

Selling your property?

REA
REAL ESTATE AUTHORITY
TE MANA PAPAWHENUA

New Zealand Residential Property
Agency Agreement Guide





This guide tells you...

what an agency agreement is

what the real estate professional should tell you before you sign an agency agreement

what's in an agency agreement

what happens if you have a problem

where to go for more information

Where to go for more information

This guide is available in other languages. You can find translated copies of this guide on [rea.govt.nz](https://www.rea.govt.nz) and [settled.govt.nz](https://www.settled.govt.nz).

The New Zealand Residential Property Sale and Purchase Agreement Guide is also available on [settled.govt.nz](https://www.settled.govt.nz). The guide tells you more about the agreement you sign with the person who buys your property.

We welcome any feedback you have on this publication.

The information in this guide was accurate when published. However, the requirements this information is based on can change at any time. Up-to-date information is available at [rea.govt.nz](https://www.rea.govt.nz).

Key things to know about agency agreements

- An agency agreement is a legally binding contract between you, the seller of the property, and a real estate agency.
- Sole agency agreements and general agency agreements allow different things.
- You can negotiate what's in an agency agreement, including the timeframe it covers, how much commission you'll pay and any expenses you'll pay.
- Your real estate professional must verify your identification to meet obligations under New Zealand's anti-money laundering legislation.
- You need to read and understand the agency agreement before you sign it.
- You should also get legal advice before you sign.
- The agency agreement is only available in English. You may need assistance interpreting it if English is not your primary language.
- You must be given a copy of the signed agency agreement within 48 hours of it being signed.

What an agency agreement is

An agency agreement gives the real estate agency the right to market your property for sale. It sets out all the terms and conditions of your contract, such as what your real estate professional will do for you and what you'll pay them.

If you use a real estate agency to sell your property, you must sign an agency agreement with them first. This is called listing your property.

While an individual real estate professional may sign you up, your contract is between you and the real estate agency they work for. Depending on the conditions of the agency agreement, once you've listed your property, any real estate professional in the agency can help you sell it. It is important to remember that all real estate professionals in the agency you list with are working for you – even if they find their own buyers.

Check...

First, check that your real estate professional is licensed. Use the public register at [rea.govt.nz](https://www.rea.govt.nz) to check their details and see if they've had any complaints upheld against them in the last 3 years.

If you deal with an unlicensed person, it can make it harder to get help if things go wrong and the Real Estate Authority may be limited in the way we can help you.



What's in an agency agreement

The layout and content of agency agreements can vary between real estate agencies, but it should include the following things.

Details about the property for sale

- The address of your property.
- The chattels to be sold with your property, for example, whiteware or curtains.
- Details about your property, for example, land area and number of bedrooms and bathrooms.

Information that needs to be shared with the buyer

- Whether there is any part of the property that doesn't have building consent or a code compliance certificate.
- If the property has any faulty building materials like asbestos or Dux Quest piping.
- If there are any planned developments nearby that might affect the property.

You need to make sure that any details you give the real estate professional are accurate. If you don't, the buyer may be able to take legal action against you.

Details about you and the real estate agency

- Your name, address and other contact details. (The real estate agency will need to verify your identity so they can meet their obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.)
- The name and contact details of your lawyer or conveyancer.

- The name of the real estate professional mainly responsible for marketing and selling your property.
- The real estate agency's name and address.

Who has the authority to sell the property?

If you're not the only owner of the property, all owners must sign the agency agreement or you must show you have the authority to sign for all owners.

Confirmation that you've been given a copy of this guide

Your real estate professional is legally obliged to give you a copy of this guide before you sign an agency agreement. They also have to get your written confirmation that you've received it.

Details of what you authorise the real estate agency to do

The agency agreement appoints your chosen real estate agency and sets out what you authorise them to do. For example:

- advertise your property for sale at the price, in the way and on the conditions you've agreed to
- arrange inspection of your property by prospective buyers
- receive a deposit on your behalf
- take their commission from the deposit.

The type of agency agreement and how long it lasts

The agency agreement will state whether it's a sole agency or general agency agreement, when it starts, when it ends and how to end it. It is up to you and the real estate agency to agree how long the agreement will last.

It is important to tell the real estate professional everything you know about the property. A real estate professional is required to disclose known defects of a property to the potential buyer. You may not instruct the real estate professional to withhold any information about the property. A real estate professional may cancel an agency agreement if you instruct them not to disclose known defects.

The real estate professional must give you a copy of the signed agency agreement within 48 hours of it being signed.

