



1 October 2009

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Dear Janet

Real Estate Agents Authority – Approved Guides

Thank you for your letter of 22 September 2009. The Section appreciates the opportunity to comment.

Unfortunately, as with the draft Code of Professional Conduct and Client Care, due to the very limited time available for comment, the Executive Committee has not been able to consult with Section members concerning the draft Guides.

However, we attach the draft Guides with various suggested amendments shown marked up in red. In the case of the Guide to Sale and Purchase Agreements, we have also included some comments in italics.

If you would like to discuss any aspect of this matter, please feel free to contact the Section Manager, Kim Oelofse by email kim.oelofse@lawsociety.org.nz or by phone (04) 463 2991.

Yours sincerely

Chris Moore
Chair

REAL ESTATE AGENTS AUTHORITY

A GUIDE TO RESIDENTIAL PROPERTY AGENCY AGREEMENTS

You are planning to sell your property and you are about to engage a real estate agent who has given you an agency agreement that authorises the agent to work on your behalf.

- The agency agreement that you are about to sign is a legally binding document.
- Read this guide before signing the agreement.
- Before signing the agency agreement consider seeking legal advice.
- Make sure you read and understand the agency agreement before signing it.
- Once you have signed the agency agreement, your agent must give you, within 48 hours, a copy that has been signed by or on behalf of the agent.

1 WHAT IS THIS GUIDE FOR?

This guide has been prepared by the Real Estate Agents Authority¹. This guide relates to the sale of residential property only.

The information provided here is for guidance only: you should not rely on it for legal advice.

By law, your agent or salesperson has to give you a copy of this guide before you sign an agency agreement. You will be asked to provide signed acknowledgement that you have received this guide.

This guide provides information on:

- What an agency agreement is for.
- What you should expect to see in an agency agreement.
- Where to go for more information.

This guide is about what happens *before* you receive an offer to buy your property.

There is a companion guide – *A Guide to Residential Property Sale and Purchase Agreements* [or else put the title in quote marks if you don't like italics]. Your agent *must* give you this second guide when presenting an offer from a buyer in the form of a sale and purchase agreement.

2 APPOINTING AN AGENT

Who can carry out real estate agency work?

¹ The Real Estate Agents Authority is established by the Real Estate Agents Act 2008. The Authority is a government agency which oversees the conduct and professional standard of the real estate industry.

A person can ~~only~~ carry out real estate agency work only if he or she has a licence as an agent, branch manager or salesperson from the Real Estate Agents Authority. A company can ~~only~~ carry out real estate agency work only if licensed as an agent.

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

- * An **agent** can carry out real estate agency work on his or her own account.
- * A **branch manager** can carry out real estate agency work for or on behalf of an agent.
- * A **salesperson** can carry out real estate agency work for or on behalf of an agent. A salesperson must be supervised by an agent or branch manager when carrying out any real estate agency work.

Your agency agreement will always be with an agent. This is usually a company, rather than an individual, as companies can also be licensed as an agent.

You should ensure that you always engage a licensed company or person as an agent. Any salesperson that works with the agent must also be licensed. 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 company or person is licensed, and whether their conduct has resulted in recent disciplinary action.

More information on licences can be found in the Licence Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.

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

When you appoint an agent, you will need to confirm this by signing an agency agreement. More information on agency agreements is provided on page x.

Before you sign, the agent or salesperson should give you:

A written market appraisal: this is the agent's or salesperson's best estimate of the price that he or she expects your property could achieve. The appraisal should be based on an objective analysis of current sales and prices for similar properties in your area or a similar area. You can also get your own valuation.

- Information on **methods of selling residential property** (e.g. sale on the basis of an advertised price, by tender or auction), the most appropriate approach for your property, and how the agent or salesperson proposes to market and advertise it. For more information on Tenders and Auctions see the Tenders and Auctions Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.
- 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. Commission is usually calculated as a percentage of the selling price, plus GST. The agent or salesperson should:
 - Explain the formula that is being used; and

- Provide you with an estimate in dollar terms of the commission you would have to pay, if your property sold at the appraised price.

Commissions can vary from one agent to another, so you may want to compare. You can also negotiate on the amount of commission to be paid. For more information on commissions see the Commission Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.

- Information on whether you will have to pay any **expenses** (e.g. advertising costs) that are not included in the commission. For more information on expenses see the Expenses Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.

Once discussed, the above information will be included in an agency agreement.

Remember you can ask questions, take independent advice, talk to more than one agent, and negotiate on commission, expenses, and services.

