

Real Estate Agent Authority

New Zealand Residential Property Agency Agreement Guide

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.
- You need to read and understand the agency agreement before you sign it.
- You should also get legal advice before you sign.
- Your real estate agent must tell you about any rebate, commission or discount they receive in connection with any work they do for you.

What an agency agreement is

An agency agreement is a legally binding contract between you and the real estate agency that helps to sell your property. An agency agreement gives the agency the right to market your property for sale. The agreement sets out all the terms and conditions of your contract, such as what your agent will do for you and what you'll pay them. If you use an agency to sell your property, you must sign an agreement with them first.

While an individual agent may sign you up, your contract is between you and the agent or agency they work for. Depending on the conditions of the agency agreement, once you've listed your property, any agent in the agency can try to sell it.



First, check that your agent 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 three years.

If you deal with an unlicensed person, the Real Estate Authority won't be able to help you if things go wrong.

What's in an agency agreement

While the layout and content of agency agreements can vary between agencies, 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, white ware or curtains).
- Details about your property (for example, number of bedrooms and bathrooms, land area).

You must make sure that any details you give the agent are accurate. If you don't, you may leave yourself open to legal action from a buyer.

Details about the parties to the agreement

- Your name, address and other contact details.
- Your lawyer's name and contact details.
- The name of the agent mainly responsible for marketing and selling your property.
- The agency's name and address.

The agent must give you a copy of the agency agreement.

It is important to tell the agent everything you know about the property. An agent is required to disclose known defects of a property to a potential buyer, and you may not instruct an agent to withhold this information. An agent may cancel an agency agreement if you instruct them not to disclose known defects.



Who has the authority to sell the property?

If you're not the sole owner of the property, either:

- all owners must sign the agency agreement, or
- you must show you have the authority to sign for all the other owners (you will need to provide the agent with written confirmation, such as power of attorney, resolution of trustees, company minutes or a court document).

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

Your agent 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 agency to do

The agency agreement appoints your chosen agent 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 agency to agree how long the agreement will last.

What the agent should tell you before you sign an agency agreement

A written estimate of your sale price

This is the agent'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 (CMA).

How they recommend selling your property

They should recommend the best way of selling your property, for example, by advertised price, tender, auction or deadline sale. The agent will set out 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 agency. The agent 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 agency will take their 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.

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

You need to consider the cost of extra marketing against the possible benefit. The 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

The agency agreement must have a set date, or 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, the real estate agent works for you, and you pay them for their services. Make sure you're happy with their approach before you decide to sign an agreement with them. If you are unsure about any terms in the agency agreement, seek independent legal advice.

Sole agency and general agency agreements allow different things

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

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 of the 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 agency a commission when you sell.
- If you change your mind immediately after signing, you can cancel the agreement by 5pm on the first working day after the agent has given you a copy. You must cancel in writing (for example, by letter or email).
- If you sign a sole agency agreement for a term of more than 90 days, either you or the agency can end the agreement after 90 days. This must be done in writing.
- In some agreements, 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 agency.

Details of any rebates, discounts or commissions the agent may receive

If an agent 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, an agent may receive a discount on the cost of advertising your property in a newspaper.

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

This disclosure is done in a format that must be included in the agency agreement. The agreement must state either:

- the estimated amount of rebate, discount or commission and its source, or
- that the agent won't be receiving any rebates, commissions or discounts.

Recommended standard clauses

Real estate agencies can choose to use standard clauses in their agency agreements. These REA-approved clauses help protect you by:

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

We recommend you only use agencies that use these standard clauses. Ask your agent about the clauses before you sign.

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

