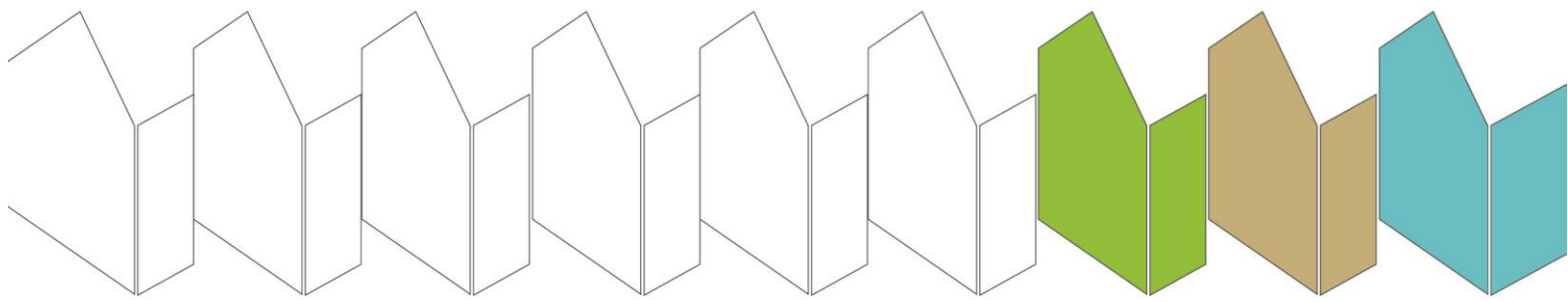


Real Estate Agents Authority

Phase Two AML Submissions



Introduction

This submission focuses on the application of Phase 2 to the real estate industry. The submission initially provides background and context to the operation of the Real Estate Agents Authority (Authority) which we believe aligns with the functions of a supervising agency under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) regime. It is the Authority's view that we are well placed to become the supervising agency for real estate licensees if the current multi-agency supervision model is retained. The submission then responds to the consultation questions.

Background to the Authority

The Authority is an independent Crown Entity established by the Real Estate Agents Act 2008 (REA Act). Our purpose is to promote and protect the interests of consumers buying and selling real estate, and to promote public confidence in the performance of real estate agency work. We do this by:

- licensing real estate agents, branch managers and salespersons (referred to collectively as licensees) and maintaining a public register of licensees
- establishing, developing and monitoring professional entry requirements for licensees, continuing education programmes and professional Code of Conduct standards for the real estate industry
- responding to enquiries and complaints, investigating problems in the real estate industry and ensuring appropriate action is taken to sanction any unsatisfactory conduct, misconduct or illegal behaviour
- informing and advising consumers so they can participate with confidence in real estate transactions

Licensing regime

Individuals and businesses that carry out real estate agency work are required to hold a licence under the Real Estate Agents Act. The categories of licence and current numbers are set out in table 1. There are currently 844 agencies operating under a company licence and 148 operating as sole traders under their own individual agent's licence.

The criteria for holding a licence is listed in s 36 of the Act and includes

- The person must be over 18 years of age
- They must not be prohibited from holding a licence
- They must have the prescribed qualification
- They must be fit and proper to hold a licence
- (For an agent class of licence) they must have at least 3 years' experience in real estate agency work within the last 10 years

Grounds for prohibition include dishonesty convictions within the last 10 years, previous orders for cancellation, and for agent licence applications, being an undischarged bankrupt.

Licence numbers and types*

Licence type	Active licences	Suspended licences	Total
Salesperson	12,074	2,842	14,916
Branch Manager	397	76	473
Agent (individual)	1,853	303	2,156
Agent (company)	871	104	975
Total	15,195	3,325	18,520

*As at 31 August 2016

Salesperson and branch manager licence holders carry out real estate agency work on behalf of an agent and must be employed or engaged by an agent before they can carry out real estate agency work. While the number of active licence holders tends to vary between 15,000 and 17,000 at any one time, for the purposes of AML/CFT the reporting entity would be agencies operating as companies or sole traders. This number sits at approximately 1000.

Complaints and discipline

The Authority administers a tiered complaints regime. We take a proportionate response to complaints and work with complainants (either consumers or agents) to achieve the best outcome. More serious complaints that cannot be resolved between the parties are referred to the Complaints Assessment Committee. A Complaints Assessment Committee may make a finding of no further action, unsatisfactory conduct, or refer misconduct charges to the Real Estate Agents Disciplinary Tribunal.

In addition to receiving complaints the Authority has the ability to investigate and initiate proceedings in relation to offences under the REA Act and any other enactment, investigate any act, omission, allegation, practice or other matter which indicates unsatisfactory conduct or misconduct on the part of an agent and carry out any other functions that might be conferred by the Minister or another enactment (s 12 REA Act).

The Authority is currently moving towards taking a more comprehensive risk-based approach to our activities. This is on the basis that, by allocating additional resource to collecting, collating and analysing data, we will be in a stronger position to understand what is happening in the industry, why it is happening and use this information to proactively assess the risks in real estate transactions that need addressing and target these accordingly.

