

Institute of Professional Auctioneers & Valuers



Code of Conduct

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Code of Conduct

Introductory Notes

This Code of Conduct forms an integral part of the conditions of membership of the Institute. All applicants for membership of the Institute are sent a copy of the current version of the Code, and on their application form agree to abide by it and the Disciplinary Procedure Regulations.

No contractual obligation

The Code relates solely to the way in which the Institute requires members to conduct their activities as Auctioneer and Valuers. 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 Code the term 'Member Firm' denotes any firm or company practising as estate agents of which a majority of its principals, partners, or directors are members of the Institute.

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

Responsibility for others

Although the Code relates directly to estate agency activities, members are advised to note that they are answerable for the acts of members and non-members employed by a member firm of which they are a principal, or partner, whether or not they are personally at fault and they may be penalised accordingly.

Penalties

If in the opinion of the Disciplinary Committee the member is found to be guilty of dishonourable, improper or unprofessional conduct they may censure the member or suspend him from exercise of all rights and privileges as a member during such period not exceeding two years as it may think fit or exclude him from membership of the Institute or otherwise deal with such member as it thinks fit.

Proceedings

Disciplinary proceedings are initiated by a complaint in writing being lodged with the Institute. This complaint will be drawn to the attention of the member and written comments invited thereon. A decision will then be made as to whether there is a prima facie case for an enquiry. If it is decided that no prima facie case exists the complainant will be so informed in writing and no further action will be taken.

If however the Disciplinary Committee shall be of the opinion that a prima facie case for an enquiry has been shown it shall fix a date for such enquiry at which the complainant and the member may attend either with or without their solicitor.

Suspension

The Disciplinary Committee at any time following consideration of a complaint and prior to making its decision following an inquiry the Disciplinary Committee may, should it consider it necessary in order to protect the interests of the Institute and of its members, suspend a member from the exercise of all rights and privileges as a member pending such decision.

The right of appeal provision open to a member is as set out in the Articles of Association of the Institute.

Promotion

While the Institute expects its members to avoid 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.

Members are expected to comply with the requirements of the 1997 Litter Pollution Act.

Publication of information

The Institute 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 Disciplinary Committee ought to be published or made known.

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

The Chief Executive
IPAV
129 Lower Baggot Street
Dublin 2

Duty to maintain separate clients' accounts

All members who receive, or may receive, deposits in transactions to which the Auctioneers and House Agents Acts apply, shall open and operate a Clients' Account (or Accounts) - hereinafter described as Statutory Clients' Account(s) - in accordance with the requirements of the Acts and with the Regulations made under it.

General duty to abstain from acts of dishonesty etc.

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

Note: A member is responsible for informing himself as to the requirements of the law and no attempt has been made to write them all into this Code. The Institute is prepared to give such general advice as it can, but where necessary members should seek specific professional advice.

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

- (a) involves dishonesty, dishonourable, or deceitful behaviour, or which is unfair to members of the public; or
- (b) in any other way brings the Institute into disrepute.

Note: The purpose of the above is to enable disciplinary action to be taken against certain kinds of dishonourable behaviour which may adversely affect the public when dealing with a member, or are seriously detrimental to the Institute, but which are not covered by another more specific Code. It is not intended to differ from the spirit of the Code as a whole, nor to limit the freedom of members to conduct their business competitively.

This is the only Code which applies to a member's conduct generally and is not confined to estate agency.

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 description indicating that he is a member of any particular class, if he is not such a member, or is for the time being suspended from membership.

Note:

This Code 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.

Attention is also drawn to Article 27/28 of the Memorandum and Articles of Association as follows:

Arrears of Subscriptions

28. Any member, shall, ipso facto, cease to be a member in the event of his annual subscription or any other sum, or sums payable by him to the Institute being in arrear for three months from the date on which such subscriptions or other sum or sums, respectively, become payable, the member shall, nevertheless, be liable to pay the amount of such year's subscription or other sums due by him to the Institute and shall be liable otherwise on the footing that his membership continued until the date when all such subscriptions, arrears and other sums were fully paid. The Council shall have power, in special cases, to suspend the operation of this Article 28. In the case of a person who has ceased to be a member under this Article or under Article 27 hereof, the Council may, at their discretion, readmit him to membership upon such conditions as they may think fit.

Bankruptcy

29. If any member shall become bankrupt, or shall either individually or as a partner in a firm make or agree to make an assignment for the benefit of his creditors; or shall make any arrangements or composition with his creditors, or execute any similar deed or agreement, or shall take or attempt to take the benefit of any statutory provision for arrangements with his creditors, or if he shall become of unsound mind or shall be convicted of an indictable offence (other than an offence under the Road Traffic Acts); he shall cease to be a member, but at the discretion of the Council he may be reinstated with or without new entrance fee or subscription.

The Council may, on just cause shown, reinstate a former member in any grade.

Duty to abide by the aims and code of the Institute

A member shall not seek business by methods which are oppressive or involve dishonesty, deceit, or misrepresentation.

No member shall directly or indirectly, in writing or verbally, canvass for or seek instructions to transact business which is known, or with ordinary care could have been ascertained, to be in the hands of another practitioner acting as sole agent.

Prior to accepting any instruction members must enquire if another agent is retained on sole agency terms or has sole selling rights. Where an affirmative answer is received the member must clarify the current standing of the said agency and only accept instructions when he is satisfied that the agency has been withdrawn or the agent has been made aware of the vendors wishes and must ascertain from the said agent that all charges due have been discharged or receive and undertaking from the vendor that they will be settled.

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

The terms under which a member accepts an instruction must be confirmed to the vendor in writing immediately after the instruction is received. The fee charged and the mutually agreed expenditure to cover all outlay is to be confirmed.

Duty to protect and promote client's 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 a re practicable, without improper conduct, or unfairness to members of the public.

Duty as to conflicting interests

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

Even when no conflicts of interest exist at the outset, they may nevertheless arise in a number of ways as the transaction progresses. 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.

Duty to applicants and others

Without detracting from his duty 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.

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.

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

Use of designatory letters, display of Diplomas of Membership etc.

Members are obliged to display their Diploma of Membership of the Institute in a prominent position in their business premises.

Members are further obliged to similarly display their annual membership disc and details of the Institute's Deposit Protection Fund. (Where applicable)

Members must always use the designatory letters MIPAV on all details issued, display units, 'For Sale' signs, and display size advertising.

Auctioneers or House Agents Licence

Members must, where appropriate, secure and retain a current Auctioneer's or House Agent's licence annually and must file with the Institute a copy of that licence within 30 days of the date thereof. Any member who fails to furnish an Auctioneer's or House Agent's licence by 1st September annually must furnish independent evidence from an external accountant or solicitor, or otherwise satisfy the Institute, to the effect that the member does not conduct an auctioneering or estate agency practice, does not hold clients' funds nor operate a client account and does not require an Auctioneer's or House Agent's licence. Members must display their Auctioneer's or House Agent's Licence in a prominent place in their public office.