the client's best interests when they failed to properly act once they became aware Bryce had already viewed the Property with another

licensee. The decision noted that the licensees involved had other avenues to settle their dispute that did not and should not have involved the client. The Committee noted that the client suffered unnecessary stress due to the inability of all licensees involved to sort out a relatively uncomplicated dispute.

The Committee found that Claire and Kelvin had many opportunities when they could have made more effort to properly establish the existence and validity of the other listing agreement.

The Committee agreed that the conduct of Claire, Kelvin and Agency White was a breach of Rules 5.1, 6.2, 6.3, 9.1, 9.2 and 9.10.

Claire and Kelvin were ordered to pay a fine of \$3,000 each. Agency White was required to pay a fine of \$5,000.

The Committee considered that the licensees proceeded down a path of behaviour which did not meet acceptable industry standards.

**Complaint number: C18082**

Date: 12 February 2019

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



## Questions

1. What could Claire, Kelvin and Agency White have done that may have avoided the commission issues which arose?

2. According to the Committee what caused the client unnecessary stress?

Case Study 1 has highlighted the need for communication between the listing agency and the conjunction agency and the importance of formalising arrangements between them. We will look at this in more detail in the next section.

## What conjunctional arrangements need to be agreed?

In a conjunctional arrangement, the sole agency (listing agency) is primarily responsible and accountable to the client and the conjunction agency will work as outlined in the terms of the agreement it has with the listing agency.

Below are some of the conjunctional arrangements that need to be agreed between the agencies. These arrangements need to be in writing so they are clear to all parties and misunderstandings are avoided. A copy of the conjunctional agreement should be provided to each party and to the vendor (client).

### The commission sharing arrangements

The agencies need to agree what percentage each agency receives, and on what basis. For example:

- Is payment to be made when the listing agent receives their commission?
- Are any applicable administration fees to be deducted before the commission is split?

The agencies need to agree on how the commission split will be calculated. For example:

- Is it a 50:50 split or a 70:30 split?
- Is the split after referral or franchise fees?
- Are marketing costs of \$XXX to be deducted first?

Note that if the client has specific instructions related to the commission split, this must be documented in the conjunctional agreement.

In a conjunctional arrangement the vendor will still pay the commission originally agreed with the sole agency, so the vendor is generally not at risk of paying more than one commission. The listing agency will receive the commission and share it as outlined in the agreement with the conjunction agency.

### Communication and negotiations with the client

The parameters for communication and negotiations with the client need to be clear. Usually all communications and negotiations with the client will be dealt with solely by the listing licensee. It is the listing agency who has the contractual agreement with the client through the agency agreement.

It would be the listing licensee's responsibility to provide the 'New Zealand Residential Property Agency Agreement Guide' to the client and obtain signed acknowledgement of receipt.

Note that in a case where the clients are separated or there has been a relationship breakdown, it is important to confirm that both clients are happy for the property to be sold by both agencies. It is also important that communication regarding a potential buyer introduced by the conjunction agency is conveyed to both clients.

### **Communication and negotiations with the potential buyer**

The customer (buyer) does not pay the conjunction agent and the conjunction agent doesn't owe fiduciary obligations to the customer (buyer). The conjunction agent indirectly works for the client (vendor). This should be clearly outlined to the potential buyer.

The guidelines for communication and negotiations with a potential buyer introduced by the conjunction agency also need to be clear. Usually all communications and negotiations with the potential buyer will be dealt with by the conjunction agent. They hold the relationship with the potential buyer.

The conjunction agent's role may include providing the potential buyer with the 'New Zealand Residential Property Sale and Purchase Agreement Guide' (from [settled.govt.nz](http://settled.govt.nz)) or the OIA Purchaser Acknowledgement Form (from REINZ) or the 'Disclosure of other benefits' form (from Section 136 of the Real Estate Agents Act 2008) if the licensee or a related party has an interest in purchasing the property.

All offers, negotiations and other communications with the client (vendor) are usually carried out through the listing agency.

### **Disclosure of Conflict of Interest**

Licensees from both the listing agency and the conjunction agency are bound by requirements for disclosure of a conflict of interest, and the related requirements for consent from the client and provision of a valuation.

If a licensee from either agency is carrying out real estate agency work for the client (either directly or indirectly) and they or a related party wish to purchase the property being marketed, or an interest in it, the licensee must disclose this to the client. If the client agrees to the purchase once the conflict of interest is disclosed, they must give consent by filling out Form 2, which is found in the Duties of Licensees Regulations 2009.

