



NAVA

National Association of
Valuers and Auctioneers

RULES OF CONDUCT

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RULES OF CONDUCT

NOTES FOR GUIDANCE

Introductory Notes

These Rules of Conduct form an integral part of the conditions of membership of the Association. All applicants for membership of the Association are sent a copy of the current version of the Rules, and on their application form agree to abide by them.

No Contractual Obligation

These Rules relate solely to the way in which the Association requires members to conduct their activities as auctioneers. They must not be taken by clients, applicants, or others, as in any way affecting the legal relationship between them and any firm, or member.

Definitions

In the Rules and in Explanatory Notes which follow them, the term 'member' also denotes – where appropriate – any firm or company practising as auctioneers of which one, or more, of its principals, partners, or directors are members of the Association. Conversely, the word 'firm' also denotes – where appropriate – a member, or such company.

Throughout – where appropriate – the male gender includes the female, the singular includes the plural, the plural includes the singular, and references to 'acts' include 'omissions'.

References to any Act of Parliament or to Statutory Regulations include any subsequent re-enactment or amendment.

Responsibility for others

Although the Rules relate directly to auctioneer's activities, members are advised to note that they are answerable for the acts of all partners and fellow directors whether they are members or not, and for the acts of members and non-members employed by any firm of which they are a principal, or director, whether or not they are personally at fault; and they may be penalised accordingly.

Where local law and practice render it appropriate (e.g. in Scotland), the Association may issue special requirements varying the general Rules.

Penalties

The breach by a member of any of the Rules constitutes a disciplinary offence for which the member may be punished by one or more of the following: a caution, reprimand, fine, reclassification of membership, suspension or expulsion. In certain cases a member could be asked to give an undertaking as to his future conduct, in which case the Disciplinary Sub-Committee may, in its absolute discretion, amend, or suspend a penalty in the light of this undertaking.

The Notes

Neither the subheadings, nor the explanatory notes are part of the Rules. However, in determining whether a breach of any Rule has occurred, and, if so, what punishment (if any) to impose, reference may be made to the Note accompanying the Rule or Rules. Conversely, the contravention of anything said in the Note, unless accompanied by a breach of a Rule, does not in itself constitute a disciplinary offence.

Proceedings

Disciplinary proceedings are initiated either by a complaint in writing lodged with the Association or by direction of the NFOPP Board. All the investigations are carried out by the NFOPP's Compliance Officer working under the direction of the Business Practices Officer.

Suspension

The Disciplinary Procedure Regulations make provision for the immediate suspension of any member believed to be in breach of the Rules pending determination of the matter. Any member under suspension remains subject to the Rules. Immediate suspension would normally only be considered in cases where it may assist in the protection of the public.

The right to be heard and the appeal provisions open to members are set out in the Disciplinary Procedure Regulations.

Promotion

While the Association expects its members to avoid any misrepresentation, bad presentation, and poor taste in their advertising and other publicity material, it places no restriction on honest advertising and permits its members to advertise in such ways as they judge appropriate. Likewise, it places no restriction on the use of promotional literature as such, believing there is a proper place for this in an activity which manifestly has commercial aspects.

Publication of information

The Association reserves the right to publish, or otherwise make known, any information concerning a member's conduct which comes into its possession and in the opinion of the NFOPP Board ought to be published or made known.

Provided the Association acts in good faith and with proper care, it cannot accept responsibility for inaccuracies in any information received by it and passed on.

All correspondence regarding the Rules of Conduct should be addressed to :

The Chief Executive
The National Federation of Property Professionals
Arbon House
6 Tournament Court
Edgehill Drive
Warwick
CV34 6LG

RULE 1

Duty to maintain separate clients' accounts.

Rule 1(1)

All members who receive, or may receive, deposits in transactions to which the Estate Agents Act 1979 applies, shall open and operate a Clients' Account (or Accounts) – hereinafter described as Statutory Clients' Account (s) – in accordance with the requirements of that Act or with the Regulations made under it.

Rule 1(2)

All members who receive clients' money to which that Act does not apply shall keep, at an Authorised Institution, at least one Clients' Account distinct from any Statutory Clients' Account (s) into which shall be paid without delay any money which is to be held on behalf of clients, tenants, or applicants, other than deposits on transactions covered by the Act.

