

## Draft SRA Property Selling Rules [2011] (Annex E2)

[Rules dated \[the date of the approval of the Legal Services Board\] commencing \[insert commencement date\] made by the Solicitors Regulation Authority Board under Part II of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under section 83 of and paragraph 19 of Schedule 4 to the Legal Services Act 2007.](#)

### 1. Purpose

The purpose of these rules is to set out the standards which must be met by *solicitors* and others when they carry on *property selling*, either themselves or through their *employees*.

### 2. Application and interpretation

- (1) These rules apply to:
- (a) *solicitors*;
  - (b) *recognised bodies*;
  - (c) *RELs* or *partners* of *RELs*; and
  - (d) *persons employed by RELs*, their *partners*, *solicitors* or *recognised bodies*
- in any part of the *UK*.
- (2) All italicised terms in these rules are to be interpreted in accordance with chapter 14 of the SRA Code of Conduct, unless they are defined as follows:
- "**associated firm**" means, in relation to:
- (a) a *partnership* with whom you have one *partner* in common;
  - (b) a *LLP* or a *company* without *shares* with whom you have one *member* in common; or
  - (c) a *company* with *shares* with whom you have one *owner* in common;

"**buyer**" includes a prospective buyer;

"**pre-contract deposit**" means the aggregate of all payments which constitute pre-contract deposits from a *buyer* in relation to the proposed sale of a *property*;

"**property**" includes an interest in property; and

"**property selling**" means things done by any *person* in the course of a business (including a business in which they are *employed*) pursuant to instructions received from another *person* (in this section referred to as the "*client*") who wishes to dispose of or acquire an interest in land:

- (a) for the purpose of, or with a view to, effecting the introduction to the *client* of a third person who wishes to acquire or, as the case may be, dispose of such an interest; and
- (b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or, as the case may be, the acquisition of that interest.

### 3. Standards of property selling services

When providing *property selling* services, you must:

- (a) ensure that you, or any *employees* through whom the work is carried out, are competent to do so, and meet any standards of competence set by the Secretary of State under section 22 of the Estate Agents Act 1979;
- (b) not seek from any *buyer* a *pre-contract deposit* in excess of any limit prescribed by the Secretary of State under section 19 of the Estate Agents Act 1979; and
- (c) if you receive from any *buyer* a *pre-contract deposit* which exceeds the prescribed limit, so much of that deposit as exceeds the prescribed limit shall be either repaid to the *buyer* or paid to such other *person* as the *buyer* may direct.

#### Notes

The requirements of rule 3 are in addition to the requirements in the [SRA Code of Conduct](#) in chapter 1 in respect of client relations.

### 4. Statement of agreement

- (1) When accepting instructions to act in the sale of a *property*, you must, at the outset of communication between you and the *client*, or as soon as is reasonably practicable, and before the *client* is committed to any liability towards you, give the *client* a written statement setting out whether or not you are to have "sole agency" or "sole selling rights". The statement must also include a clear explanation of the intention and effect of those terms, or any similar terms used, which shall, subject to (3) below, take the following form:

"Sole agency: You will be liable to pay a fee to us, in addition to any other costs or charges agreed, if unconditional contracts for the sale of the property are exchanged at any time: with a buyer introduced by us with whom we had negotiations about the property in the period during which we have sole agency; or with a buyer introduced by another agent during the period of our sole agency."

"Sole selling rights: You will be liable to pay a fee to us, in addition to any other costs or charges agreed, in each of the following circumstances:

if unconditional contracts for the sale of the property are exchanged in the period during which we have sole selling rights, even if the buyer was not found by us but by another agent or by any other person, including yourself; or

if unconditional contracts for the sale of the property are exchanged after the expiry of the period during which we have sole selling rights but to a buyer who was introduced to you during that period or with whom we had negotiations about the property during that period."

- (2) If the statement refers to a "ready, willing and able" buyer (or similar term), you must include a clear explanation of the term, which shall, subject to (3) below, take the following form:

"A buyer is a "ready, willing and able" buyer if he or she is prepared and is able to exchange unconditional contracts for the purchase of your property. You will be liable to pay a fee to us, in addition to any other costs or charges agreed, if such a buyer is introduced by us in accordance with your instructions and this must be paid even if you subsequently withdraw and unconditional contracts for sale are not exchanged, irrespective of your reasons."

- (3) If, by reason of the provisions of the statement in which any of the terms referred to in (1) or (2) above appear, any of the prescribed explanations is in any way misleading, you should alter the content of the explanation so as accurately to describe the liability of the *client* to pay a fee in accordance with those provisions. Subject to this requirement, you should reproduce the explanations prominently, clearly and legibly without any material alterations or additions. They should be given no less prominence than that given to any other information in the statement apart from the heading, firm names, names of the parties, numbers or lettering subsequently inserted.

## Notes

The requirements of rule 4 correspond to those in the Estate Agents (Provision of Information) Regulations 1991 (SI 1991/859) and the Schedule to those Regulations. The requirements of rule 4 are in addition to the requirements in the [SRA Code of Conduct](#) in chapter 1 in respect of client relations.

## 5. Transactions in which you have a personal interest

- (1) When selling *property* you must comply with the following requirements:
- (a) If you [have](#), or, to your knowledge, any *connected person*, has, or is

seeking to acquire, a beneficial interest in the *property* or in the proceeds of sale of any interest in the *property*, you must promptly inform your *client* in writing.

- (b) If you have, or to your knowledge any *connected person* has, a beneficial interest in a *property* or in the proceeds of sale of any interest in it, you must promptly inform in writing any person negotiating to acquire or dispose of any interest in that *property*. You must make this disclosure before entering into any negotiations with that *person*, whether or not you are negotiating on your own behalf or on that of a *client*.

(2) In paragraph (1) above:

(a) "**connected person**" means:

- (i) any *associated firm*;
- (ii) anyone with whom you are related by blood, marriage or adoption, or with whom you are living together in a civil or domestic partnership;
- (iii) any *owner* or *employee* of your *firm* or of an *associated firm*, or anyone with whom that *owner* or *employee* is related by blood, marriage or adoption, or with whom they are living together in a civil or domestic partnership;
- (iv) any *company* of which you are a *director* or *employee*, or any *LLP* of which you are a *member* or *employee*, or any *company* in which you, either alone or with any other *connected person* or *persons*, are entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting;
- (v) any *company* of which any of the *persons* mentioned in (i) and (ii) above is a *director* or *employee*, or any *LLP* of which any of them is a *member* or *employee*, or any *company* in which any of them, either alone or with any other *connected person* or *persons*, is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting; and
- (vi) any other "associate" as defined in section 32 of the Estate Agents Act 1979; and

- (b) "knowledge" of any matter, includes any matter of which you may reasonably be expected to have knowledge.

**Note**

The requirements in rule 5 are in addition to the need to comply with the requirements in the [SRA Code of Conduct](#) in chapter 4 about conflicts. The requirements in rule 5 are similar to those imposed on estate agents by the Estate Agents (Undesirable Practices) (No.2) Order 1991 (SI 1991/1032).

## **6. Waivers**

The Board of the Solicitors Regulation Authority shall not have power to waive any of the provisions of these rules.

### **Note**

The exemption from the Estate Agents Act 1979 is on the basis that the standards in these rules are complied with in all circumstances. For this reason there is no power to waive.