(<http://www.legislation.govt.nz/regulation/public/2009/0281/latest/whole.html#DLM2372545>). The licensee must also provide the client with a valuation, completed at the licensee's expense.

The definitions of a licensee and related person are given in Section 137 and a 'related person' includes:

- a partner of the licensee under a partnership agreement
- an employee of the licensee
- a branch manager or salesperson engaged by the licensee
- the licensee's spouse or civil union partner
- the licensee's de facto partner

- a child, grandchild, brother, sister, nephew, or niece of the licensee or the licensee's spouse, civil union partner or de facto partner
- any other child who is being, or is to be, cared for on a continuous basis by the licensee or the licensee's spouse, civil union partner or de facto partner
- a grandparent, parent, uncle, or aunt of the licensee or the licensee's spouse, civil union partner or de facto partner
- an entity that has an interest in the licensee or an entity in which the licensee has an interest (except where either interest is in quoted financial products within the meaning given for those terms in section 6(1) of the Financial Markets Conduct Act 2013).

### **Communication between the agencies**

Guidelines for communication between the agencies should be established. For example, how often should the conjunction agent report back to the listing agent, and how much information regarding enquiries and potential customers should be communicated? Other points to confirm are how the viewings are arranged and who is present. (For example, does the listing agent have to be present at all viewings?).

### **Documentation**

The sale must be recorded on the agreement form as being by the listing agent. The listing agent must appear where it says 'sale by' as the listing agent has the formal agreement with the client, not the conjunction agent.

There would need to be clear best practice guidelines for specific situations such as multi-offer situations.

### **Disclosure obligations**

Disclosure obligations primarily lie with the listing agency. It is good practice for both the listing agent and the conjunction agent to work together to comply with disclosure obligations under the Client Care Rules. All licensees involved in real estate agency work related to the property would need to comply with these obligations.

There should be agreement on what information can be disclosed to potential buyers, and the vendor should give their consent for this information to be disclosed.

This authorised disclosure information should be recorded in the conjunctive agreement, so the listing agency shares it with the conjunction agency. This means customers introduced through the conjunction agency are given the information they require. As with all disclosure conversations, any communication needs to be followed up in writing between the parties. It is good practice for the listing agency to provide the conjunction agency with a well-prepared list of items to disclose. If the conjunction agency discovers additional information that needs to be disclosed to customers, they must promptly advise the listing agency.

## **Confidentiality obligations**

Both the listing agency and the conjunction agency have confidentiality obligations to the client.

The Client Care Rules cover disclosure of confidential client information and the limited circumstances in which this type of information can be disclosed. These rules apply to licensees from both the listing agency and the conjunction agency.

Rule 9.16 recognises that confidential information about a client may be revealed through the licensee's dealings with them. For example, during discussions it may become clear that the client is desperate to sell their property quickly because of financial difficulties or a relationship separation. Rule 9.16 states that such confidential information must not be used for the benefit of the licensee or any other person.

Rule 9.17(a) states that confidential client information can only be disclosed if the client consents in writing. Note that the client's permission must never be assumed. Before any reference is made to a client's personal information in any way, disclosure of this information must be discussed with them and their written consent obtained. As the listing agency holds the relationship with the client, licensees working for the conjunction agency would need to gain consent through the listing licensee.

## **AML/CFT obligations**

All licensees who work for a real estate agent, carry out real estate agency work and manage client funds in relation to that work are required to fully comply with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act).

The AML/CFT obligations in relation to verifying the identity of the client(s) and their proof of residential address would sit with the listing agency because they have the contractual agreement with the client through the agency agreement. It is best practice for the listing agency to provide evidence of this to the conjunction agency.

Licensees from both agencies still have obligations under the Act in terms of reporting any suspicious activity and providing information required for prescribed transaction reports. The agencies would need to agree on the reporting obligations of their staff. For example, it is likely that the listing agency would be responsible for any reporting related to the client (vendor), and the conjunction agency would be responsible for any reporting related to a purchaser they introduced. If one agency became aware of activities that would need to be reported by the other, they would need to ensure this information was promptly conveyed to the other agency.

## **Other considerations**

The written agreement may also outline open home times (if sharing open homes), marketing information and signage (shared or separate).



## Communication between the agencies during the arrangement

There needs to be clear communication between the agencies while the conjunctive arrangement is in place. If there are issues, managers in the respective agencies may need to be involved to find a resolution.

The listing agent needs to:

- pass on all information about the property
- make sure the marketing and open home arrangements are understood by both agents
- keep the conjunction agent informed of progress when the buyer introduced by the conjunction agent makes an offer.