3 AGENCY AGREEMENTS

What is an agency agreement for?

An agency agreement is a contract between you and an agent. It sets out the terms and conditions on which you appoint an agent (and the salespersons who work for that agent) to sell your property.

By signing the agreement you:

- Authorise the agent (and the salespersons who work for that agent) to market your property.
- Agree to pay the specified commission or fee for services in accordance with the terms and conditions set out in the agency agreement. Normally a commission becomes payable once the sale agreement is unconditional whether or not the sale is settled.

You should not sign an agency agreement unless you are happy with all of the terms and conditions.

Agency agreements can vary widely. **It is recommended that you have your lawyer look at the agreement before you sign.**

If you do not have a lawyer, now is the time to find one. You may need legal advice on the agency agreement, and you will almost certainly require it when you receive an offer from someone who wants to buy your property.

Can I appoint an agent without signing an agency agreement?

If you want to have an agent you do need to have an agency agreement.

However, the Real Estate Agents Act 2008 does not allow an agent to be paid for any real estate agency work he or she does for you unless that work is done under an agency agreement. The agreement also sets out the rights and obligations of both you and the agent, and is intended to protect the interest of both.

Can I have more than one agent?

You can appoint more than one agent, but you will ~~have~~need to have a separate agency agreement (called a General Agency agreement) with each one.

If you decide to do this, make sure that the information in every agency agreement is the same (for example, the price at which the property is marketed, the chattels you are offering with the property etc).

What is a sole agency?

A sole agency is where you give one agent the exclusive right to market and arrange a sale of your property by signing a sole agency agreement.

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.

If you are considering a sole agency agreement be aware that:

- You should not sign any other agency agreement with any other agent while the sole agency agreement is in place. If you appoint another agent or agents when you have already granted someone a sole agency, and your property is sold, you may have to pay commission to more than one agent, regardless of which agent actually arranged the sale.
- If you have second thoughts about a sole agency agreement after you have signed it, you have the right, under the Real Estate Agents Act 2008, to cancel the agreement by 5pm the next working day. However if the agent or salesperson undertakes any work for you before that time which eventually results in the sale of your property (even if the sale takes place much later), you will still have to pay commission as set out in 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 terminate the agreement after 90 days. To do this written notice must be given.
- You may be able to negotiate a sole agency period of less than 90 days if you wish to do so.
- Under a sole agency agreement normally you will be liable to pay a commission whether or not the buyer is introduced by the agent.

What should I expect to see in an agency agreement?

The layout and content of agency agreements vary from one agent to another, and many of the details that are included in an agency agreement are subject to negotiation. The following is a general indication of the main things you should expect to see.

1. *Details about the property for sale*

The agency agreement should:

- Identify the property (e.g. address and DP number, lot number, certificate of title or legal description).
- List all of the chattels (e.g. white ware, drapes, television aerial) that are included in the selling price of the property.
- Include other relevant details about the property (e.g. land area, number of bedrooms, bathrooms, garaging, access, any easements or building restrictions).

You must ensure that any details you provide to the agent or salesperson are accurate and factual. If you knowingly provide misleading or incorrect information you may leave yourself open to subsequent legal action.

2. *Information about the parties to the agreement*

This information includes:

- Your name, address and other contact details.
- The name and contact details of your lawyer.
- The name of the agent or salesperson that is dealing with the marketing and sale of your property on a day to day basis (sometimes called the “listing agent” or “listing salesperson”).
- The agent’s business name and address.

3. *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 either ensure that all owners sign the agency agreement, or that you have the authority of all the other owners to sign for them. The agency agreement will probably have a section asking you to confirm this.

4. *Approved Guide*

The Real Estate Agents Act 2008 requires an agent or salesperson to give you a copy of this guide before you sign an agency agreement, and to get your written confirmation that you have received the guide. This written confirmation may ~~form~~ part of be in the agency agreement or may be given to you as a separate form.

5. *Appointment of the agent and details of what the agent is authorised to do*

The agency agreement will include a statement that specifically appoints the named agent (usually a company) as your agent.

☐ The agreement should also include details of specific things the agent (and the salespersons who work for that agent) is authorised to do. Some standard provisions are that the agent can:

- Put a “for sale” sign on the property.

- Advertise the property for sale at the price and on the conditions you have authorised.
- Arrange inspection of the 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.

Other matters can be included as agreed between you and the agent.

6. 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. It should also state the date on which the agency agreement starts and when it ends. Information on Sole Agencies is provided on page x.