Raising standards

The Authority provides advice and compliance guidance to licensees. We do this through several forums: by publishing information sheets and guidance on our website, bi-monthly industry newsletters, and face to face meetings with key industry stakeholders via our established Industry Advisory Groups and Regulators Forum.

Licensees are required to complete 20 hours of continuing education (10 hours of verified and 10 hours of non-verified self-directed study) each year as a condition of their licence renewal. The Authority currently sets the topic and content of the verified continuing education each year.

The Authority is in the process of developing professional standards for the industry which set out its expectations of best practice. These professional standards will be used by Complaints Assessment Committees as benchmarks when considering complaints against licensees.

Risks related to real estate

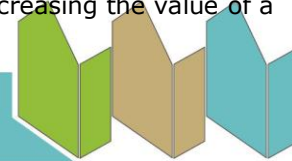
Real estate licensees typically receive funds from customers in two situations: purchase deposits and advertising and marketing fees.

An agent who receives deposit funds in the course of a transaction is required to place those funds in a separate trust account and hold them for a minimum of 10 working days unless an earlier release is authorised in writing by both the purchaser and the vendor. An Agent's commission is typically deducted from deposit funds before the balance is dispersed to the person lawfully entitled to it. The balance of the purchase price is generally paid to the vendor's solicitor's trust account and those funds will not go through the agent.

Advertising and marketing fees are generally paid to an agent "up front" at the start of the agency relationship. Advertising and marketing fees are not required to be paid into a trust account and the safeguards that apply to trust account monies are not engaged.

Other situations where an agent will potentially be exposed to risk include:

- when a property is bought and sold in rapid succession for increases or decreases in value that do not correlate to the current market. This can have the effect of artificially increasing the value of a



- property to the detriment of loan providers and the end purchaser
- When a property is bought and sold multiple times between family members or associates
- When the purchaser on a sale and purchase agreement is recorded as "... or nominee"
- When the purchaser is an overseas resident or where a purchaser is acting on behalf of an overseas buyer

Response to consultation questions

How should the AML & CFT requirements apply to the real estate and conveyancing sectors to help ensure the Act addresses the risks specific to them?

Eg which business activities should the requirements apply to? At what stage in a business relationship should checks, assessments and suspicious transaction reports be done? Who should be responsible for doing them?

We consider that the AML & CFT requirements should apply to agents at the following points in a real estate transaction:

- When an agency relationship is being formed: specifically, during the information gathering process prior to a written agency agreement being signed between a vendor and an agent or between a buyer and an agent;
- When receiving marketing or other funds from a vendor
- When preparing a written offer on behalf of a purchaser for presenting to a vendor
- When receiving deposit funds from a purchaser

An agent is well placed to know if a property is being bought and then on sold after short periods of time, which should alert them to the possibility of mortgage ramping.

The individual agent who is dealing with the transaction should alert their agency manager when they become aware of or suspect a suspicious transaction. It is our view that the report should be submitted by the agency as the reporting entity, either through the AML/CFT compliance officer or a senior manager.

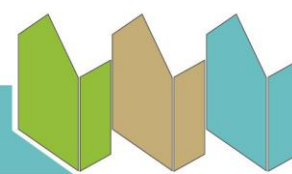
Other players in the real estate sector not currently regulated but should be included within the AML/CFT regime

Property traders & finders

There are a number of property traders and finders who operate on the fringe of real estate agency work. These individuals and businesses may not be licensed under the REA Act and the Authority currently has no visibility or oversight over them. The Authority has previously taken prosecution action against property traders for carrying out unlicensed real estate agency work (see *Homebuyers Limited and Francisca Dorientje Forster v Real Estate Agents Authority* HC Wellington CRI 2011-485-82/83 and *Real Estate Agents Authority v Vicki Letele* DC Manukau CRI-2012-092-004265). Whether or not a property trader or finder is carrying out real estate agency work will be dependent on the particular facts of the case. We consider that the requirements of the AML/CFT should apply to these individuals and businesses particularly as the risks faced by real estate agents outlined above are likely to apply to them.

Other professionals in the property sector

We note that leasing and property management services provided by real estate agents are not intended to be covered by the AML/CFT regime. The negotiation, setting and renewal of a commercial lease comes within the definition of real estate agency work and agents are required to have a written agency agreement for those individuals and businesses they act for. We consider that the due diligence requirements could be applied at the time the agent enters into an agency agreement with their client.



Residential property managers are not currently regulated; however they have a high turnover of income in and out of their rental accounts. While some rent levels might not be high enough to seem significant, over the life of a rental agreement they can add up to significant sums. Similarly, Body Corporates receive money in and out of their levy and maintenance funds. Again, this can amount to significant funds over a period of ownership of a unit title property. We consider that these parts of the real estate sector should be subject to the AML/CFT regime.

Should businesses in the real estate sector that engage in property development have obligations under the Act? If yes, in what circumstances?

