

New Zealand Residential Property Agency Agreements Guide

This guide has been prepared and approved by the Real Estate Agents Authority



Important things to know:

1. An agency agreement is a **legally binding** contract.

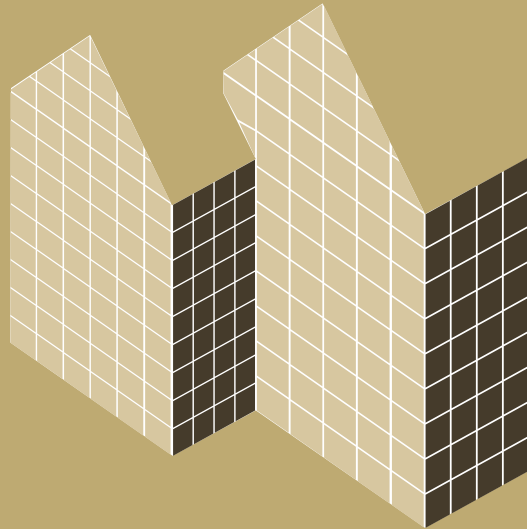
2. You can **negotiate** the terms of the agency agreement including the timeframe it covers, the amount of commission paid to the agent, and payment of any expenses.

3. Agents must **disclose** to you any rebate, commission or discount they receive in connection with any work they do for you.

4. Be aware of the differences between a **sole agency agreement** and a **general agency agreement**.

5. Make sure you **read** and **understand** the agency agreement before signing it.

6. Consider seeking **legal advice**.



Introduction

Selling your home can be a complex process and most people choose to use a real estate agent¹ to help them. If you use an agent you will need to enter into a written agency agreement which forms the contract between you and the agent.

This is a guide to the agency agreement that you will be asked to sign if you wish to sell residential property through an agent.

This guide provides information about agency agreements, tells you where you can get more information, what to expect from your agent, and what to do if there is a problem.

This guide only relates to the sale of residential property.

This guide is just that - guidance. You should not rely on it for legal advice. It has been prepared by the Real Estate Agents Authority (REAA), a Crown entity established by the Real Estate Agents Act 2008.

Your agent must provide you with a copy of this guide before you sign an agency agreement and ask you to confirm in writing that you've received it.

The agent must also give you a copy of the *New Zealand Residential Property Sale and Purchase Agreements Guide* when presenting an offer from a buyer. If you require more information you can consult your lawyer and information is also available on the REAA website: **www.reaa.govt.nz**.

¹ Real estate agent or agent are general terms that refer to an agent, branch manager or salesperson.

Who can carry out real estate work?

Your agent must hold a current licence issued by the REAA to carry out real estate work

You can ask to see proof of licence and you can also check the register of licensees at **www.reaa.govt.nz** to see if the person is licensed, and whether their conduct has resulted in recent disciplinary action.

Why do I need an agency agreement?

If you want to use an agent you have to have an agency agreement. This gives the agent, and the agency they work for, the right to market your property for sale.

What is an agency agreement?

An agency agreement is a legally binding contract between you and an agent. It sets out the terms and conditions on which you appoint an agent, what the agent will do for you, and what you will pay them.

One agent may sign you up, but once you've listed your property, any agent in the company can try and sell your property.

Make sure you read and understand the agency agreement before signing it.

What do I need to know before I sign an agency agreement?

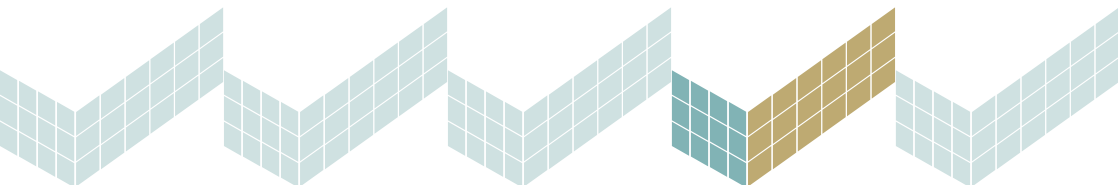
Before you sign the agent should give you the following information.