***Note:** It cannot be too strongly stressed that clients' money must be held by a member in such a way that it is not available for the ordinary trading purposes of the firm, nor used as security for any loan, nor for meeting any personal or business liabilities. The rules which follow dealing with approved forms of withdrawal from Clients Account (s) are designed to enforce this main purpose of separate accounts.*

'Authorised Institution' in Rule 1(2) bears the same meaning as it does in the Estate Agents (Accounts) Regulations; thus any institution which may properly be used for Statutory Clients' Account (s) may also be used for other clients' accounts. In deciding which institution to use, members are reminded of the importance of having immediate access to the money.

When operating any form of Clients' Account the bank or other institution should be advised that the money is to be held in a separate right from the firm's own money, and should be instructed to handle the account (s) in accordance with these rules.

Bank charges for operating all forms of Clients' Account (s) must be paid out of other resources and not charged against the account (s). Interest payments must not be credited to Statutory Clients' Accounts.

Rule 1(3)

Money may be drawn from Clients' Accounts (s) only;

- (a) for payment, on proper authorisation, to the person entitled to received it; or
- (b) in discharge of a sum owed to the member by the person otherwise entitled to receive it; or
- (c) for payment into another client account kept by the member; or
- (d) to correct an inadvertent over payment into the account; or

- (e) to withdraw interest which has accrued on the account; and
- (f) if there are sufficient funds available to the credit of the client to fully cover the payments;

always provided that in the operation of Statutory Clients' Accounts, the provisions of the Estate Agents Act and of the Estate Agents (Accounts) Regulations 1981 or any other Regulations made in pursuance of that Act have precedence over these rules.

Note: Rule 1(3) allows the member to draw commission out of the balance in the account for the person liable to pay that commission; but to do so only when the event has taken place upon which the commission becomes due. It also allows disbursements to be recovered, where expressly arranged with the client.

Rule 1(4)

Every member shall maintain proper internal accounts showing the up-to-date position in relation to sums falling within Rules 1(1) and 1(2), and the heading under Rule 1(3) for all withdrawals. There shall be maintained on the Clients' Account(s) at all times balances to satisfy the indebtedness shown in the internal accounts.

Note: Members are reminded that an auditor's report in prescribed form is required in respect of that part of the audit which relates to Statutory Clients' Accounts. A copy of a suitable form of Report is available on request from the Secretariat.

Rule 1(5)

Existing members and new applicants for membership who handle clients' money whether in a statutory client account or otherwise must produce on application for membership and thereafter, annually, a report by an accountant approved by the Association, such report to be in the form approved the Association and to be produced within 6 months of the end of the accounting year. If a report has not been provided within this period a letter will be sent to request production of the report within 14 days.

When a member retires from practice or ceases to be a member of the Association (whether by retirement, resignation, expulsion or otherwise) that member is obliged to deliver a report covering the period from the last report to the date upon which the member ceased to hold clients' money or to be a member.

RULE 2

General duty to uphold high standards of ethical and professional practice.

Rule 2(1)

A member shall conduct his/her practice so as to conform with the laws relevant thereto.

Note: A member is responsible for informing him/herself as to the requirements of the law and no attempt has been made to write them all into these Rules. The Association is prepared to give such general advice as it can, but where necessary members should seek specific professional advice. In the case of the Estate Agents Act 1979 the Association has issued guidance to which members should refer in the first instance for advice in respect of that part of their practice which is covered by the Act. A warning or banning order under that Act against a member would call into question his suitability or, in some cases, eligibility to continue as a member.

In the case of General Bidding Agreements Acts and relevant laws the Association may offer guidance to members in the first instance in respect of that part of their practice which is covered by such Acts without liability for such advice.

Rule 2(2)

No member shall do any act (whether in the business of auctioneering or otherwise) which:

- (a) involves dishonesty or deceitful behaviour: or
- (b) involves unprofessional practice or practices that is unfair to members of the public; or
- (c) in any other way brings the Association into disrepute.
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Note: The purpose of Rule 2(2) is to enable disciplinary action to be taken against certain kinds of disgraceful behaviour which may adversely affect the public when dealing with a member, or are seriously detrimental to the Association, but which are not covered by another more specific Rule. It is not intended to differ from the spirit of the rules as a whole, nor to limit the freedom of members to conduct their businesses competitively. This is the only Rule which applies to a member's conduct generally and is not confined to auctioneering. Conviction on a criminal offence is not necessary for proceedings under the Rule as misconduct may be evidenced in other ways, and successful proceedings against a member in a criminal or civil action do not necessarily imply a breach of this rule.