The conjunction agent needs to:

- keep the listing agent informed of any enquiry regarding the property received by the conjunction agent
- provide feedback to the listing agent after the buyer they introduce views the property
- if conducting open homes, provide feedback to the listing agent regarding the number of visitors, and their perceived interest.

Remember:

- all communications and negotiations with the client will be dealt with solely by the listing agent
- usually all communications and negotiations with a potential buyer introduced by the conjunction agent will be dealt with by the conjunction agent
- the regularity, contact person, and content of communications between the agencies need to be agreed.

## Implications of acting as a 'buyer's agent'

As mentioned previously, there are differences in the licensee's responsibilities to the buyer depending on whether they are introducing a buyer to a property as a licensee for the conjunction agent or introducing a buyer to a property as their 'buyer's agent'.

### Where a licensee is acting as a 'buyer's agent'

A 'buyer's agent' is just that, an agent for the buyer. In this situation **the buyer is the agency's client**. The **buyer employs the agent** under a **contract of agency** and will pay them commission if a sale is successfully negotiated. The vendor will not be paying commission to the buyer's agent.

Also, as a buyer's agent, the agent works to get the best possible deal for the buyer – this usually equates to selling the property at the lowest price that the client will accept.

**Note:** It may be regarded as a professional courtesy for a licensee acting as a 'buyer's agent' to not directly approach a vendor who is represented by an agent. Other industries, such as lawyers, have specific rules around this. However real estate does not have such rules.

The 'buyer's agent' must comply with Rule 11 of the Client Care Rules which specifically relates to the obligations of buyer's agents.

### Where a licensee is introducing a buyer to a property as a licensee for the conjunction agent

If a licensee engaged by the conjunction agency is introducing a buyer to the listing agent's property, the licensee's obligation is to the vendor and **the vendor is their client**, not the buyer. The licensee engaged by the conjunction agency must act in the client's (vendor's) best interests (Rule 9.1).

The licensee engaged by the conjunction agency must make it clear to the buyer that they are acting for the client (vendor). This is because their agency has a conjunctional agreement with the listing agency and the client is paying commission to the listing agency. The conjunction agency indirectly represents the client (vendor).

Here is a comparison of the two situations:

Introducing a buyer to a property as a licensee for the conjunction agent	Introducing a buyer to a property as their 'buyer's agent'
<ul style="list-style-type: none"> <li>Agency agreement between listing agent and client</li> </ul>	<ul style="list-style-type: none"> <li>Agency agreement between agent and potential buyer</li> </ul>
<ul style="list-style-type: none"> <li>Primary obligation to client</li> </ul>	<ul style="list-style-type: none"> <li>Primary obligation to the buyer</li> </ul>
<ul style="list-style-type: none"> <li>Commission paid to the listing agent by the client</li> </ul>	<ul style="list-style-type: none"> <li>Commission paid to the buyer's agent by the buyer</li> </ul>
<ul style="list-style-type: none"> <li>Licensee introduces buyer to the listing agent's property</li> </ul>	<ul style="list-style-type: none"> <li>Licensee finds properties for a buyer, based on buyer's requirements</li> </ul>



## Key points

- A formal conjunctive agreement should be completed and signed by both agencies.
- The conjunctive agreement should cover:
  - Commission payment arrangements
  - Communication with the client (vendor) and the customer (buyer), and between the agencies
  - Documentation to be used in the event of an offer
  - Access arrangements
  - Obligations in terms of confidentiality, AML/CFT disclosure and disclosure of defects.
- Where a licensee or a related party from either the listing agency or the conjunction agency wish to purchase the property being marketed, or an interest in it, they are bound by the requirements for disclosure of a conflict of interest. This includes the related requirements for consent from the client and provision of a valuation.
- Effective communication between the agencies is important to the success of the conjunctive arrangement.
- Any disclosure conversations, related to the property, by licensees from either the listing agency or conjunction agency should be followed up in writing between the parties.
- It is best practice for the listing agency to provide the conjunction agency with evidence of meeting the AML/ CFT obligations in terms of verification of the identity and residential address of the client(s).
- If the conjunction agent wants to act 'for' the customer (buyer), it is more appropriate for them to do so as 'buyer's agent'. A 'buyer's agent' is paid by the buyer to find a property for them.
 

A licensee who is a buyer's agent has primary responsibility to the customer (buyer), whereas if the agency agreement is between the client (vendor) and the listing agent, the licensee from the conjunction agency has a primary responsibility to the client (vendor).
- Even though a 'buyer's agent' has no listing with the client (vendor), they are still bound by the Client Care Rules.
- All offers, negotiations and other communications with the client (vendor) are usually carried out through the listing agency.