7. Method of sale and price of property

The agency agreement should include the selling method and pricing options that you have already discussed with your agent or salesperson. Methods of selling include sale on the basis of an advertised price or price range; by tender; or auction. For more information on tenders and auctions see the Tenders and Auctions Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.

The agency agreement should include a "listing price", even if the property is not being marketed with an advertised price. The listing price records your expectations of the indicative price that you would be willing to sell for or negotiate on. You should agree this listing price with your agent or salesperson. Where a property is advertised with a price or price range, the advertised price should be consistent with the listing price.

8. Commission

The agency agreement should include details of how commission will be calculated. Information on commission is provided on page x.

The agency agreement will also specify **when** you have to pay commission.

Agency agreements normally state that commission will be paid when you have an **unconditional offer** from a buyer (that is, a buyer is committed, unconditionally, by contract, to buy the property and pay you the agreed price at a specified date). The date on which an offer becomes unconditional is usually earlier than the **settlement date** (that is, the date on which the buyer actually pays you for the property).

It is important that you fully understand your rights and obligations concerning payment of commission. A Commission Fact Sheet, which provides further information on the issues and risks, is available from www.reaa.govt.nz or by calling 0800for REAA.

9. 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 wish 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. This may include:

- Putting details of your property on the agency’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 agency’s office.
- Providing a “for sale” sign outside your property.

Weigh up the cost of spending extra on advertising against the potential benefit. The agent or salesperson should prepare a detailed marketing plan and explain how the extra cost is justified.

If you do decide to pay for extra advertising, the agency agreement should include the maximum amount you agree to spend, and how you will pay (e.g. authorisation to charge to a credit card, or by cheque). Unlike commission, you have to pay for advertising even if your property does not sell.

Disclosure of rebates, discounts or commissions that the agent may receive

The Real Estate Agents Act 2008 requires that agents disclose, in the agency agreement, any rebates, commissions or discounts that they receive from other service providers in connection with work they do for you. For example, an agent may receive a discount on the cost of placing advertising about your property with 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 rebate, discount or commission, and its source, *or* a statement that the agent will not be receiving any rebates, commissions or discounts. The agent is breaking the law if this form is not included with the agreement.

While the agent is not required by law to share these rebates, commissions or discounts with you, you are entitled to negotiate a share with the agent. The agency agreement should show any benefit that is being passed back to you.

For more information on expenses see the Expenses Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.

4 WHAT HAPPENS WHEN SOMEONE OFFERS TO BUY MY PROPERTY?

When someone makes an offer to buy your property, your agent or salesperson will bring you the offer in the form of a written sale and purchase agreement. The agent or salesperson must also give you a copy of the *Guide to Residential Property Sale and Purchase Agreements*. 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.

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For More information	
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REAL ESTATE AGENTS AUTHORITY

A GUIDE TO RESIDENTIAL PROPERTY SALE AND PURCHASE AGREEMENTS

You are selling your property and have received an offer from a buyer. Or, you are a buyer and have just found your dream home. Both sellers and buyers need to sign a sale and purchase agreement.

It's natural to want to get things agreed and signed off quickly – but when the time comes, remember:

- A sale and purchase agreement is a legally binding contract.
- Take the time to read this guide before you sign anything.
- Do not sign the sale and purchase agreement without first getting your lawyer to look at it.

1 WHAT IS THIS GUIDE FOR?

This guide has been prepared by the Real Estate Agents Authority¹. This guide relates to the sale of residential property.

The information provided here is for guidance only: you should not rely on it for legal advice.

A real estate agent or salesperson has to give you a copy of this guide before you sign a sale and purchase agreement that concerns the sale of a residential property. You will be asked to provide a signed acknowledgement that you have received this guide.

What is the difference between an agent and salesperson?

- * An **agent** can carry out real estate agency work on his or her own account.
- * A **salesperson** can carry out real estate agency work for or on behalf of an agent. A salesperson must be supervised by an agent when carrying out any real estate agency work.

2 ABOUT SALE AND PURCHASE AGREEMENTS

What is a sale and purchase agreement?

A sale and purchase agreement is a contract between the seller and buyer of a property. It is a complex and legally binding document that sets out the price, terms and conditions that have been negotiated and agreed between the seller and buyer.

More information on the conditions that you can expect to see in a sale and purchase

¹ The Real Estate Agents Authority is established by the Real Estate Agents Act 2008. The Authority is a government agency which oversees the conduct and professional standard of the real estate industry.

agreement is provided on page x.