Rule 2(3)

A member who is a principal shall be responsible for the proper supervision of his/her partners, fellow directors and staff in the conduct of his/her business and shall be liable under these Rules of conduct for any breaches as if such breaches had been committed by him/her.

Note: The purpose of Rule 2(3) is to require principals to ensure that their partners, fellow directors and members of staff comply with the Rules of Conduct of the Association. The Rule makes principals liable to disciplinary action for any breaches of the Rules of Conduct committed by others within their control.

RULE 3

Duty not to carry on business with inadequate working capital.

A member shall not carry on business if he lacks sufficient financial resources to operate successfully without undue risk to the interests of clients and applicants.

***Note:** This Rule is designed to prevent members setting up or running a business with insufficient resources. A business cannot be run efficiently if there is constant anxiety about how wages are to be paid and other bills met. Evidence of financial strain, such as unsatisfied County Court judgments, may lead to investigation under Rule 13.*

RULE 4

Duty not to carry on business without stipulated security.

A member shall not carry on business unless he complies with such requirements of the N FoPP Board as are currently in force as to bonding or other financial safeguards of the public's money.

***Note:** Members are required to comply with whatever regulations are currently in force to protect the public against defalcation. Details of the regulations in force from time-to-time are obtainable from the Secretariat.*

RULE 5

Duty not to misdescribe class of membership.

No member shall publish or display the name of a principal, director or employee, of a firm with letters or other description indicating that he is a member of the Association, or a member of any particular class, if he is not such a member, or is for the time being suspended from membership.

***Note:** This Rule applies to any form of publication, including the heading on a letter. Particularly, it covers three cases:*

- a) stating or implying that a person is a member when he is not;*
- b) stating or implying that he is a member of one class (e.g. a Fellow) when he in fact belongs to another class (e.g. Member); and*
- c) stating or implying that he is a member when he has been suspended.*

Suspension, while it lasts, takes away the privileges of membership. It is most important therefore, however inconvenient it may be, that stationery etc, should not be used which indicates that a suspended person is a member. If such a practice were permitted suspension would lose meaning and membership its value as a protection to the public.

Attention is also drawn to Article 7 of the N FoPP Memorandum and Articles of Association as follows:

A Member shall cease to be a Member on the happening of any of the following events:

- 7.1 If any aspect of the declaration and certification in the Member's application for membership proves to be false.

7.2(i) If the Member (being an individual) shall become bankrupt or shall enter into an arrangement or composition with that Member's creditors.

(ii) If it (being a company) shall enter into liquidation whether compulsory or voluntary (save for the purpose of amalgamation or re-construction of a solvent company) or if a receiver shall be appointed of its undertaking or if it shall have an administration order made against it or if it shall enter into an arrangement or composition with its creditors or

(iii) If the Member (being an individual) is a Director of a Company in respect of which any of the circumstances set out in sub-clause (ii) above occur.

7.3 If the Member be required to resign his membership as a result of a finding to that effect made under the Federation's disciplinary procedure.

7.4 On the Member's death.

7.5 If the Member becomes of unsound mind.

7.6 If the subscriptions or any agreed contributions of a Member or any other moneys due from the Member to the Federation shall remain outstanding for more than one month but any such subscriptions, contributions or other moneys shall nevertheless remain a debt due to and recoverable by the Federation.

7.7 If the Member resigns from the Federation by notice in writing sent by post or delivered to the Secretary at the Office of the Federation.

7.8 If the Federation shall notify a Member in writing that the Member no longer continues to meet the current qualifications for membership or a condition for membership imposed on the Member under Article 3.4 hereof.

7.9 If the Federation attaches to his Member's, special conditions and the Member is in breach of those conditions.

7.10 If the Member fails to maintain any other requirements as may be specified by the Board from time to time in accordance with such criteria as may from time be approved by the Board.

Provided always that if a Member shall cease to be a Member in accordance with any one or more of the foregoing provisions, that former Member shall not thereafter be entitled to hold themselves out to be a member of the Federation in any way and if the former Member does so then the Federation may take such action (including legal proceedings) against such former Member as it deems to be necessary and the Federation shall be entitled to publish the facts

in any local and/or national newspapers and such other publications as it shall think fit.

RULE 6

Duty to abide by the aims and rules of the Association.

Every member shall, in his business dealings, conform to the statement of Aims of the Association, together with these Rules and any other Rules and Regulations made from time-to-time by the Federation.

RULE 7

Duty not to seek business by improper means

Rule 7(1)

A member shall not seek business by methods which are oppressive or involve dishonesty, deceit, or misrepresentation. Members shall not use any business term, name or initials which could cause confusion between their own business and that of the Association.