Sole agency and general agency agreements allow different things

A sole agency agreement gives one real estate agency the exclusive right to market and sell your property.

A general agency agreement gives more than one real estate agency the right to market your property. You'll sign a separate agreement with each real estate agency but should only pay a commission to one agency. The real estate agencies must tell you if there is a risk of you paying two commissions.

If you sign a sole agency agreement, there are some things you should be aware of:

- You shouldn't sign another agency agreement with anyone else. If you do, you may have to pay both real estate agencies a commission when your property sells.
- If you sell the property privately with a sole agency agreement in place, you will still need to pay the real estate agency a commission when you sell.
- You or the real estate agency can cancel a sole agency agreement at the end of 90 days if that sole agency agreement was for longer than 90 days. Ending the agency agreement must be done in writing.
- In some cases, cancelling a sole agency agreement means it becomes a general agency agreement. You'll need to cancel this too if you don't want to continue with the real estate agency.

You can ask questions, get independent advice, talk to more than one real estate professional and negotiate what's in the agency agreement. You can negotiate timeframes, commission, expenses or services. Make sure you and your lawyer are happy with the agreement before you sign it.

Details of any rebates, discounts or commissions the real estate professional may receive

If a real estate professional gets a discount, rebate or commission on any services they arrange for you and you're paying for, they have to tell you. For example, a real estate professional may receive a discount on the cost of advertising your property in a newspaper.

Avoid paying two commissions

REA introduced standard clauses that offer you protection when it comes to paying commission. These REA-approved clauses help protect you by:

- reducing the likelihood of you being charged commission by two agencies
- clarifying when the agency agreement ends and when you need to pay a commission.

Not all agencies choose to use REA's standard clauses. We recommend you only use agencies that use them. Ask your real estate professional about these clauses before you sign.

Cancelling your agency agreement

It can be difficult to cancel the agency agreement once you have signed it, so think carefully before you put pen to paper. If you change your mind immediately after signing, you can cancel the agreement by 5pm on the first working day after the real estate professional has given you a copy of the agreement. You must cancel in writing, for example, by letter or email.

If you signed an agency agreement as a result of a real estate professional door knocking with their services and later change your mind, you have up to 5 working days to cancel the agreement.

If you do choose to cancel your agency agreement and quickly list with a new real estate agency, be sure to check with your lawyer about what commission obligations you might have to the first real estate agency.

What you need to know before you sign an agency agreement

A written estimate of your sale price

This is the real estate professional's best estimate of the price they expect your property could sell for based on sales of similar properties in your area. This is referred to as an appraisal or a current market appraisal.

How they recommend selling your property

The real estate professional should recommend the best way of selling your property, for example, by advertised price, tender, auction or deadline sale. They will set out in the agency agreement how you've agreed to sell and what marketing you've agreed they'll do.

The agency agreement will include a listing price if your property is being marketed with an advertised price but not if it's being sold by another method.

What commission you'll pay

They should tell you what commission you'll have to pay them, when you'll have to pay and how this payment is calculated. Commissions can vary between agencies, so you may want to compare different agencies or negotiate with your preferred real estate agency. The real estate professional must explain the formula used and give you an estimate in dollars of the commission you'll pay if your property sells at

their estimated price. Usually, the real estate agency will take the commission out of the deposit once your agreement for sale and purchase becomes unconditional.

What expenses you'll pay for

Usually, you pay extra for marketing the property, but you don't have to pay extra if you don't want to. You can negotiate on this cost.

Ask what marketing is provided for free by the real estate agency, for example, they may put details of your property in their office or on their website.

You need to consider the cost of extra marketing against the possible benefit. The real estate agency should prepare a detailed marketing plan explaining what you're paying for and when. Remember, you'll have to pay for the extra marketing even if your property doesn't sell.

When the agency agreement ends

When the agency agreement ends, the real estate professional and real estate agency are no longer authorised to act for you. The agency agreement must have a set date or a timeframe from the time the agreement is signed for when the agreement ends. The agreement must also say under what circumstances you might have to pay commission after the agreement ends.

Remember...

Remember, the real estate professional and any of their colleagues from the same agency work for you, and you pay them for their services. Make sure you're happy with their approach before you decide to sign an agency agreement with them. If you are unsure about any terms in the agency agreement, seek independent legal advice.

Real estate professionals have to hold a licence in New Zealand to sell property. This allows REA to set and uphold high professional standards of conduct expected from licensed real estate professionals through rules, standards and guidelines. Real estate professionals must adhere to a Code of Conduct and meet ongoing continuing professional development training to maintain their licence.

