Australian Institute of Conveyancers
South Australian Division Incorporated

CODE OF CONDUCT

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CODE OF CONDUCT

1. DEFINITIONS

1.1. "Act" means the Conveyancers Act 1994 and "Regulations" means the regulations under the Act.

1.2. "conveyancer" means a conveyancer as defined in the Act.

1.3. "Institute" means Australian Institute of Conveyancers South Australian Division Incorporated.

1.4. "Board" means the Board of the Australian Institute of Conveyancers South Australian Division Incorporated.

1.5. "land" has the same meaning as in Section 3 of the Real Property Act, 1886.

1.6. "Professional Conduct and Practice Committee (PCPC)" means the committee under delegation from the Board, makes decisions and determinations on complaints under the AICSA Code of Conduct, as per *Terms of Reference.*

1.7. "Member" means an active individual in any membership category of the Institute.

2. APPLICATION OF CODE

2.1. The Board of the Institute on 11th June 2002 approved this code of conduct ("code") as a code of conduct appropriate to the practice of conveyancing by conveyancers in South Australia. This code also applies to non-conveyancing members of the Institute.

2.2. The code will take effect from 12th June 2002.

2.3. Amendments and additions to the code may be made by resolution of the Board by motion on at least 14 days notice.

2.4. The Board may at any time in its absolute discretion in any particular case vary the application of any rule in the code either wholly or in part and on such terms and conditions as it thinks fit.

2.5. This code supersedes the code of ethics published by the Institute's predecessor The Land Brokers Society Incorporated.

2.6. Is it a condition of membership of the Australian Institute of Conveyancers SA that all members adhere to the Constitution and Code of Conduct in their business activities within the Conveyancing Profession in South Australia.

3. BUSINESS NAMES AND PROFESSIONAL DESCRIPTIONS

3.1. A conveyancer will not describe themselves in connection with their profession as other than a conveyancer, a registered conveyancer or, if applicable, a mortgage broker.

3.2. A conveyancer may practise

3.2.1. as a member of more than one firm; or

3.2.2. on their own account and as a member of a firm

3.2.3. provided that there is no reasonable possibility that any client, the public or any other conveyancer may be confused as to the capacity in which the conveyancer is acting at any one time or in relation to any other matter.

3.3. A conveyancer may carry on business under any name that is not misleading or deceptive or likely to mislead or deceive the public or the conveyancing profession.

3.4. A conveyancer may carry on business under any name which is not vulgar, sensational or otherwise of such nature that it would be likely, in the opinion of the Institute, to bring a conveyancer or the conveyancing professional into disrepute.

3.5. A conveyancer may include on professional stationery the names of persons who are partners of or otherwise employed by the conveyancer provided that it does not mislead or deceive the conveyancer's clients, the public or the conveyancing profession.

4. CARRYING ON OTHER BUSINESSES

4.1. A conveyancer may carry on another business apart from a conveyancing business provided that:

4.1.1. the conduct of that business is kept entirely separate from the conveyancing business;

4.1.2. the other business is not of such a character that the conveyancer's interest and the duty to clients are likely to conflict;

4.1.3. the carrying on of that business is not likely to lead to any infringement of the Act or of this code.

4.2. For the purpose of clause 4.1 a conveyancer will be deemed to be carrying on another business if that business is conducted by a company which is substantially under the conveyancer's direction or control.

5. ADVERTISING

5.1. A conveyancer may advertise their practices if the advertising:

5.1.1. is not false;

5.1.2. is not misleading or deceptive, or likely to mislead or deceive;

5.1.3. does not make or imply a comparison with any other conveyancer;

5.1.4. is not vulgar, sensational or otherwise of such a nature that in the opinion of the Institute it would be likely to bring a conveyancer or the conveyancing profession into disrepute.

5.2. A conveyancer will not in advertising or otherwise claim to be an expert or a specialist in a particular area of conveyancing if such a claim is false, misleading or deceptive.

6. EMPLOYED CONVEYANCERS

6.1. Employed conveyancers are subject to the same rules of conduct as apply to conveyancers in private practice and in the event of a conflict between a duty to an employer and a duty as a conveyancer the latter will prevail.

6.2. Employed conveyancers may act for clients other than clients of their employer provided that in doing so:

6.2.1. they act pursuant to an express right of private practice in their contract of employment; and

6.2.2. they comply in all respects with the Act and the regulations.

7. CLIENT CONFIDENTIALITY

7.1. A conveyancer will not (whether still acting under instructions or whether their instructions have been terminated) disclose any information obtained in the course of handling any matter:

7.1.1. except for any communications which are required for the normal conduct of the matter;

7.1.2. unless instructed to do so by the client; or

7.1.3. unless permitted or required to do so by law.