Read the following case study and answer the questions that follow.

(**Note:** Fictional names have been used for the purpose of making the case easier to follow.)

## Case study 2

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A case was taken to a Complaints Assessment Committee against two licensees: Jade and Eric. These licensees were both licensed as salespeople and worked for the same agency, Agency Blue. The case related to the situation where the licensees did not follow the client's instructions to split commission with another licensee.

The clients complained that the licensees misled them into believing that the agency they initially had an agency agreement with, Agency White, would receive a share of the commission.

### The Background

The clients of the property first listed the property with Matt, a licensee from Agency White. After some months they listed their property as a joint sole agency with Jade and Eric, licensees from another agency located in a neighbouring town, Agency Blue. The listing agreement for the joint sole agency is dated 15 February on a standard form from Agency Blue and covers that the listing is for a 'Joint Sole Agency with Matt [Smith] from Agency White'. Later in the agreement, the listing is referred to as a 'Joint Exclusive and Sole Agency Authority'.

Prior to signing the listing agreement with Jade and Eric on 15 February, the clients sought an assurance that the other licensee, Matt from Agency White, would be entitled to a commission split in the event of a sale. The clients understood that he would.

The initial agreement was for the property to be sold at auction and for Matt to be involved in the auction as a shared listing. However, the clients changed their mind and decided to sell by negotiation. Jade states that when the client agreed to sell by negotiation, she made it very clear to them that both agencies would operate independently. Jade said that the clients were verbally advised by her that the successful agency would be paid the commission due. Eric believed that there was a clear understanding between the agencies and the Complainants that the selling agent would receive the commission.

When Matt was interviewed by the Committee, he confirmed that he had agreed to the client's wish to change his listing from a sole agency to a joint agency with Agency Blue. He met with Eric and they agreed they would do a joint listing to sell by way of auction. Agency Blue would control and run everything, and Matt would be available to assist with open homes. There was an agreement for a 50/50 split of the commission in the event of a sale although this arrangement was not recorded and instead 'a handshake agreement was made'. This arrangement was confirmed by the clients who advised that they had entered into a joint agency agreement on the understanding that Matt was involved.

Matt gave evidence to the Committee that he knew that the clients were reluctant to market the property by auction but he understood that, even if the sale wasn't by auction, he would help the licensees with open homes, very much in a secondary role, but still at a 50/50 commission split.

On 19 March Jade and Eric presented the clients with a conditional offer from Ms Dawson. The offer was accepted by the clients and proceeded to settlement.

After the sale the commission was not split with Matt. Jade and Eric said the reason there was no commission split was that the arrangement for the commission split had been agreed upon if the

sale went to auction. However, if it was a sale by negotiation the licensee who secured the sale would get all the usual commission.

When the clients discovered that Agency Blue had not paid commission to Matt, they laid a complaint with REA, alleging that Jade and Eric had misled them regarding the commission split.

### **The Committee's Decision**

The Committee believed the client's understanding that Matt would be entitled to a commission split from the evidence presented. The Committee considered that there was insufficient evidence to establish that there was an agreement for a 50/50 split of commission outside of the auction process, and consequently dismissed this complaint.

In publishing their decision, the Committee noted that best practice in the industry regarding joint listings would suggest that arrangements between real estate agencies to jointly market a client's property should in all cases be recorded in writing. In this case, however, there was no written documentation to support the contention that there was any conjunctive agreement in place. All parties have a version of events that would indicate there was to be some arrangement for sharing of commission if the Property went to auction. There is insufficient evidence to establish that there was an agreement that a 50/50 split of commission would be payable if the Property sold outside of the auction process. Up to the date of the Committee order Agency Blue had not paid any commission to Matt and, in the absence of a written agreement, legally they are not obliged to.

### **The Tribunal's Decision**

The Committee's decision was overturned on appeal to the Disciplinary Tribunal.

The Disciplinary Tribunal found that Jade and Eric breached Rules 5.1, 9.1 and 9.10 because they did not follow the client's instructions to split commission with another licensee, and because they did not adequately record the arrangement in the listing agreement.

Jade and Eric were fined \$1,000 each and were required to refund 20% of the commission (\$5,675) to the clients on the basis that the clients pay this to Matt, less \$200 towards their own expenses.

### **Complaint numbers: CD500115 and CD500034**

Date: 14 July 2015

(Note case number CD500115 relates to Jade and CD500034 relates to Eric)

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



## Questions

3. The Committee highlighted that the different parties had varied perceptions on the commission due to Matt if the sale was by a method other than by auction.

