

Settlement Agents Code of Conduct Amendment Rules 2020

SL 2020/221

Made by the Commissioner with the approval of the Minister.

1. Citation

These rules are the *Settlement Agents Code of Conduct Amendment Rules 2020*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. Rules amended

These rules amend the *Settlement Agents Code of Conduct 2016*.

4. Rule 23 amended

Delete rule 23(3) and (4) and insert:

- (3) Without limiting subrule (2), the service amount must include all amounts —
 - (a) that are listed, or that reflect amounts that are listed, in subrule (4); and
 - (b) that the client will be charged by the licensee.
- (4) The amounts are as follows —
 - (a) professional fees;
 - (b) commissions;
 - (c) general office disbursements;
 - (d) search or enquiry fees or charges;
 - (e) electronic conveyancing service fees or charges;
 - (f) any other types of fees or charges;
 - (g) taxes, duties or levies.

- (5) However, the service amount must not include any amount that is, or reflects, an amount that is imposed on the client (as opposed to the licensee) under a written law or otherwise by a third party, for example —
- (a) duty imposed on the client under the *Duties Act 2008*;
 - (b) commissions imposed on the client by —
 - (i) an agent as defined in the *Real Estate and Business Agents Act 1978* section 4(1); or
 - (ii) a developer as defined in the *Real Estate and Business Agents Act 1978* section 4(1); or
 - (iii) any other third party.
- (6) An amount that is imposed on the client as referred to in subrule (5) may be set out, or estimated, in the costs disclosure separately from the service amount.

5. Rule 24 replaced

Delete rule 24 and insert:

24. Payment not to exceed service amount unless exception applies

- (1) A licensee is not entitled to receive payment for services that exceeds the service amount for those services disclosed in the costs disclosure given under rule 23(1) unless subrule (2) or (3) applies.
- (2) The licensee may receive payment of an amount (the ***additional amount***) in addition to the service amount if —
 - (a) an amount of work (the ***additional work***), in addition to the work that was provided for in the calculation of the service amount, is required to provide the services; and
 - (b) the licensee could not reasonably have foreseen the requirement for the additional work when the costs disclosure was given; and
 - (c) the licensee informs the client in writing of the additional work; and
 - (d) the client agrees to the licensee continuing to provide the services; and
 - (e) the additional amount is reasonable having regard to the type and scope of the additional work.

- (3) The licensee may receive payment of an amount (the ***additional amount***) in addition to the service amount if —
- (a) the service amount includes an amount that reflects a tax, duty, fee, levy or charge imposed on the licensee under a written law in relation to the services; and
 - (b) after the costs disclosure is given —
 - (i) a written law comes into operation or a power under a written law is exercised; and
 - (ii) as a result, there is an increase in the amount of the tax, duty, fee, levy or charge that is imposed on the licensee as referred to in paragraph (a);
- and
- (c) the increase, or a part of the increase, was not provided for in the calculation of the service amount; and
 - (d) as soon as practicable, the licensee informs the client in writing of the amount of the increase that was not provided for in the calculation of the service amount; and
 - (e) the additional amount is reasonable having regard to the amount of the increase that was not provided for in the calculation of the service amount.

6. Rule 27A inserted

At the end of Part 5 insert:

27A. Transitional provision for the *Settlement Agents Code of Conduct Amendment Rules 2020*

- (1) In this rule —
commencement day means the day on which the *Settlement Agents Code of Conduct Amendment Rules 2020* rule 3 comes into operation.
- (2) Rules 23 and 24 of these rules as in force immediately before commencement day continue to apply to cases in which a costs disclosure is given to a client before commencement day.

Approved by:

J. QUIGLEY, Minister for Commerce.

LANIE CHOPPING, Commissioner.