- **A written market appraisal:** This is the agent's best estimate of the price they expect your property could be sold for, based on sales and prices for similar properties in your area or a similar area.
- **How they recommend you sell your property:** They should recommend the best way of selling your property and how they will market and advertise it.
- **How they will be paid:** What you will have to pay the agent (usually referred to as commission), when you will have to pay, and how this payment is calculated. Commissions can vary from one agent to another, so you may want to compare them. You can also negotiate on the amount or rate of commission to be paid. Commission is usually calculated as a percentage of the selling price, plus GST.

The agent must:

- explain the formula that is being used
- provide you with an estimate in dollar terms of the commission you would have to pay if your property sold at the appraised price.
- **Expenses:** What expenses you will have to pay e.g. advertising costs that are not included in the commission.

You can negotiate the terms of the agency agreement including the timeframe it covers, the amount of commission paid to the agent, and the payment of any expenses.



What can I expect to see in an agency agreement?

While the layout and content of agency agreements vary from one agent to another, the following are some of the main things you should see.

Details about the property for sale

- The address of your property.
- The chattels that are to be sold with your property e.g. whiteware, drapes, television aerial etc.
- Details about your property e.g. number of bedrooms, bathrooms, land area etc.

You must ensure that any details you provide to the agent are accurate and factual or you may leave yourself open to legal action.

Information about the parties to the agreement

- Your name, address and other contact details.
- The name and contact details of your lawyer.
- The name of the agent that is dealing with the marketing and sale of your property on a day-to-day basis.
- The agent's business name and address.

Confirmation that you have the authority to sign the agency agreement on behalf of all owners of the property

If you are not the sole owner of the property, you must either ensure that all owners sign the agency agreement, or that you have the authority of all the other owners to sign for them.

Confirmation you have been given a copy of this guide

The Real Estate Agents Act 2008 requires an agent to give you a copy of the *Residential Property Agency Agreements Guide* before you sign an agency agreement, and to get your written confirmation that you have received the guide.



Appointment of the agent and details of what the agent is authorised to do

The agency agreement appoints the named agent (usually a company) and details what they are authorised to do. For example:

- Put a 'For Sale' sign on your property.
- Advertise your property for sale at the price, in the way, and on the conditions you have authorised.
- Arrange inspection of your property by prospective buyers.
- Receive a deposit on your behalf.
- Deduct the agent's commission from the deposit in the event that an offer becomes unconditional.

The type of agency agreement and the term of the agreement

The agency agreement will state whether this is a **sole agency** or **general agency**, the date on which the agency agreement starts, when it ends, and how to end the agreement. The term of an agency agreement is negotiable. A sole agency means that **only** that agency can carry out real estate agency work on the property identified in the agency agreement.

What's the difference between sole and general agency?

- A **sole agency** gives one agency the exclusive right to market and arrange the sale of your property.
- A **general agency** is not exclusive and you may employ other agencies and/or market your property privately.

There are some things to be aware of if you are considering a sole agency:

- You should not sign another agency agreement if you already have a sole agency in place. If you do you may have to pay all the agencies a commission, regardless of which agency actually arranged the sale.
- If you have second thoughts about a sole agency agreement after you have signed it, you can cancel the agreement by 5pm on the next working day after the day you receive a copy of the agreement. Cancellation must be in writing which includes fax or email.

- If you sign a sole agency agreement that is for a term of more than 90 days, then either you or the agent can end the sole agency agreement after 90 days. This must be done in writing.
- In some agreements, the sole agency agreement becomes a general agency agreement when the sole agency is cancelled. This means you will also need to cancel the general agency agreement if you do not wish to continue with the agency.

Method of sale and price of property

The agency agreement will detail how you have agreed to sell your property. This could be by advertised price, negotiation, tender, or auction.