What did each of the following people understand to be the commission due to Matt under the joint agency agreement in this case?

- The clients (vendors)
- Matt
- Jade
- Eric

You should refer to what was stated to the Committee.

Person/people	What commission the person/people understood Matt would get
The clients (vendors)	
Matt	
Jade	
Eric	

4. The Disciplinary Tribunal found that Jade and Eric did not comply with Rules 5.1, 9.1 and 9.10 in relation to the client's instructions around the commission share. How did the licensees breach Rules 5.1, 9.1 and 9.10 in this regard?

5. Answer these questions in relation to the dispute around the commission split for the sale of the property.
- Explain a negative effect on the clients that resulted from the dispute.
  - Explain a further negative effect on the client that **could have** resulted from the dispute.

6. What could Jade and Eric have done to try to prevent any dispute arising?

## Approaches by clients and potential customers

### Approaches by a client with a sole agency agreement with another agency

If you are approached by a client (who has a current sole agency agreement with another agency) to explain services you can offer, REA recommends that your agency doesn't take on a client who has a sole agency agreement with another agency.

A client can sign on with multiple sole agents, but they would be at risk of having to pay multiple commissions. If a client signs two different agency agreements for sole agency, the licensees need to make it clear to the client that they would be at risk of double commissions.

### Approaches by a buyer about a sole agency listing from another agency

If you are approached by a potential buyer regarding a property listed by another agency under a sole agency (listing agency), your agency can approach the sole agency to make a reasonable proposal to refer the buyer and subsequently share any commission payable upon the successful sale to that person.

Approaches from one agency to another with a proposal to introduce a buyer and conjunct must be discussed with the vendor. Good practice is to explain the possible advantages and disadvantages of agreeing to the approach, so the vendor can make an informed decision.

In dealing with approaches such as the above, the listing agent must consider what is in the best interests of the client (vendor), as outlined in Rule 9.1.

- Rule 9.1 – A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.

It may be to the vendor's advantage to follow up on interest from another agency's buyer.

Any approach you make to another agency must be well thought out and professional, so that misunderstandings and conflicts don't arise later. Any agreement made should be confirmed in writing.

The listing agent can decline making a conjunctual agreement with your agency if the listing agency believes such a conjunctual agreement would not be in the best interests of their client. This decision not to conjunct would need to be recorded. Note that the agreement not to conjunct must be discussed with the client (vendor) even if the agency doesn't want to conjunct.

**Note:** It is important that customers who approach a licensee about another agency's sole listing are not misled by the licensee implying or stating they (the potential buyer) can't approach the current listing agent directly. The potential buyer has the right to do this.



## Acting as a buyer's agent

Many real estate agents and salespeople use the term 'buyer's agent' incorrectly. They use it to mean that the salesperson is actively helping the buyer to find a property to buy, using their own database of listings, or perhaps approaching another agent to share by way of a conjunctural sale. Doing this is **not** acting as a buyer's agent.

If you are a 'buyer's agent' you have a **contract of agency** with the buyer and the buyer will pay your commission.

If the buyer is paying commission you cannot also receive a commission from the client (vendor). Rule 9.14 makes this clear. It says a licensee must not act in a capacity that would attract more than one commission in the same transaction.

If you are acting as a buyer's agent, you must comply with Rule 11 of the Client Care Rules, 'Client and customer care for buyer's agents.'

Before you sign an agency agreement with the buyer you must remember to comply with Rule 11.2:

- Rule 11.2- Before a prospective client signs a buyer's agency agreement, a licensee must explain to the prospective client and set out in writing —
  - the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the average of the estimated price range of the land or business that the client is seeking to purchase and
  - when the agency agreement ends.

This means that you must calculate the commission that the buyer client will have to pay **before** the buyer signs the agency agreement or makes an offer.

You must also tell the buyer, in writing, when the agency agreement ends.

Rule 11.4 is similar to rule 10.10:

- Rule 11.4 - A licensee must submit all offers that the licensee is instructed by the client to make concerning the purchase or acquisition of any land or business, provided that such offers are in writing.

This means that any written offer that the buyer makes must be presented to the vendor.

## Professionalism in a conjunctional sale situation

Real estate agency work can be stressful and high pressured. Transactions have huge significance to the parties involved and can involve disputes and conflict. Conjunctional sales are an aspect of real estate agency work that can be challenging for the parties involved: clients, customers, agents and salespeople. However, they can be of significant benefit to the client.