The agent or salesperson will probably use one of two standard/common forms for preparing a sale and purchase agreement:

- A form developed by the Auckland District Law Society in conjunction with the Real Estate Institute of New Zealand (the ADLS form); or
- A form developed by the Real Estate Institute of New Zealand (REINZ).

You are advised not to sign either any form of agreement without first consulting your lawyer.

[There are one or two other forms available in the market place (apart from the ADLS and REINZ forms) although they are little used.]

Do I have to have a written sale and purchase agreement?

Yes you do. A sale and purchase agreement provides certainty to both the buyer and seller as it is a legally binding agreement. An oral agreement for the sale of land is normally not binding on the parties.

What should I expect to see in a sale and purchase agreement?

The agreement should include the following:

- The name(s) of the seller(s) and buyer(s).
- Identification of the property (e.g. address and ~~DP number, lot number, certificate of title or~~ the legal description).
- The chattels that are to be sold with the property (e.g. white ware, drapes, television aerial). If you are the seller, make sure that what is listed here is what you listed in your agency agreement.
- ~~The price that the buyer is offering to pay.~~
- The rate of interest that the buyer must pay on any overdue payments (e.g. if the buyer fails to pay for the property on the agreed settlement date).
- The deposit that the buyer must pay. ~~The deposit must be paid~~ is normally payable as soon as the seller and buyer have agreed on the price and all other terms and conditions, and both have signed the agreement. If you are a buyer, ensure in advance that you have enough money available to do this. If you are a seller, make sure that the deposit is large enough to cover the agent's commission, as the agency agreement you signed with your agent normally authorises the agent to deduct his or her commission from the deposit once the sale and purchase agreement becomes unconditional. In fact a deposit of about 10% of the price is desirable, if a seller wishes to be appropriately protected against default by the buyer.

[It is by no means uncommon for the deposit or the bulk of it not to be payable until the conditions in the agreement are satisfied.]

- The date on which the sale will become unconditional. This is the date by which any conditions imposed by the buyer or seller must be fulfilled, and the ~~buyer is parties are~~ contractually bound to go through with the purchase.

More information can be found in *the Guide to Residential Property Agency Agreements* and the Commission Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.

- The settlement date. This is the date on which the buyer pays the seller for the property: this date is usually ~~some weeks~~ some period after the date on which the agreement becomes unconditional. This is usually also the date on which the buyer takes possession: but if the possession date is different from settlement, the agreement will show this ~~this will be shown separately.~~

Conditions

Sale and purchase agreements will frequently contain conditions. Buyers will usually want to have some or all of the following:

- Title search. This is usually done by the buyer's lawyer to check who the legal owner of the property is, the legal description of the property, and whether there are any mortgages that will need to be discharged on settlement, ~~or~~ and whether there are any charges or other interests that affect the property.
- Finance. The sale is subject to the buyer arranging ~~buyer undertakes to buy the property provided he or she is able to arrange a loan by a specified date.~~
- A Land Information Memorandum (LIM) report. This is provided by the local council and provides information about the property, such as rates, building permits and consents, protected buildings, drainage and planning. For more information contact your local council office.
- A building inspection report. This condition is becoming more common, reflecting concerns about leaky buildings.
- A buyer may make the purchase conditional on selling his or her own property within a specified time. In this case the seller can include an "escape" clause. This allows the seller to leave the property on the market while the buyer is attempting to sell his or her own property, so that the seller can consider any further offers that may be made. If the seller receives another offer, the seller can ask the buyer either to make the contract ~~their own offer unconditional or the seller can accept the subsequent offer.~~

General or Standard Clauses

A sale and purchase agreement also includes clauses that set out general obligations and conditions with which the parties must comply. The ADLS form calls these "General Terms

of Sale”. The REINZ sale and purchase agreement calls them the “REINZ Book of Standard Clauses”.

Even though they are referred to as standard or general clauses, it is important that you understand what these mean and that you are able to comply with them. If you want to make changes to any of these clauses you should ask your lawyer to do this before you sign the agreement.

The following are a few examples of the types of things you can expect to see in either the ADLS or REINZ form.