***Note:** It is considered oppressive to seek business by methods designed to take unfair advantage of the age, condition, infirmity, ignorance, or bereavement of a prospective client or by any course of action which amounts to harassment. Members are not permitted to use any cheat or subterfuge to obtain business.*

Rule 7(2)

A member shall not contact another agent posing as an applicant, nor place himself, or his nominee, on another agent's register of applicants to obtain addresses for the purpose of canvassing.

Rule 7(3)

A member shall not advertise for properties under a box number without making it clear that he is not an agent who is advertising, unless specifically instructed to do so by a retaining applicant, nor shall he use any form of misleading advertisement of published material.

Rule 7(4)

Before accepting instructions to sell a property by auction a member shall ascertain whether the prospective client has given the sole agency and/or sole selling rights to another agent. No attempt shall be made to induce the

breaking of a valid sole agency and/or a sole selling rights contract. If a prospective client wishes to give instructions regardless of an existing sole agency and/or sole selling rights contract the member shall not accept instructions before advising the vendor that he thereby lays himself open to a possible liability for payment of two commission claims.

Rule 7(5)

If a member wishes to offer a property which is on another agent's books, knowledge of which came to him by reason of that agent having erected a board on the property, or having taken other action to market it, he may approach the seller for instructions only by an individually signed letter sent by post, including an enquiry as to whether a sole agency and/or sole selling rights contract has been granted elsewhere. In such a letter intended to solicit instructions, the following clause shall be included:

"If you have instructed another agent on a sole agency and/or sole selling rights basis, the terms of those instructions must be considered to avoid a possible liability to pay two commissions."

And Rule 7(4) must then be observed.

Note: The Association permits general promotional activity, and a communication which offers estate agency services generally is not normally deemed to be an approach for instructions for the purpose of this rule.

Rule 7, like all other Rules, is not intended to interfere with competitive methods if they are legitimate. A member is permitted to accept business which is in the hands of another agent if, without infringement of the Rules against improper methods, that business is offered by the seller.

RULE 8

Duty to ensure that agency terms are fair and that clients are aware of them.

Rule 8(1)

A member shall not propose to a prospective client terms and conditions for the supply of his services which are otherwise than fair and reasonable.

Rule 8(2)

A member shall ensure that each client is aware of the terms and conditions upon which his services are supplied and these shall be set out in writing.

Note: Attention is directed to Section 18 of the Estate Agents Act 1979 which stipulates the information which must be given to clients in cases to which the Act applies. The uncertainty of interpretation of this Section has been clarified by a

statement of the Law, all members are strongly recommended to follow the OFT guidance and must comply with the 1991 Orders and Regulations.

If VAT is payable on any items of expenditure, this should be indicated. The client should be made aware at the outset that his relationship with the firm will constitute a binding contract, even though in the case of selling instructions no obligation may be incurred until a sale is affected. The rate of commission and agreed level of advertising charges – if any – are particularly important as is the period of the sole agency. Such matters must be embodied in a written statement given to the client.

Members are advised that the Advertising Standards Authority publishes a code, which relates to property advertising. They should use terms which are clearly understood by the public and avoid possible confusion.

The Association receives a considerable volume of complaints relating to chargeable advertising. Members are urged to clarify such arrangement beyond any doubt and not to exceed the agreed budget without the specific knowledge and authorisation of the vendor.

Members marketing property for auction must comply, in all respects, with the requirements of the Property Misdescriptions Act 1991 and the Regulations.

RULE 9

Duty to protect and promote clients' interests.

A member shall use all due diligence in looking after his clients' business and shall take all such reasonable steps to protect and promote the clients' interests as are practicable, without improper conduct, or unfairness to members of the public.

Note: *While the main duty is to one's client with whom an agreement has been made and to whom one looks for remuneration, this Rule should be read in conjunction with Rule 12.*

RULE 10

Duty as to conflicting interests.

A member shall disclose in writing to his client and relevant third parties any existing conflict of interest, or any circumstances which might give rise to a conflict of interest.

Note: *For transactions to which the Estate Agents Act 1979 applies, members' attention is drawn to Sections 21, 31 and 32 of the Act. Members are reminded that they also have a duty to declare existing or potential conflicts of interests in transactions to which that Act does not apply.*

Members are reminded that under common law an agent's fiduciary duty of care is very wide: it covers all situations, not just those under the Act.