What happens if you have a problem

If something has gone wrong, first discuss your concern with the real estate professional or their manager. All agencies must have in-house procedures for resolving complaints.

If you can't resolve the issue with the real estate agency or you don't feel comfortable discussing it with them, you can contact the Real Estate Authority (REA). We can help in a number of ways if your complaint is about the real estate professional. For example, we can help you and the real estate professional or agency to resolve

the issue and remind them of their obligations under the Real Estate Agents Act 2008. When you contact us, we'll work with you to help you decide the best thing to do.

Call us on **0800 367 7322**, email us at info@rea.govt.nz or visit us online at rea.govt.nz

About settled.govt.nz



Settled.govt.nz guides you through home buying and selling.

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Settled.govt.nz provides comprehensive independent information and guidance for home buyers and sellers. You can find information about the risks and how they can impact you and get useful tips on how to avoid some of the major potential problems.

Settled.govt.nz will help to inform and guide you through the process from when you're thinking of buying or selling right through to when you're moving in or out. You'll find valuable information, checklists, quizzes, videos and tools. From understanding LIMs, to sale and purchase agreements, to when to contact a lawyer, **settled.govt.nz** explains what you need to know.

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For more information

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REA is the independent government agency that regulates the New Zealand real estate profession.

Our purpose is to promote and protect the interests of consumers buying and selling real estate and to promote public confidence in the performance of real estate agency work.

What we do

Our job is to promote a high standard of conduct in the real estate profession and protect buyers and sellers of property from harm.

- We provide independent information for people who are buying and selling property through our settled.govt.nz website.
- We provide guidance for real estate professionals and oversee a complaints process.
- We license people and companies working in the real estate industry.

- We maintain a Code of Conduct setting out the professional standards real estate professionals must follow.
- We maintain a public register of real estate professionals that includes information about disciplinary action taken in the last 3 years.

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For more information

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October 2022

Approved under section 127 of the Real Estate Agents Act 2008. Effective from 14 October 2022.

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The New Zealand Residential Property Agency Agreement Guide is also available on [settled.govt.nz](https://www.settled.govt.nz). The guide tells you more about the agreement you sign with the agency helping to sell your property.

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Key things to know about sale and purchase agreements

- A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property.
- You must sign a written sale and purchase agreement to buy or sell a property.
- You need to read and understand the sale and purchase agreement before you sign it.
- Even if a standard sale and purchase agreement is being used, you should always get legal advice before you sign the agreement and throughout the buying and selling process.
- You can negotiate some of the terms and conditions in a sale and purchase agreement.
- You can include additional clauses, such as what to do if there are special circumstances. Your lawyer plays an important role in providing advice on what the sale and purchase agreement should say.
- A sale and purchase agreement becomes unconditional once all the conditions are met.
- In most cases, the real estate professional is working for the seller of the property, but they must treat the buyer fairly.
- If your real estate professional or anyone related to them wants to buy your property, they must get your written consent to do this. They must also give you a valuation of your property by an independent registered valuer.
- The sale and purchase agreement is only available in English. You may need assistance interpreting it if English is not your primary language.

What a sale and purchase agreement is

A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property. It sets out all the details, terms and conditions of the sale. This includes things such as the price, any chattels being sold with the property, whether the buyer

needs to sell another property first or needs a property inspection and the settlement date.

A sale and purchase agreement provides certainty to both the buyer and the seller about what will happen when.



What's in a sale and purchase agreement

Your sale and purchase agreement should include the following things.

Basic details of the sale

Different sale methods like tender or auction might mean the sale and purchase agreement can look different, but all sale and purchase agreements should contain:

- the names of the people buying and selling the property
- the address of the property
- the type of title, for example, freehold or leasehold
- the price
- any deposit the buyer must pay
- any chattels being sold with the property, for example, whiteware or curtains
- any specific conditions you or the other party want fulfilled
- how many working days you have to fulfil your conditions (if there are any conditions)
- the settlement date (the date the buyer pays the rest of the amount for the property, which is usually also the day they can move in)
- the rate of interest the buyer must pay on any overdue payments (such as being late on paying the deposit or the remaining amount at the settlement date).

