

New Zealand Residential Property Agency Agreements Guide

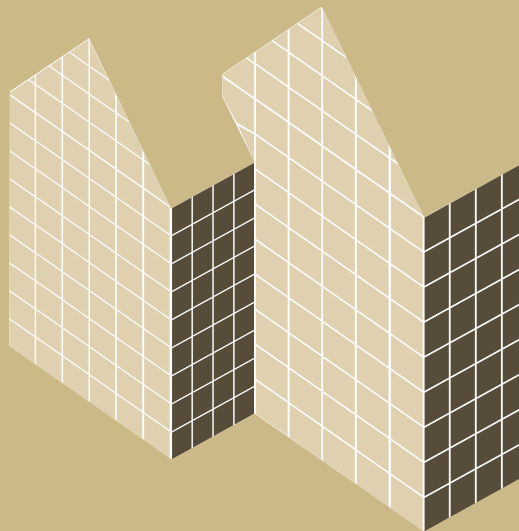
This guide has been prepared and approved by the Real Estate Agents Authority



Important things to know:

1. An agency agreement is a legally binding agreement.
2. 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.
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.

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Introduction

Selling your own home can be a complex process. Most people choose to use an agent¹ to assist them in selling their property. If you use an agent you will need to enter into a written agency agreement.

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 – it is a legal document that forms the contract between the seller of a property and the agent representing the seller's interests.

This guide provides information about agency agreements and tells you where you can get more information, how to make complaints and what to expect from your agent. 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's been prepared by the Real Estate Agents Authority, 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. Information is also available on the Real Estate Agents Authority website: www.reaa.govt.nz.

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

Why do I need an agency agreement?

While private sales are on the increase in New Zealand and there is no legal requirement to use a real estate agent when selling property, most people will engage an agent to help them through the sales process.

Employing a real estate agent means that your property will be listed and marketed by the agency for which the real estate agent works.

If you want to use an agent, you need to have an agency agreement as this gives the agent the right to sell your property.

What is an agency agreement?

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

When you enter into an agency agreement with a real estate agent, you are listing your home for sale. One agent may sign you up, but once you've listed your home any agent in the company can try to sell your home.

Who can carry out real estate work?

Agents, branch managers and salespersons who have a current licence issued by the Real Estate Agents Authority can carry out real estate work.

You should ensure that you always engage a person licensed as an agent, branch manager or salesperson. You can ask to see proof of the licence.

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.

What is the difference between an agent, branch manager and salesperson?

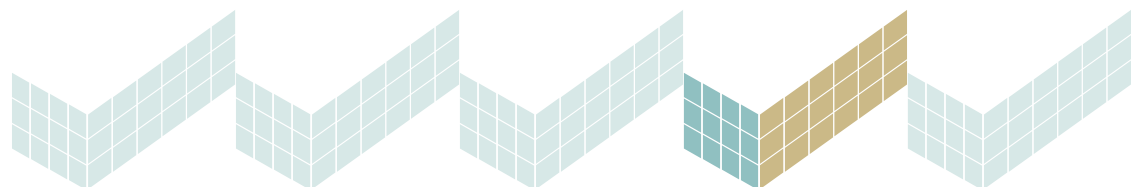
- An **agent** is qualified to carry out real estate agency work on his, her or its (in the case of a company) own account.
- A **branch manager** is qualified to carry out real estate agency work for or on behalf of an agent.
- A **salesperson** is qualified to carry out real estate agency work for or on behalf of an agent. A salesperson must be properly supervised and managed by an agent or branch manager when carrying out any real estate agency work.

The term agent is used throughout this guide to refer to an agent, branch manager or salesperson.

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

Before you sign an agency agreement 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. You can also get your own valuation.
- **How they recommend you sell your property:** This could be sale by advertised price, by tender or by auction. They should recommend the best way of selling and how they will market and advertise it.



- **How they will be paid:** Information on 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:** Information on whether you will have to pay any expenses (e.g. advertising costs) that are not included in the commission.

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 is a general indication of the main things you should expect to 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.
- Details about your property e.g. number of bedrooms and bathrooms, land area.

You must be honest and ensure that any details you provide to the agent are accurate and factual. If you knowingly provide misleading or incorrect information, 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 who 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 ensure either 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 the agent to give you a copy of the *New Zealand 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 inspections 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 agent (and the salespersons who work for that agent) 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 agent the exclusive right to market and arrange a sale of your property.
- A **general agency** is when you employ more than one agent to market and arrange a sale of your property.

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

- You should not sign another agency agreement with any other agent if you already have a sole agency in place. If you do, you may have to pay all the agents a commission, regardless of which agent 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 on which you receive a copy of the agreement.
- If you sign a sole agency agreement that is for a term of more than 90 days, either you or the agent can end the agreement after 90 days. This must be done in writing.

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 Fact Sheets, available from www.reaa.govt.nz or by calling **0800forREAA** (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 the payment of commission.

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

Expenses**Advertising and marketing**

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 benefits. 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 Fact Sheet, available from www.reaa.govt.nz or by calling **0800forREAA** (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 for which you are paying, 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 by way of a form that **must** be included in the agency agreement. The form must either show the estimated amount of discount, rebate or commission, and its source, or a statement that the agent will not be receiving any rebates, commissions or discounts.

The agent is committing an offence under the Act if this form is not included with the agreement.

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

For more information, see the Disclosure of Rebates, Discounts and Commissions Fact Sheet, available from www.reaa.govt.nz or by calling **0800forREAA** (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 *New Zealand 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 over some aspect of the service you have received from a real estate agent, you should in the first instance discuss any concerns you have with the agent or their manager. Agents are required to have in-house complaints resolution procedures.

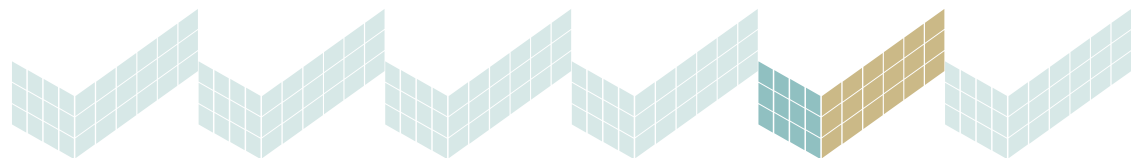
If this does not work or if you do not wish to go through this channel, you can complain directly to the Real Estate Agents Authority.

More information on the Authority's complaints process can be found at www.reaa.govt.nz or by calling **0800forREAA** (0800 367 7322) and requesting a copy of the How to Make a Complaint brochure and/or the Complaint Form.

More helpful information can be found at...

Whether you are a buyer or a seller, there are several sources of help and advice you can go to, including:

- the Real Estate Agents Authority at www.reaa.govt.nz or by calling **0800forREAA** (0800 367 7322). The Real Estate Agents Authority can provide information and assistance on a wide range of issues and has the specific responsibility of dealing with complaints in relation to real estate agency work
- your lawyer
- Community Law Centres www.lsa.govt.nz
- Citizens Advice Bureaux 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's 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 1.0, 17 November 2009].



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