You must remember your obligations to your agency and the industry, and the importance of maintaining your personal 'brand' in conjunctional sale situations. You must be able to carry out your work in a professional way.

It is important for you to remember your obligation to the client and your obligation in terms of protecting and promoting the interests of consumers.

In disciplinary rulings unacceptable behaviours such as the following have been highlighted in relation to conjunctional sales:

- undermining a client's relationship with their current listing agency (for example, by making negative comments on how the property has been listed, or making adverse remarks about the listing agency)
- misleading potential customers to believe they can only view the property with the agency wanting to establish a conjunctional agreement, rather than the company with the sole agency
- interfering with another agency's sole agency when no conjunctional arrangement exists
- undermining the professional reputation of another licensee
- intimidating or harassing another licensee
- misleading clients and customers regarding the actions or competence of another licensee
- promoting themselves as the seller of the property when another licensee's client purchased the property.

It is also unacceptable for agencies to engage in anti-competitive conduct when considering conjunctional agreement opportunities. An example is having an agreement with more than two agencies to exclude or limit the customers' dealings with a rival company. Note that if anti-competitive practices are found under the Commerce Act 1986, there are actions the Commerce Commission can take against the firm or firms involved.

You must remember that your behaviour reflects on the industry. Your obligation to protect the industry's reputation is enacted in Rule 6.3, which says that a licensee must not engage in any conduct likely to bring the industry into disrepute.

## Disciplinary action as a result of unprofessional behaviour

Licensees must be aware that behaviour such as that listed on the previous page could be reported to REA and a charge of unsatisfactory conduct or even misconduct may result. The consequence could be a fine or even cancellation of their real estate licence.

Note that a Complaints Committee has powers under Section 93 of the Real Estate Agents Act to order a refund from a commission payment and/or to rectify an error in commission.



### Key points

- If you are approached by a client with a sole agency agreement with another agency, REA recommend that your agency doesn't take on a client who has a sole agency agreement with another agency.
- If you are approached by a potential buyer regarding a property listed by another agency under a sole agency, your agency can approach the sole agency about establishing a conjunctional agreement. The sole agent may decline a conjunctional agreement.
- You must act professionally in conjunctional agreement situations. For example, you must not undermine the professional reputation of another licensee, intimidate or harass another licensee or mislead the clients and buyers regarding the actions or competence of another licensee.
- If you are a buyer's agent you have a contract of agency with the buyer and the buyer will pay you commission. Obligations as a buyer's agent are outlined in Rule 11 of the Client Care Rules.
- A licensee acting as a 'buyer's agent' cannot approach a vendor directly. They must go through the listing licensee.

Read the following case study and answer the questions that follow.

(**Note:** Fictional names have been used for the purpose of making the case easier to follow.)

### Case study 3

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A case against the defendant, Shane, was taken to a Complaints Assessment Committee. Shane worked for Agency Brown.

The complaint relates to the licensee approaching clients of properties that were listed with another agency, Agency Grey, on two separate occasions.

The Complainant, Jing, held an agent's licence and worked for Agency Grey.

#### The Background

Property A:

Jing held a listing for Property A that was due to expire on 17 July. On or about 21 April, Shane contacted the client on behalf of an interested buyer from overseas. Shane gave the client the impression he had contacted the listing agency.

On or about 23 April, the client contacted Jing, the listing salesperson from Agency Grey, to ask about progress with the potential buyer from overseas. He learned that the listing salesperson didn't know anything about the potential buyer. When Jing spoke to Shane about the potential buyer, Shane said the buyer had not arrived from overseas, when in fact he had.

A licensee from Agency Grey met with Shane and showed the potential buyer through Property A. The client then advised Jing the potential buyer had already been through the property.

Jing raised this with Shane's manager. The manager was concerned at Shane's apparent disrespect for the sole agency, that he had misled the buyer, and that he had shown the potential buyer through Property A without the listing salesperson being present to talk about any possible defects. Shane stopped working for the agency soon after. The overseas buyer didn't express any further interest in buying Property A.

Property B:

Agency Grey had a sole agency listing for Property B that was due to expire on or about 30 January. Shane contacted the client on 23 January and advised the client that he had an interested buyer who did not wish to deal with Agency Grey. This was not the case.

The client said he wanted to check with the listing licensee before proceeding.

Shane told his buyer about Property B and said he held a general listing for it. This was not the case.

Shane drew up a sale and purchase agreement on his own agency's documentation and presented it to Agency Grey. Agency Grey then asked for the offer to be on its own paperwork and a new offer was drawn up on Agency Grey's documentation and was signed by the buyer. However, Shane would not pass the signed sale and purchase agreement to the listing licensee until an agreement was reached regarding the commission split.