Even when no conflicts of interest exists at the outset, they may never the less arise in a number of ways. Members should therefore be alert to this possibility and disclose any conflicts of interest or potential conflicts of interest to the client, and to anyone else affected by them, as soon as they themselves become aware of the situation. For the avoidance of doubt and confusion it is recommended that all disclosures should be confirmed in writing.

In any case where a member, or his partners, associates, staff, or any of their relatives, are interested in the purchase of a property which the member has been instructed to sell, the client should be advised in writing to obtain independent professional advice.

RULE 11

Duty not to accept secret commissions.

Neither a firm, nor any principal, director or employee of the firm shall accept from any person in connection with the affairs of a client of the firm any commission, discount, rebate, or other profit unless the details thereof have first been disclosed to the client:

Provided that this Rule shall not apply to:

- a) interest accruing on sums held in client accounts under Rule 1, except where required to be paid by Regulations made under the Estate Agents Act 1979;
- b) discounts on advertisements; and
- c) remuneration paid by a firm to its principals, directors or employees.

Note: *The Rule about payment of interest may be superseded in a particular case by an agreement between a member and any other person or persons who have, or may have come to have, an interest in the money. A member should not act upon such an agreement in his favour unless the agreement is in writing.*

RULE 12

Duty to applicants and others.

Without detracting from his duty under Rule 9, a member shall treat applicants and other non-clients with fairness and courtesy at all times.

Note: *Although there is no contractual duty to applicants, they ought to be treated with proper consideration. Attention is drawn to the prohibition on any unqualified person drawing a contract or conveyance for the sale of land.*

Nobody should be led into contractual commitments without being made aware of their binding nature, and invited to seek independent advice. Contracts should not be oppressive or unconscionable in relation to the circumstances.

Deposits should be returned to applicants upon receipt of a properly authorised request without delay, provided contracts have not been exchanged.

RULE 13

Duty to allow inspection of accounts, etc.

In order to ascertain whether these Rules have been complied with, the Association may – whether or not any complaint has been made – require a member to produce for the inspection of a person appointed by the Association, his books of accounts, bank statements, vouchers and other relevant documents, to furnish the appointed person with copies of any parts thereof, and to give the appointed person such information and explanations as the appointed person may require. The member shall comply with any such requirements at the time and place specified.

Any information obtained by such an appointed person as a result of compliance with this Rule shall only be used by the Secretary of the Federation, its Board, Disciplinary Sub-Committee or Appeals Committee for the sole purpose of ascertaining whether these Rules have been complied with.

***Note:** It should be thought that an investigation under this Rule necessarily involves suspicion of misconduct because the Rule may also be used to make spot checks at random. The appointed inspector will usually be a qualified accountant but in any case will not be a practising estate agent nor a member of the Association, and he will be instructed to confine the report of his findings to any material relating to the Rules of Conduct. A copy of the inspector's report will be given to the member.*

RULE 14

Duty to assist in disciplinary investigations.

A member shall co-operate with any disciplinary investigation, replying to correspondence within 14 days, in accordance with the current Disciplinary Procedure Regulations. *Inter alia*, these provide that he may attend any meeting of the Disciplinary Sub-Committee at which an allegation concerning his conduct is to be discussed, and that he has the right to be heard, to be represented and to appeal against any finding or penalty. A member must abide by any finding, and pay any fine imposed on him no later than 28 days after the end of the period within which an appeal against the finding or penalty may be lodged or, if such an appeal is lodged and not allowed in full, within 28 days after proceedings on the appeal are concluded.

***Note:** This Rule requiring a member to co-operate with any investigation applies regardless of whether he has allegedly broken a Rule or Rules, and follows from each*

member's agreement to be bound by the Rules of Conduct which he signed in applying to join the Association. The full details of how the Association handles any investigation are set out from time-to-time in the Disciplinary Procedure Regulations. This Rule is merely a synopsis of these regulations. Any member may obtain a copy of the Regulations on application to the Compliance Officer at the Secretariat.

RULE 15

Examination Regulations.

Every member to whom examination requirements apply shall comply with such Regulations as the Board may, from time-to-time, stipulate for that purpose.

Rule 16

Prohibition from dealing

No member shall be allowed to purchase goods, chattels, or property of a client or other person with whom they have come into contact in the ordinary course of their day to day business either as auctioneer or valuer with the object of providing that client with either an auctioneering service for the sale of such property or a valuation thereof, with the intent thereafter to take title to that property for their own benefit or account or for the benefit or account of any persons with whom they are associated.