General obligations and conditions you have to comply with

The sale and purchase agreement includes general obligations and conditions that you will need to comply with. For example, these may include:

- access rights – what access the buyer can have to inspect the property before settlement day
- insurance – to make sure the property remains insured until the settlement date and outline what will happen if any damage occurs before settlement day
- default by the buyer – the buyer may have to compensate the seller if they don't settle on time, for example, with interest payments
- default by the seller – the seller may have to compensate the buyer if they don't settle on time, for example, by paying accommodation costs
- eligibility to buy property in New Zealand – people who have migrated to New Zealand may not be permitted to immediately buy property or may need to get consent from the Overseas Investment Office.

Your lawyer will explain these clauses to you.

Check...

Always check your sale and purchase agreement with a lawyer before signing.

Buying or selling a property where the owner isn't able to participate, like a mortgagee sale or deceased estate, can mean the real estate professional has limited information about the property. It pays to allow for this when deciding what conditions the buyer and seller might need.

Remember...

Before you sign a sale and purchase agreement, whether you're the buyer or the seller, the real estate professional must give you a copy of this guide. They must also ask you to confirm in writing that you've received it.

Specific conditions a buyer may include

Some buyers will present an unconditional offer, which means there are no specific conditions to be fulfilled. Some buyers will include one or more conditions (that must be fulfilled by a specified date) in their offer such as:

- title search – this is done by the buyer's lawyer to check who the legal owner of the property is and to see if there are any other interests over the property such as caveats or easements
- finance – this refers to the buyer arranging payment, often requiring bank approval for a mortgage or loan
- valuation report – a bank may require the buyer to obtain a valuation of the property (an estimate of the property's worth on the current market) before they agree to a loan
- Land Information Memorandum (LIM) – provided by the local council, this report provides information about the property such as rates, building permits and consents, drainage, planning and other important information
- property inspection – a buyer paying for an inspection provides an independent overview of the condition of the property rather than relying on an inspection that has been arranged by the seller

- engineer's or surveyor's report – similar to the above but more focused on the entire section and the structure of the property
- sale of another home – the buyer may need to sell their own home in order to buy another.

The real estate professional helps the buyer and the seller to include the conditions they each want. Even though the real estate professional works for the seller, they also have to deal fairly and honestly with the buyer. While they're not expected to discover hidden defects, they can't withhold information and must tell the buyer about any known defects with the property. If a buyer needs time to check a property for defects, including a property inspection condition may be important.



What happens after you sign the sale and purchase agreement

Signing the sale and purchase agreement is not the end of the sale or purchase process.

Both parties work through the conditions until the agreement is unconditional

A conditional agreement means the sale and purchase agreement has one or more conditions that must be met by a specified date and before the sale goes through.

The buyer pays the deposit. Depending on what the sale and purchase agreement says, the buyer may pay the deposit when they sign the agreement or when the agreement becomes unconditional. If the deposit is made to the real estate agency, it must be held in their agency's trust account for 10 working days before it can be released to the seller.

An agreement for sale and purchase commits you to buy or sell

Once you've signed the sale and purchase agreement and any conditions set out in it have been met, you must complete the sale or purchase of the property.

The length of time between the conditions being met and the settlement date varies. Settlement periods can be lengthy if the property hasn't been built yet or the sale and purchase agreement includes conditions for one party to buy or sell another property. The real estate professional has obligations to keep you informed of important updates that come up during this time.

Pre-settlement inspection

This is the chance for the buyer to check the property and chattels are in the same condition they were when the sale and purchase agreement was signed and to check that the seller has met any conditions, for example, there is no damage to walls or chattels haven't been removed from the property.

It's important to raise any concerns you find at the pre-settlement inspection with your lawyer and the real estate professional as soon as possible to allow enough time for an issue to be resolved. If it's less than 24 hours before settlement, the vendor may not be obligated to set things right.

Payment of a commission

Once the sale is complete, the seller pays the real estate professional for their services. The real estate agency usually takes the commission from the deposit they're holding in their trust account. The seller should make sure the deposit is enough to cover the commission. The real estate professional cannot ask the buyer to pay for their services if they have been engaged by the seller.

The buyer pays the rest

The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer.

Buying a tenanted property

If the property is tenanted, the agreement for sale and purchase should specify this. It may also contain a specific date for possession that may differ from the settlement date.

If the buyer requires the property to be sold with 'vacant possession', it is the seller's responsibility to give the tenant notice to vacate in accordance with the tenant's legal rights.

It is recommended that you seek legal advice if you are buying a property that is currently tenanted.

What happens if you have a problem

If something has gone wrong, first discuss your concern with the real estate professional or their manager. All agencies must have in-house procedures for resolving complaints.