7.2. For the purpose of ensuring the confidentiality of a client's business, a conveyancer will not share, occupy or use premises jointly with any person unless appropriate arrangements have been made to ensure that confidentiality.

8. PROFESSIOAL RESPONSIBILITIES

8.1. A conveyancer will comply with all legislation and regulations that govern their activities and will refrain from any conduct or activity that would cause harm to others

8.2. A conveyancer will keep up to date with the law relating to conveyancing and other essential facts and public policies that affect their clients.

8.3. A conveyancer will abide by the rules and practice directions of the Institute, the Lands Titles Office and other relevant bodies.

8.4. A conveyancer will be responsible for the actions of their employees in their business dealings with clients, their colleagues, the public and others.

8.5. A conveyancer will keep adequate files for each matter handled for a client including electronic records, notes of all telephone conversations and copies of all documents and correspondence as required under the Act.

9. FAIRNESS AND SOCIAL RESPONSIBILITY

9.1. A conveyancer will make their services available to all members of the public and they will not withdraw their services except in the circumstances specified in this code or as set out under the Act.

9.2. A conveyancer will not refuse instructions on the grounds of race, colour, ethnic origin, religion or any other ground as set out in the Equal Opportunities Act and any other relevant legislation.

9.3. A conveyancer will not accept instructions:

9.3.1. that may be beyond their competence or that of their staff,

9.3.2. for which there is not sufficient time or resources available to fulfill efficiently;

9.3.3. for which the conveyancer is not indemnified under their professional indemnity policy; or

9.3.4. that involve an illegal transaction.

10. FEES COMMISSIONS AND CHARGES

10.1. A conveyancer will not undertake unnecessary practises that result in charging higher fees to clients.

10.2. A conveyancer will give their clients an accurate and complete breakdown of their fees and disbursements.

10.3. A conveyancer will not charge their clients for disbursements that they have not incurred and will promptly refund any unused money, which has been paid to them for anticipated disbursements.

10.4. A conveyancer will as soon as possible after being asked to do so by a client, unless it is unreasonable or inappropriate in the circumstances provide to the client an estimate of the costs and disbursements the client will incur and the method of calculation of those costs.

10.5. A conveyancer will not share or agree to share fees derived from their practice with a person who is not a conveyancer, unless permitted to do so by the Act or any other Act or Regulation.

10.6. A conveyancer who is an agent of another conveyancer (the “principal”) to perform specific work, may agree with the principal to share with that principal a proportion of the fees paid or payable for any such work.

10.7. A conveyancer will not pay or give a commission, fee, reward, inducement or other consideration to a person or corporation for referring business involving the preparation of a conveyancing instrument.

10.8. A conveyancer who has been referred Form 1 preparation work from a real estate agent or a related entity will not insist, induce or attempt to assist or induce the agent, to provide them with the associated conveyancing work in connection with the preparation of the Form 1

10.9. A conveyancer may accept remuneration from a person or corporation for placing business with or otherwise securing business for that person or corporation provided that the conveyancer previously disclosed to their client that such remuneration and the amount of it will or may be received.

10.10. The remuneration to which the preceding paragraph applies includes commissions paid by an insurance company, utility provider, connection service or by any person or corporation receiving money for investment.

11. RELATIONSHIP AND DEALINGS BETWEEN CONVEYANCERS AND CLIENTS

11.1. A conveyancer will act in their clients' best interests within the limit of their instructions.

11.2. A conveyancer will at all times make full and frank disclosures to clients of any interest they may have in any matter in which they are acting for that client and if that interest is adverse to that of their client they should cease acting unless otherwise instructed by the client.

11.3. A conveyancer will at all times make full and frank disclosure to clients of any matter or thing which could reasonably be regarded by the client as raising a conflict of interest on the part of the conveyancer.

11.4. A conveyancer must not act for more than one party to a transaction except as permitted by the Act.

11.5. Where a conveyancer acts for more than one party in a transaction and a conflict of interest arises the conveyancer must cease to act for any party in the transaction except as permitted by the Act.

11.6. A conveyancer acting for more than one party to a transaction must treat all of their clients equally.

11.7. A conveyancer will at all times use reasonable endeavours to complete in a competent manner and within a reasonable time any business entrusted by a client.

11.8. A conveyancer have a duty to communicate effectively and promptly with clients and will keep clients informed of all significant developments in any matter in which they are acting unless the client has instructed the conveyancer to do otherwise.

11.9. A conveyancer will not give any advice or information to a client or do anything on behalf of a client if they know that the client will use it for an illegal purpose.

11.10. If the instructions of a client are such as to prevent the proper performance of the conveyancer's duties the conveyancer should decline to act further and should advise the client accordingly.

11.11. Subject to any agreement or understanding to the contrary, a conveyancer who undertakes conveyancing work impliedly undertakes to see that work through to conclusion but that conveyancer is entitled to cease acting if the client does not provide such money on account of costs as may properly be stipulated by the conveyancer from time to time.

