



Real Estate Agents (Exemptions) Regulations 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 14th day of August 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 156(1)(a) of the Real Estate Agents Act 2008—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Justice after—
 - (i) being satisfied as to the matters specified in section 156(3)(a) of that Act; and
 - (ii) consulting in accordance with section 156(3)(b) of that Act.

Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Transitional, savings, and related provisions	2
5 Persons and classes of persons exempt from requirement to be licensed under Act	2
Schedule 1	2
Transitional, savings, and related provisions	2
Schedule 2	3
Exemptions from requirement to be licensed under Act	3

Regulations

1 Title

These regulations are the Real Estate Agents (Exemptions) Regulations 2017.

2 Commencement

These regulations come into force on 1 November 2017.

3 Interpretation

In these regulations, unless the context otherwise requires, **Act** means the Real Estate Agents Act 2008.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

5 Persons and classes of persons exempt from requirement to be licensed under Act

- (1) Any person, or class of persons, to whom a Part in Schedule 2 applies is exempt from the requirement to be licensed under the Act to carry out real estate agency work.
- (2) An exemption specified in a Part in Schedule 2 is subject to any terms and conditions specified in that Part.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Schedule 2

Exemptions from requirement to be licensed under Act

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Part 1

Registered members of New Zealand Institute of Forestry

1 Interpretation

In this Part, unless the context otherwise requires,—

forestry sector means all those activities involved in the management and use of forests and their products, the purposes of which are—

- (a) the production of wood or other forest benefits; and
- (b) the maintenance of forest environments in their most beneficial form

NZIF means the New Zealand Institute of Forestry (NZIF) Te Pūtahi Ngāherehere o Aotearoa Incorporated

registered member means a person who holds a certificate of registration granted by the NZIF in accordance with its rules

rules means—

- (a) the rules of the NZIF; and
- (b) any regulations made under the rules of the NZIF; and
- (c) the NZIF Code of Ethics.

2 Application

- (1) This Part applies on and from 1 November 2017.
- (2) This Part applies to registered members if they—
 - (a) carry out real estate agency work in the forestry sector; and
 - (b) comply with the terms and conditions specified in clause 4.
- (3) This Part ceases to apply if, on or after the commencement of this Part, the NZIF amends any provision in the rules without the approval of the Ministry of Justice.

3 Exemption for registered members

- (1) If this Part applies, a registered member may carry out real estate agency work in the forestry sector without being licensed under the Act.
- (2) However, if a transaction relates to non-forestry sector activities, a registered member may not carry out agency work in relation to those activities unless licensed under the Act.
- (3) A registered member is not eligible for an exemption if the registered member—

- (a) was convicted of a crime involving dishonesty within the 10 years preceding an application for registration or a renewal of a registration; or
- (b) was convicted of an offence under the Fair Trading Act 1986 within the 5 years preceding the application for registration or a renewal of a registration; or
- (c) was a licensed real estate agent whose licence was cancelled within the 5 years preceding the application for registration or a renewal of a registration; or
- (d) is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated body; or
- (e) is an undischarged bankrupt.

4 Terms and conditions of exemption

- (1) A registered member must comply with the rules, including (but not limited to) the provisions relating to—
 - (a) the exemption for registered members;
 - (b) the duties of registered members, including (but not limited to) the duties relating to—
 - (i) professional competence and conduct;
 - (ii) clients;
 - (iii) land defects;
 - (c) qualifications and eligibility requirements for registration;
 - (d) continuing education and professional development requirements;
 - (e) conflicts of interest;
 - (f) payments and commissions;
 - (g) disciplinary orders and complaints.
- (2) A registered member may not—
 - (a) accept remuneration for any real estate agency work in the form of a commission that is in addition to, or instead of, the professional charges of the registered member; or
 - (b) prepare, in connection with a real estate transaction, an agreement of sale and purchase; or
 - (c) give advice about legal rights and obligations that is incidental to the preparing of an agreement of the kind referred to in paragraph (b); or
 - (d) manage money related to a transaction.
- (3) A registered member must—
 - (a) inform each client in writing—

- (i) that the member is not a licensed real estate agent or salesperson; and
- (ii) that the client may need to seek—
 - (A) advice from a licensed real estate agent or salesperson;
 - (B) legal advice; and
- (iii) of any actual or potential conflict of interest that the member may have; and
- (iv) of the differences between the disciplinary regimes of the NZIF and the Real Estate Agents Act 2008; and

- (b) retain a signed written statement from each client that acknowledges each of the member's disclosures under paragraph (a).

(4) If a registered member has an actual or potential conflict of interest, the client may still engage the member if the client states in the signed written statement that the client has been informed of the conflict and still wishes to engage the member.

(5) If a registered member fails to comply with subclause (3)(a)(iii), the client—

- (a) may cancel the contract with the registered member;
- (b) may cancel any contract arising out of the contract with the registered member;
- (c) is not liable to pay any fees regardless of whether the contract is cancelled;
- (d) may recover any fees paid regardless of whether the contract is cancelled.

(6) To avoid doubt, **fees** excludes any expenses that a registered member has incurred on behalf of a client.

5 Reasons for exemption

The exemption has been granted for the following reasons:

- (a) a requirement that registered members must be licensed under the Act is too onerous having regard to—
 - (i) the small volume of real estate agency work that they carry out; and
 - (ii) the type of real estate agency work they carry out;
- (b) the activities that registered members are allowed to perform under the exemption are limited;
- (c) requiring registered members to be licensed to carry out those activities provides no material benefit for consumers;

(d) the rules, and the terms and conditions specified in clause 4, provide the necessary protection for consumers when registered members carry out real estate agency work in respect of real estate used in forestry.

6 Requirements of Part prevail in cases of inconsistency with rules

If an inconsistency exists between the provisions of the rules and the provisions of this Part, the provisions of this Part prevail.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 November 2017, allow registered members of the New Zealand Institute of Forestry (NZIF) Te Pūtahi Ngāhorehere o Aotearoa Incorporated (NZIF) to carry out real estate agency work without being licensed under the Real Estate Agents Act 2008.

The exemption is subject to terms and conditions and is supported by a memorandum of understanding between the Ministry of Justice and the NZIF dated 25 July 2017. Essentially, a registered member of the NZIF may not act as a replacement for a real estate agent with respect to a forestry sector transaction.

The NZIF has undertaken to report annually to the Ministry of Justice on compliance with the terms and conditions, which provides a regular opportunity for the Minister to consider whether the exemption should continue to apply. The NZIF has also undertaken not to amend any provision in the rules without the approval of the Ministry of Justice.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 17 August 2017.

These regulations are administered by the Ministry of Justice.