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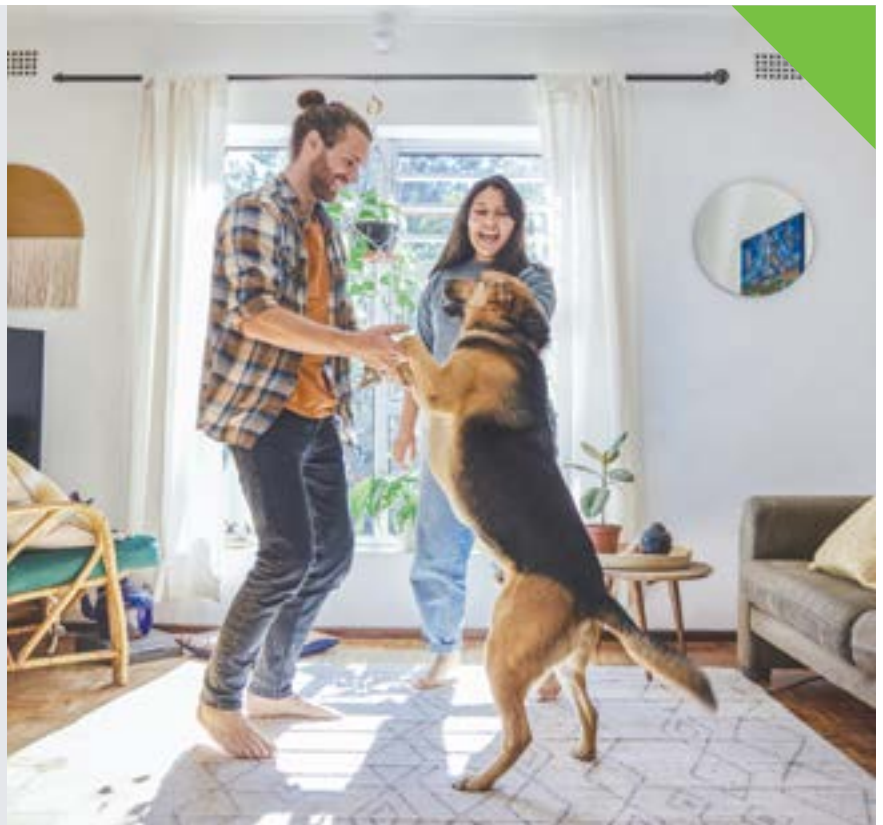
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Approved under section 133 of the Real Estate Agents Act 2008. Effective from 14 October 2022.



In-House Complaints / Dispute Procedures

In accordance with Rule 12 Real Estate Agents Act (Professional Conduct and Client Care Rules) 2012

Introduction

All licensed real estate agents are required to have a written in-house complaints and dispute resolution procedure. That procedure is set out below.

You do not have to use our complaints and resolution procedure. You may make a complaint directly to the Real Estate Agents Authority at any time. You can make a complaint to the Real Estate Agents Authority even if you choose to also use our procedures.

In-house Complaints and Dispute Resolution Procedures

Our complaints and dispute resolution procedures are designed to provide a simple and personalised process for resolving any complaint you might have about the service you have received from our agency.

- STEP 1: Call us and speak to the manager. [Give contact details of manager designated to receive complaints] Tell the manager who you are complaining about and what your concerns are. Let the manager know what you would like done about your complaint.
- STEP 2: The manager may ask you to put your complaint in writing so that he or she can investigate it. The manager will need a brief period of time to talk to the team members involved. We promise to come back to you within 10 working days with a response to your complaint. That response may be in writing. As part of that response we might ask you to meet with members of our team to discuss the complaint and try to agree a resolution.
- STEP 3: If we are unable to come to an agreed resolution after a meeting, or if you don't wish to meet with us, then we will provide you with a written proposal to resolve your complaint.
- STEP 4: If you do not accept our proposal, please try and advise us in writing within five working days. You can, of course, suggest another way of resolving your complaint.
- STEP 5: If we accept your preferred resolution, we will attempt to implement that resolution as soon as possible. If we decline your preferred resolution, we may invite you to mediate the dispute.
- STEP 6: If we agree to mediate the complaint but don't settle the complaint at mediation, or we do not agree to mediate the dispute, then that will be the end of our process.

Remember: You can still make a complaint to the Real Estate Agents Authority in the first instance and, even if you use these procedures, you can still make a complaint to the Real Estate Agents Authority at any time.

The Real Estate Agents Authority
c/ - PO Box 25 - 371
Wellington 6146
New Zealand

Phone 0800 for REAA or 0800 367 7322