



## ***Conflicts of Interest Code & Guidance***

### ***Conflicts of Interest Code***

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies regulated by the CLC must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

#### ***Outcomes-Focused***

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- Each **Client's** best interests are served; (**Outcome 3.1**)
- **Clients** have the information they need to make informed decisions; (**Outcome 3.3**)
- **Clients** are aware of any limitation or any condition resulting from your relationship with another party. (**Outcome 3.5**)

The prevention, detection and mitigation of **conflicts of interests** help you deliver these **Outcomes** and act in a principled way:

1. **Act with Independence and Integrity. (Overriding Principle 1)**
2. **Act in the best interests of your Clients. (Overriding Principle 3)**
3. You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**). (**CoC P3b**)
4. You do not act for a **Client** where you judge it is not in their best interest for you to do so. (**CoC 3c**)

5. You do not accept instructions from a person nor continue to act for a **Client** whose interests conflict directly with your own, the entity's, or another **Client**. (CoC P3d)

You must also comply with the following *specific requirements*:

6. Where the entity represents parties with different interests in any transaction each party is at all times represented by different **Authorised Persons** conducting themselves in the matter as though they were members of different entities. (CoC P3n)
7. Before or when accepting instructions to act for a second **Client** you inform each **Client** in writing that the body has been asked to act for another **Client** in the same matter and you explain the relevant issues and risks to them.
8. You only act for both **Clients** if each **Client** has provided informed written consent that you may act for another **Client** in the matter.
9. You do not act, or do not continue to act, for a **Client** where your ability to give independent advice is in any way restricted. This may arise if:
  - (a) you owe separate duties to act in the best interests of two or more **clients** in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict; or
  - (b) your duty to act in the best interests of any **client** in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter.
10. If a conflict arises which was or should have been foreseen, you do not charge either **Client** a fee for the work undertaken (other than for **disbursements** properly incurred).
11. As an exception to requirement 6, and provided no conflict of interest arises, if you are a body with only one **Authorised Person** you may act for more than one **Client** where one of the **Clients** is a lender providing mortgages in the normal course of its business activities.

---

## **Conflicts of Interest Guidance**

### **Assessment of circumstances**

1. You should assess all relevant factors to determine if there is a conflict of interest between **Clients**. For instance, if there is an imbalance in bargaining power between the **Clients**, or a **Client** is vulnerable, or their interests are markedly different and cannot be reasonably reconciled.

2. You should assess all relevant factors to determine if there is a conflict of interest between yourself and a **client**. For instance, if there is a financial interest or a personal or commercial relationship.

#### **Arm's length transactions**

3. A body may act for two or more **Clients** in an arm's length transaction for value where each **Client** is represented by a different **Authorised Person**, except where a conflict of interest arises:
  - a) A matter will not generally be regarded as an arm's length transaction where the parties are related by blood, adoption or marriage or in a stable relationship (e.g. a cohabiting couple or the parties otherwise treat each other as family members).
  - b) The determining factor is not the specific relationship but the existence of any inequality of influence or disproportionate bargaining power which may give rise to a conflict of interest between the **Clients**.

#### **Conveyancing transactions**

4. You must consider carefully whether a conflict of interest arises or is likely to arise when the body receives instructions to act for different **Clients** in the same matter where the seller is:-
  - (i) a developer or builder; or
  - (ii) a lessor granting a lease