11.12. A conveyancer should not restrain or otherwise attempt to discourage a client from changing conveyancers at any time provided that the client has paid the conveyancer for all work done and disbursements incurred up to the time of the termination of the conveyancer's instructions.

11.13. A conveyancer will offer all such assistance and give all such advice or information as may be necessary to enable any other conveyancer instructed to take over a matter, to take such matter in hand promptly and expeditiously and with the least duplication in costs.

11.14. If a conveyancer gives an undertaking on behalf of a client;

11.14.1. the conveyancer will ensure that explicit instructions to give the undertaking have been given and that the client is fully aware of the obligations and the consequences of breaching the undertaking;

11.14.2. the conveyancer will do whatever is necessary to ensure that the undertakings are complied with promptly in accordance with their terms.

11.15. A conveyancer will advise their clients of their legal obligations in matters such as making statutory enquiries and will resist trying to save their clients money if doing so results in their client acting unlawfully.

11.16. Where a client has been referred to a conveyancer by another person the conveyancer must put the client's interests before those of the other person.

11.17. When a conveyancer accepts instructions to provide a service to a client, they must be fair and non-discriminatory in their dealings with the client and protect and promote the client's best interests.

11.18. A conveyancer will not assume to act for a client until they have received instructions from the client.

12. DEALINGS BETWEEN CONVEYANCERS

12.1. A conveyancer will at all times treat other conveyancers with courtesy and fairness.

12.2. A conveyancer, unless under a legal obligation to do so, will not disparage other conveyancers in their professional calling.

12.3. A conveyancer will not directly or indirectly communicate with a client of another conveyancer in the same transaction, except with the express approval of the other conveyancer.

12.4. A conveyancer will not attempt to supplant another conveyancer after that conveyancer has been engaged to act for a client in a particular matter.

12.5. A conveyancer will make every effort to open and maintain regular and effective communication with the conveyancer acting for other parties in a matter.

12.6. A conveyancer has a duty to co-operate with another to bring a transaction to a satisfactory conclusion and in particular:

12.6.1. to reply promptly to correspondence and telephone calls;

12.6.2. to prepare documents and forward them to the other conveyancer in sufficient time for the other conveyancer to have them signed and stamped as necessary;

12.6.3. to prepare settlement statements and forward them to the other conveyancer in sufficient time for the other conveyancer to deal with them and arrange cheques for settlement.

13. DEALING WITH OTHER PROFESSIONALS

13.1. A conveyancer has an obligation to co-operate with and assist, wherever possible, others involved in the conveyancing process such as other professionals, experts, finance providers, government offices and land agents.

13.2. If a conveyancer requests an expert to provide advice or services in connection with a transaction, the conveyancer is responsible for payment of the expert's fee unless some other express prior arrangement has been made with the expert.

13.3. In acting for clients, conveyancers must accept responsibility for attending to the reasonable requirements of finance providers.

13.4. A conveyancer will comply with the reasonable requirements of government offices and public authorities.

14. DEALING WITH TRUST MONEY

14.1. Any amounts held in a conveyancer's trust account at the time of settlement will be properly accounted for and disbursed within a reasonable time after settlement or after the resolution of the matter for which the money is being held.

14.2. A conveyancer must not use the proceeds from the settlement of a client's sale for the settlement of a client's purchase or for any other similar purpose unless they obtain a written authority from the client.

15. TAXATION MATTERS

15.1. A conveyancer may advise and otherwise act for clients so as to assist them to minimise an obligation to pay stamp duty land tax and other taxes, provided that at all times the conveyancer in so acting:

15.1.1. does not commit or is not associated with any misleading, deceptive, fraudulent or improper conduct;

15.1.2. does not offer advice or assistance when the conveyancer knows or ought to know that the client proposes to act in a manner contrary to law.

16. BREACHES OF THE CODE OF CONDUCT

16.1. Breaching this Code of Conduct may result in disciplinary action as a recommendation to the Board via the Professional Conduct and Practice Committee (PCPC).

16.2. For severe or repeated breaches; suspension and/or termination of membership may occur. *Refer clause 27 of the Constitution.*

16.3. A member subject to disciplinary action has the right to appeal the decision. *Refer clause 28 of the Constitution.*

16.4. All matters related to breaches of the Code of Conduct, including reports, investigations, and disciplinary actions, shall be treated with strict

confidentiality. Disclosure of such information shall be limited to those who need to know to carry out their duties.

16.5. The PCPC is responsible in addressing all breaches of the Code of Conduct with fairness, impartiality, and respect for all parties involved. The procedures outlined in this clause aim to ensure that every member receives a fair opportunity to be heard and that any disciplinary actions are justly administered.