- The property is sold with vacant possession (if the property has tenants, the agreement needs to reflect whether the property will be sold vacant or tenanted).
- What access rights the purchaser/buyer has to the property prior to the settlement date to examine the property and the chattels.
- Provisions concerning default by the purchaser/buyer (e.g. the seller is not obliged to give possession; the buyer will pay interest at an agreed rate if unable to pay on the settlement date).
- Provisions regarding default by the seller: ~~this includes provisions relating to payment of any compensation to the buyer, including reasonable costs for accommodation and storage of chattels if the seller fails to give vacant possession on the due date~~ designed to compensate the buyer for any delay in settlement.
- The seller’s obligations to insure the property and chattels until possession of the property passes to the buyer ~~in accordance with the contract~~; and what happens if the property is damaged prior to that date. If you are a seller make sure that you do not cancel your insurance until after the settlement has been concluded. If you are a buyer, ensure that you or your lawyer arranges insurance from the settlement date.
- Undertakings by the seller that all local authority and any other requirements have been met. If you are a seller any work you have done on the property must have the necessary building permits, resource consents, code compliance certificates and the like *before* you put the property on the market.

The above is not an exhaustive list. It is provided simply to indicate the range of things you need to think about when signing a sale and purchase agreement.

REINZ Sale and Purchase Agreement

~~There are some key differences introduced by the REINZ sale and purchase agreement that do not appear in~~ between the REINZ and the ADLS agreement that you should be aware of if you are using the REINZ sale and purchase agreement. Your lawyer can explain these differences to you and may advise you to use one of these forms in preference to the other.

I have changed my mind about buying/selling the property: can I cancel the agreement?

You cannot cancel a sale and purchase agreement simply because you have had second thoughts about buying or selling the property concerned.

~~Nor can you~~ You may not be able to cancel an agreement simply by inserting what is sometimes called a “solicitor’s approval” clause (a condition in the agreement that says something like “this agreement is subject to my solicitor’s/lawyer’ approval”). Your lawyer can ~~only help~~ you to cancel an agreement only on the basis of the specific conditions in the agreement.

As a general principle, once you have signed a sale and purchase agreement and the conditions set out in it have been met, you will have to go ahead with the sale/purchase of the property.

~~Both the~~ A buyer ~~and~~ seller must make a genuine effort to fulfil ~~the~~ conditions included for his or her benefit. For example, if you agreed that you would buy a house, subject to being able to obtain arrange finance, you must ~~make~~ genuinely try to arrange a loan. Similarly, if you agreed to buy a house on condition that you would sell your own house by a certain date, you must be able to show that you genuinely did try to sell.

There are significant differences between the ADLS and REINZ sale and purchase agreements in terms of the ~~exact conditions~~ circumstances under which a contract can be cancelled.

It is important that whether you are a buyer or seller you have checked *all* the terms and conditions in any agreement and that you are prepared to accept or renegotiate them before signing.

What if your agent or salesperson or someone related to them wants to buy the property?

If your agent or salesperson (or someone related to them, either by family, or possibly through a business relationship) wants to buy your property, by law they must obtain your informed consent to the purchase and you will be asked to sign a consent form. This form must be given to you along with the sale and purchase agreement.

Before you sign the consent form the agent or salesperson must give you a valuation of your property, made by an independent registered valuer. This valuation is not the same thing as the market appraisal that the salesperson or agent originally gave you when you listed the property for sale.

The valuation must be made at the salesperson’s own expense.

You can agree to sign the consent form before receiving the valuation, but in this case the agent or salesperson:

- Must give you a provisional valuation (again, this is not the original market appraisal); and
- Give you the valuation made by an independent registered valuer within 14 days of your signing the consent form; and
- If the independent valuation is greater than the provisional valuation, you can cancel the contract for the sale of your property.

These requirements apply to a wide range of “related persons”. More information can be found in the Conflict of Interest Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.

If you receive a personal offer from your agent or salesperson, you are advised to consult your lawyer before signing either the consent form or a sale and purchase agreement.

What is the agent’s or salesperson’s role in the settlement process?

The settlement date in the sale and purchase agreement is the date on which the buyer must pay for the property and is then entitled to take possession of it. The seller must have made all the necessary arrangements to enable the buyer to take possession, e.g. ensuring that the mortgage is released, keys are available, and removing furniture and personal effects.

The agent or salesperson is not usually involved in this stage of the transaction. The role of the agent and salesperson usually ends at the point that the sale becomes unconditional. After that any further interaction is between the seller and buyer (generally their lawyers). An agent or salesperson is not required to verify the credit-worthiness of a potential buyer, or to guarantee settlement.