We consider that any person or business carrying out activity that involves real estate agency work should be subject to the AML/CFT.

At what stage should a client of a real estate agent become a customer for the purposes of customer due diligence?

Under the Real Estate Agents Act Rules of Professional Conduct and Client Care an agent's client is the person they have an agency agreement with. Generally this will be the vendor of a property. Our view is that customer due diligence should take place prior to the agent entering into the formal agency agreement. Prior to marketing a property for sale, agents are expected to know what they are selling and who they are selling it for. This includes:

- Carrying out a title search on the property to establish the legal owners, legal description and any interests registered on the title
- Ensuring that the ownership of the property on the title matches the owners listed on the agency agreement
- Where the property is owned by a company establishing who the director(s) are
- Where the property has more than one owner checking that all owners have authorised the sale of the property and that the person they are dealing with has the written authorisation of the other owners to enter into an agency agreement on their behalf

Any further due diligence required by the AML/CFT can be appropriately carried out at this time as well.

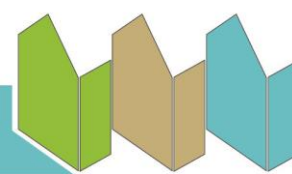
Customer due diligence on a purchaser or prospective purchaser should be carried out at the point when the purchaser wishes to make an offer on the property. We note that an agent will be collecting information about the prospective purchaser from the time they view the property (eg by completing an open home register).

Where an agent is acting for a purchaser as a buyers agent an agency agreement must still be entered in to and it is our view that as with traditional agency relationships, due diligence should be carried out on the prospective client while the agency agreement is being formed.

Supervision

Do you think any of our existing sector supervisors (the Reserve Bank, the Financial Markets Authority and the Department of Internal Affairs) are appropriate agencies for the supervision of Phase Two businesses? If not, what other agencies do you think should be considered?

We do not think that the real estate sector sits comfortably with any of the existing sector supervisors. We believe that we are the agency best suited to be the supervisor for the real estate industry, given that we already carry out many of the activities of a supervisor. We administer a licensing regime and have established methods of informing, advising and educating the industry. We also carry out monitoring and enforcement activity as part of our regulatory functions as outlined in the first section of this submission.



Are there other advantages or disadvantages to the options in addition to those outlined [in the consultation document]?

While there is potential for duplication of effort and resource between supervisors in the multi-agency model, an advantage of retaining it is that the resources, systems and oversight of existing industry regulators can be utilised. Oversight by the coordination committee and centralised creation of resources should also mitigate duplication of effort to some extent.

Implementation period & costs

What is the necessary lead in period for businesses in your sector to implement measures they will need to put in place to meet their AML/CFT obligations?

Where possible, please tell us how you calculated how long it will take to develop and put in place AML/CFT requirements.

The Authority makes no comment on this aspect of the consultation in relation to implementation for real estate businesses.

We understand from the Ministry of Justice that a very preliminary estimation of the FTE resource for a supervisor of the real estate industry based on approximately 1000 reporting entities is 6-9. If the current multi-agency supervision model is continued with and the Authority is appointed as supervisor for the real estate industry, we estimate that we would require approximately 9 – 12 months to prepare.

Enhancing the AML/CFT Act

Expanded reporting to PFIU

Should the current requirement to report suspicious transactions be expanded to reporting suspicious activities? Please tell us why or why not.

We support the introduction of reporting suspicious activities. If reporting obligations are expanded to include suspicious activities the legislation will need to define the threshold which would apply to suspicious activities.

Information sharing

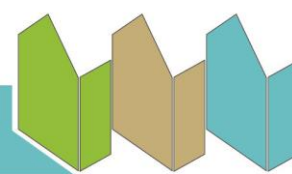
Should industry regulators be able to share AML/CFT-related information with government agencies?

Should AML/CFT supervisors be able to share customers' AML/CFT-related personal information with government agencies?

What are the appropriate circumstances under which the FIU can share financial intelligence with government agencies (such as the sector supervisors, industry regulators, intelligence agencies, IRD and Customs) and reporting entities? What protections should apply?

What restrictions should be placed on information sharing?

We support information sharing between regulators, AML/CFT supervisors and other government agencies.



Reliance on third parties

Are the existing provisions that allow reporting entities to rely on third parties to meet their AML/CFT obligations sufficient and appropriate? If not, what changes should be made?

We note that some real estate agencies use third party trust account providers for the receipt of deposit funds. We would expect that agencies using this service would still comply with the requirements of the AML/CFT regime unless they are part of a designated business group or have contracted an agent to carry out their customer due diligence.

Trust & Company service providers

Should the scope of the provision requiring persons providing trust and company services to comply with the AML/CFT Act be extended to activities carried out in the ordinary course of business, rather than just when they're the only or principal part of a business?

The Authority makes no comment on this aspect of the consultation.

Simplified customer due diligence

Should the simplified customer due diligence provisions be extended to the types of low-risk institutions we've proposed above? If not, why?

Should we consider extending the provisions to any other institutions?

The Authority makes no comment on this aspect of the consultation.

