

Information sheet for licensees: Agency agreements

This information sheet provides guidance on how the Real Estate Agents Act 2008 (the Act) and the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Code) apply to agency agreements.

Why do I need to have an agency agreement in place?

You are not entitled to receive commission or expenses for real estate agency work unless a written agency agreement is in place (section 126).

What do I need to know before entering into an agency agreement?

Before you enter an agency agreement with a client, you must:

- a. Give the client a current market appraisal. This appraisal must realistically reflect current market conditions and must be supported by information on sales of similar properties in similar locations (rule 10.2). Note that this rule also applies to the sale of a business.
- b. Explain to your client, in writing (rule 10.6):
 - a. how your commission is calculated and paid and include an estimated cost (actual \$ amount) of commission payable by the client, based on the appraised price of the land or business (rule 10.6 (a)). Be clear about whether the figures are inclusive or exclusive of GST.
 - b. how the property will be marketed and advertised, including any additional expenses for the advertising and marketing.
 - c. that further information on agency agreements and contractual documents is available from the Real Estate Authority (REA) and explain how they can access this information.
- c. Ensure the client knows they can seek legal, technical or other advice before entering into the agreement (rule 9.7).
- d. If you are selling a residential property, give your client a copy of the New Zealand Residential Property Agency Agreements Approved Guide before they sign the agency agreement. The client must sign an acknowledgement that they have received this guide (section 127).
- e. You must inform the client that if they enter into or have already entered into other agency agreements, that they could be liable to pay full commission to more than one agent (rule 9.10)

What needs to be in the agency agreement?

Make sure you include in the agreement:

- a. All material particulars before you ask the client to sign it (rule 9.9). You may not include conditions that are not reasonably necessary to protect the interests of the agent (rule 9.12).

- b. A statement about rebates, discounts and commissions (section 128). You must disclose the source of all rebates, discounts or commissions that you and your agency will receive and specify the estimated amount. This statement must be done even if you are not receiving any rebates, discounts or commissions.

This statement must be as described in Form 1 of the Duties of Licensees Regulations 2009. You can download this form from the REA website.

- c. The signature(s) of the client, or someone authorised to sign on the client's behalf (section 126).

Once the client signs the agency agreement, you must give them a copy of the agreement within 48 hours (section 126.)

What do I need to know about cancelling agency agreements?

Sole agency agreements

Here are some things you need to know about cancelling sole agency agreements:

- a. A client can cancel a sole agency agreement by 5pm on the first working day after they have been given a copy of the agreement (section 130).
- b. Cancellation must be done in writing, which includes fax or email.
- c. If the client signed the agreement after an unsolicited approach from you, they may cancel the agreement within five working days of receiving a copy of the agreement (section 36M Fair Trading Act). Cancellation does not need to be in writing in this case.
- d. If the sole agency is for residential property and is for a term of more than 90 days, then you or the client can end the sole agency agreement after 90 days. This applies even if something different is said in the agreement (section 131).
- e. If a sole agency is renewed, then the 90 days applies again from the date the agreement was renewed.
- f. You should give the client a list of people you introduced to the property, so your client knows they may be liable to pay commission if they sell privately to one of those people

What happens once a sole agency agreement is cancelled depends on what the agreement says. If your agency uses the standard clauses, see the "What you need to know" section on our website.

General agency agreements

Most general agency agreements will say what the notice period is for cancelling the agreement. The notice period is designed to give the agency the chance to conclude any introductions.

There is nothing in the Act or the Code which specifies how long the notice period for the cancellation of a general agency should be. Industry practice is usually somewhere between 7 and 14 days.

If you choose to make your notice period longer than 14 days, you may be at risk of breaching the rules.

Approaching a client who has a sole agency with another agency

Previously, under the Real Estate Agents Act 1976, the Rules of the Real Estate Institute of New Zealand (REINZ) prevented you from approaching a client signed up under a sole agency with another agency.

The Act and the Code do not contain any similar provisions. However, this does not mean that anything goes.

You can approach another agent's client to explain the services you are able to offer them when their current agency agreement ends. Be careful not to undermine their relationship with the current listing agency – don't make negative comments about how the property has been listed, or about the listing agent.

You may be approached by a seller who wants to sign a sole agency agreement with you while they have an existing sole agency agreement with another agency. We recommend you don't take on this seller as a client until their existing agreement ends.

If you choose to take on a client who has another sole agency agreement in place, be sure to:

- a. explain the high risk that they will need to pay two commissions and put this in writing
- b. give them plenty of time to take legal and/or expert advice
- c. provide an appraisal and have a signed listing agreement in place.

Don't mislead potential buyers by implying or stating they can't approach the current listing agent directly.

This information is a guide only and is not intended to form professional legal advice or legal opinion on any particular matter. To the best of the Real Estate 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 rea.govt.nz

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