~~If either a party the buyer or seller is unable to do whatever is necessary to settle on the due date, the party should consult his or her lawyer should contact the other person’s lawyer in advance for advice. Sometimes the parties can agree to vary the settlement arrangements on the advice of their lawyers accordingly.~~

3 WHAT IF THERE’S A PROBLEM?

- You should ensure that you keep a copy of any document that you sign (e.g. the agency agreement, sale and purchase agreement, or client consent form).
- If you are concerned over some aspect of the service you received from an agent or salesperson, you should, in the first instance discuss any concerns you have with the agent or salesperson (or, if necessary, with a more senior person in his or her office): agents are required to have in-house complaints resolution procedures.
- Whether you are a buyer or seller, there are several sources of help and advice you can go to, including:
 - The Real Estate Agents Authority. The 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.

Further information on the Authority’s complaints process can be found at www.reaa.govt.nz or by calling 0800forREAA and requesting a copy of the How to Make a Complaint brochure and/or the Complaint Form.

- Your lawyer.
- Community Law Centres.
www.lsa.govt.nz/about-us/legal-services/community-law-centres.php
- Citizens Advice Bureaux.
www.cab.org.nz
- Ministry of Consumer Affairs.
www.consumeraffairs.govt.nz

[Conveyancing is generally outside the jurisdiction of Community Law Centres. Further, the desirability of referring people with issues arising out of a contract to Citizens Advice Bureaux is questionable. The Section suggests that the references to these two organisations would be better omitted.]

It is suggested that the New Zealand Law Society Property Law Section's website (www.propertylawyers.org.nz) be added. This contains property-specific information and an on-line 'Find a property lawyer' directory.

It is also suggested that the ConsumerBuild website be added: www.consumerbuild.org.nz.]

4 FOR BUYERS

Dealing with a real estate agent or salesperson

Most people who buy residential property in New Zealand will find themselves dealing with a real estate agent or salesperson. While some sellers arrange the sale of their property themselves (private sale), most will engage an agent or salesperson to market the property for them and facilitate the sales process.

You should bear in mind that the agent is engaged and paid by the seller. The primary duty of an agent and the salespersons who work for that agent is to the seller, and to getting the best outcome possible for the seller.

The agent or salesperson does not and cannot have the same duty to you as a buyer.

Agents and salespersons do, however, have some clear responsibilities to buyers. All agents and salespersons are bound by a Code of Professional Conduct and Client Care, issued by the Real Estate Agents Authority. A copy of this code is available from www.reaa.govt.nz or by calling 0800forREAA. Under the Code, agents and salespersons must deal fairly and honestly with all parties and must not provide any misleading information to a buyer.

When you view a property ask questions of the agent or salesperson. Be specific with them about what you want to know. The agent or salesperson does not have to volunteer information or anticipate what you might want to know, and he or she is not required to discover defects in a property that would not be readily apparent. The agent or salesperson does, however, have to give you factual and truthful information and to disclose to you known defects in the property.

[It is suggested that the addition is desirable having regard to the provisions of Rule 4.5 of the draft Code of Conduct and Client Care.]

If you are interested in a property and are considering making an offer to buy it, it is essential that you get independent advice. You may, for example, need a building inspection, information from the local council (e.g. a LIM report), an independent valuation, and you will certainly need legal advice if you get to the point of making an offer.

Do I have to pay anything to an agent or salesperson?

Not usually. Agents and salespersons in New Zealand generally work on behalf of a seller and it is therefore the seller who pays. An agent or salesperson who is marketing a property on behalf of a seller cannot ask a buyer to pay for his or her services.

This is different from some other countries where buyers' agents are common: that is, agents who are employed by a buyer to locate a property and sometimes to negotiate the purchase on the buyer's behalf. There are few buyers' agents in New Zealand. More information on buyers agents can be found in the Buyers Agent Fact Sheet available from www.reaa.govt.nz or by calling 0800forREAA.

Can I deal directly with the seller?

If the seller has appointed an agent, or agents, you cannot deal directly with the seller. The seller will have a contract (an agency agreement) with the agent or agents, and must work through them.

If the seller has appointed several agents, you can deal with whichever agent you wish. Do, however, deal ~~only~~ through only *one* of the seller's agents.

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Useful sources of advice and assistance are:

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| • Consumer NZ | www.consumer.org.nz |
| • New Zealand Law Society | www.lawsociety.org.nz |
| • Department of Building and Housing | www.dbh.govt.nz |
| • Building Inspections | www.buildingsurveyors.co.nz |
| • Weather Tight Homes | www.dbh.govt.nz/weathertightness-index |

For More information

Website: www.reaa.govt.nz
 Phone: 0800forREAA (0800 367 7322)
 Email: info@reaa.govt.nz

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