The client visited Agency Grey to sign the sale and purchase agreement and then had to wait while Agency Grey contacted Shane's manager about the undue pressure Shane was putting on the client and the listing agency.

Shane's manager spoke to him, and Shane immediately arrived at the office with the offer. On 27 January the offer became unconditional. No commission was paid to Shane or his agency.

### **The decision**

In his justification to the Committee, Shane said he was "paying back" Agency Grey for how it had treated him in the past. The Committee felt that this "pay back" attitude and behaviour was unsatisfactory and not the behaviour expected of a reasonable, professional real estate person. They believed this behaviour was contrary to promoting public confidence in the performance of real estate agency work.

The Committee found that Shane was guilty of unsatisfactory conduct because he:

- disregarded the sole agency agreement in place for Property A, contacting the clients directly and showing a prospective buyer through the property
- disregarded the sole agency agreement that was in place between the Property B clients and Agency Grey, by contacting the clients directly and submitting an offer to them from his buyer.

In disregarding these sole agency agreements, the committee found Shane had breached rules 6.2, 6.3, 6.4, 9.2 and 9.6.

The Committee established that Shane knew the properties were under sole agency to Agency Grey, yet still contacted the clients of both properties directly and without making any effort to first contact the listing salesperson or agency. Shane would have known that his agency did not have the authority to market and sell the properties he was presenting to customers, and that were listed by other agencies. However, he chose to behave in a way that gave the client the impression he did have such authority. By doing so Shane has not acted in good faith nor dealt fairly with all parties engaged in the transactions, which is a breach of Rule 6.2 and a breach of Rule 9.6.

The evidence shows he made misrepresentations to both a client and a potential buyer by

- telling a client that a buyer did not wish to deal with Agency Grey directly, when this was found to not be the case, and
- telling a buyer that he had a general listing for a property, which he did not have.

It is clear under Rule 6.4 that a licensee must not mislead a customer or client.

The Committee believed that Shane had breached Rule 9.2 in that his action of withholding an offer whilst trying to reach an agreement on a commission split could have put potential customers and clients under undue pressure. His actions could also have put the industry in disrepute (Rule 6.3).

The licensee was censured and ordered to pay a fine of \$1,000.00. He was also ordered to undertake further training.

### **Complaint number: C07219**

Date: 6 October 2015

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



## Questions

7. The Committee found that Shane had breached rules 6.2, 6.3, 6.4, 9.2 and 9.6. Explain how he breached each of these rules.

8. What negative impact could Shane's actions have had on the potential customers' understanding of any potential defects in the properties?

Read the following case study and answer the questions that follow.

(**Note:** Fictional names have been used for the purpose of making the case easier to follow.)

## Case study 4

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A case against the defendants, Corey and Martin, was taken to the Disciplinary Tribunal. The case related to the licensees attempting to coerce another licensee, Sam, who was the complainant, to make a commission payment to them.

Sam and Ken were licensees working for Agency Red, the listing agency.

Corey and Martin were licensees working for Agency Black, the conjunction agency. John was the principal of their agency.

### The Background

Early in the year, the property was listed with Sam who worked for Agency Red. The owners of the property were very keen to sell the property as quickly as possible. When a rapid sale didn't happen, Corey and Martin, who were salespeople for Agency Black, entered into a joint agency with Agency Red to help sell the property.

By April both Martin from Agency Black and Ken from Agency Red had offers for the property. A multiple offer situation arose, which was managed by the client's solicitor. The clients decided to accept the offer made by Ken from Agency Red.

Corey and Martin were very unhappy that their customer's offer had not been accepted. They spoke to the principal of their agency, John, about their agency making a claim for commission sharing with Agency Red. John did not agree with their concerns and refused to pursue a claim for commission for them. John wrote a letter dated 16 August stating his position that there was no commission dispute between the two companies.

Almost a year after the sale of the property, in July of the following year, Sam was in his agency's office when Martin, who was in the office at the time, approached him. Martin said that Corey was getting very agitated at the lack of commission on the sale of the property mentioned above. Martin made a request that Sam pay Corey and Martin the sum of \$2,000 each, stating that this was their share of the commission for the sale of the property. Sam declined to make this payment.

