

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 and settled.govt.nz.

The New Zealand Residential Property Sale and Purchase Agreement Guide is also available on 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.

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 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.

Buying or selling your home is one of the biggest financial decisions you will make. It's a complex and sometimes stressful process with potentially significant emotional and financial impacts if things go wrong.

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.

Settled.govt.nz is brought to you by the Real Estate Authority – Te Mana Papawhenua (REA).

For more information

For more information on home buying and selling, visit settled.govt.nz or email info@settled.govt.nz



About the Real Estate Authority – Te Mana Papawhenua (REA)

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.

The Real Estate Agents Authority is a Crown agent, established under the Real Estate Agents Act 2008. The Real Estate Authority is the operating name of the Real Estate Agents Authority.

For more information

To find out more about
REA, visit rea.govt.nz,
call us on **0800 367 7322**
or email us at
info@rea.govt.nz