The agency agreement will include a 'listing price' if your property is being marketed with an advertised price. The agency agreement will not include a listing price if your property is being marketed by negotiation, tender or auction.

For more information, see the Tenders and Auctions Information Sheets available from www.reaa.govt.nz or by calling 0800 for **REAA (0800 367 7322)**.

Commission

The agency agreement will include details of how the commission to be paid to the agent will be calculated and when it will be paid to the agent.

It is important that you fully understand your rights and obligations concerning payment of commission.

For more information, see the Commission Information Sheet available from www.reaa.govt.nz or by calling **0800 for REAA (0800 367 7322)**.

Advertising and marketing expenses

The agency agreement may include separate advertising and marketing costs. You do not have to pay extra for advertising if you do not want to. Before you commit to paying extra advertising costs ask what advertising is provided without charge. As part of their service agents usually provide 'free' advertising which may include:

- Putting details of your property on the agent's website.
- Putting details of your property on other real estate websites.
- Putting details of your property in real estate publications.
- Displaying a photo and details in the agent's office.
- Providing a 'For Sale' sign outside your property.

You need to consider the cost of extra advertising against the possible benefit. The agent should prepare a detailed marketing plan and explain why this extra cost is worth it. Remember, you have to pay for extra advertising even if your property does not sell.

For more information, see the Advertising Information Sheet available from www.reaa.govt.nz or by calling **0800 for REAA** (0800 367 7322).

Disclosure of rebates, discounts or commissions that the agent may receive

If an agent gets a discount, rebate or commission on any services that they arrange for you and that you are paying for, they have to tell you about this. For example an agent may receive a discount on the cost of advertising your property in a newspaper.

This disclosure is done in a form that must be included in the agency agreement. The form must either show the estimated amount of rebate, discount or commission, and its source, or a statement that the agent will not be receiving any rebates, commissions or discounts.

While the agent is not required by law to share these rebates, commissions or discounts with you, you may wish to negotiate a share with the agent.

For more information, see the Disclosure of Rebates, Discounts and Commissions Information Sheet available from www.reaa.govt.nz or by calling **0800 for REAA** (0800 367 7322).

Remember you can ask questions, take independent advice, talk to more than one agent, and negotiate on commission, expenses, and services.

What happens when I get an offer?

When someone makes an offer to buy your property, your agent will bring you the offer in the form of a written sale and purchase agreement. Before you sign any sale and purchase agreement you must be given a copy of the *Residential Property Sale and Purchase Agreements Guide*. You are advised not to sign anything until you have read and understood this guide and have shown the sale and purchase agreement to your lawyer.

What if there's a problem?

If you are concerned about the behaviour of an agent, you should discuss any concerns you have with the agent or their manager. Agents are required to have in-house complaints resolution procedures.

If this does not work or if you do not wish to go through this process you can contact the REAA.

The REAA has a number of ways it can help with your concerns. This includes sending the agent a compliance advice letter, arranging alternative dispute resolution or processing the matter as a complaint. When you contact the REAA they will help you identify the best way of dealing with your concern.

More information on how the REAA can help you can be found at www.reaa.govt.nz or by calling **0800 for REAA** (0800 367 7322).

You can get more information from...

There are several places you can go for help and advice including:

- The Real Estate Agents Authority (REAA) at www.reaa.govt.nz or call **0800 for REAA** (0800 367 7322).

The REAA can provide information and assistance on a wide range of issues and is responsible for dealing with concerns about real estate agents.

- Your lawyer.
- Community Law Centres www.communitylaw.org.nz.
- Citizens Advice Bureau www.cab.org.nz.
- Ministry of Consumer Affairs www.consumeraffairs.govt.nz.
- NZ Law Society Property Section www.propertylawyers.org.nz.
- Consumer Build www.consumerbuild.org.nz.



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To the best of the Real Estate Agents Authority knowledge, the information in this guide is accurate at the date shown below. However, the requirements on which this information is based can change at any time and the most up-to-date information is available at www.reaa.govt.nz [Version 1.1, 1 July 2011].