The following month, on 7 August, Sam met with Martin regarding the question of commission. At this meeting Martin asked Sam to pay \$24,000 plus GST in cash to Corey and Martin as their commission for the sale of the property. According to Sam, he was told by Martin that if he did not agree to make this payment then Corey would make a complaint to the REA. Martin also said that Agency Black was no longer involved in the commission claim and gave Sam a copy of Agency Black's commission schedule to show how the amount sought had been calculated. Sam told Martin that there was no commission payable and Martin replied that "you don't need the hassle of an REAA enquiry".

A few days after the August meeting, Sam was sitting in his car when he was again approached by Martin. Martin asked when the payment would be made, saying words to the effect “*you better hurry up and pay as [Corey] is losing patience and won’t wait much longer and will complain to the REAA*”.

On 13 August, Sam met with Corey and Martin. It was agreed that in return for not complaining to REAA, Corey and Martin would receive \$15,000 from Sam by 26 August. Corey prepared a receipt for this payment, which stated:

*“We acknowledge receipt of the sum of \$15,000 cash from [Sam] on [Monday 26 August 20XX]. This is full and final settlement for all matters relating to [the Property]. We undertake not to initiate any complaint legal or other action to the REAA or any other body.”*

After the 13 August meeting, Sam met with John, the principal of Agency Black, and outlined to him what had happened. John wrote a letter to Corey and Martin in which he recommended there was no basis for their claim and that they drop any claim they had considered.

Later in August, Sam received a phone call from Martin. In this call Martin asked for a \$500 advance on the \$7,500 that he and Corey were to be paid from the sum agreed at the 13 August meeting. Sam did not pay this sum or any sum.

### **The Decision**

This case was taken to the Disciplinary Tribunal.

Corey and Martin were charged with misconduct under section 73(c)(iii) of the Real Estate Agents Act 2008 in that their conduct was a wilful and reckless contravention of Rule 7.3 of the Code of Conduct. The particulars of the charge are that “*they threatened the complainant with making a complaint to the REAA unless the complainant shared his commission on the sale of [The Property] with the licensees*”.

Corey maintained that what happened was a “*private arrangement which could be considered an out-of-Court settlement*”. The Tribunal did not accept this and stated that the licensees had used the threat of the complaints process to try to get Sam to agree to a payment that only themselves appeared to consider was due.

The Tribunal highlighted that both Corey and Martin were aware that their agency did not consider their actions were in accordance with their professional obligations and warned them against making a claim for commission. The Tribunal stated that a licensee has means available for making a commission claim, but the disciplinary process is not to be used as a weapon in a civil claim between licensees.

The Tribunal ruled that the licensees’ conduct was a serious breach of Rule 7.3 and their finding was that this behaviour constituted misconduct. The ruling of misconduct was because

- The agents persisted in their conduct for some time and in the face of clear direction from their manager that the actions they were taking were wrong. They both had an opportunity to reflect on their conduct given their manager’s comments. However, they chose not to stop this behaviour.
- Disciplinary penalties are for the maintenance of professional standards and to maintain public confidence in the real estate profession. Actions such as pursuing Sam for money and threatening a disciplinary procedure, despite clear advice to the contrary from their



manager, are examples of types of behaviour that cause the public to mistrust real estate agents.

Both Corey and Martin were censured and suspended for eight months from the date of the decision. They were also fined \$1,500 each.

**Complaint number: C06433**

Date: 23 June 2016

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



## Questions

9. The Committee found that Corey and Martin had breached rule 7.3. Explain how they breached this rule.

10. What aspect of their behaviour did the Tribunal believe meant that the breach was of a serious nature and constituted misconduct?



## Putting my learning into practice

Describe **at least three** key learnings you will take away from this 'Conjunctional Sales' topic.

Describe **at least one** change you will make to the way you work as a result of this topic.

## Appendix

### Master agency

A master agency agreement is more common in the commercial real estate sector. A master agreement is where, for example, the client wants to list with Company A, but also wants Company B to be able to work the property. In this case they may request Company A enters into a sub-agency arrangement with Company B. The client may even want several agents to work the property and may request Company A to enter into sub-agency arrangements with more than one other agent.

With a planned master agency/sub-agency, the arrangements between agents may be quite varied and to a large extent will depend on the client's requirements. In some cases, sub-agents may be encouraged to advertise the property and hold open homes, and to work the property as if they had listed it themselves. In other cases, the master agent may have exclusive rights to these activities.

Commission will be split between the agents, but the split may vary from case to case. The client may decide to offer extra commission, so both the master agent and the sub-agents are motivated to work the property. The client's reasoning is that this method of sale will combine the best of both worlds:

- a sole agency with one licensee as a liaison point, and
- other agents with a good financial reason to actively look for customers.