

AGENCY AGREEMENT AND CONTINUING AGENCY

USER GUIDE

1. This form has been designed to comply with the Property, Stock & Business Agents Act 2002 (the Act) and Regulations 2003 (the Regulations) which commenced 1 September 2003.
2. The Agent must fully understand the terms of the agency agreement. Failure to comply with the law and follow correct procedure may prevent the Agent from recovering their commission, fees and expenses and/or subject the Agent to penalties for breach of the Act and Regulations. The Agent should be able to explain the agency agreement to the Principal.
3. All parts of the form must be completed. An omission may bring about a defective agency agreement, enabling a Principal to avoid their financial responsibilities to the Agent.
4. A licensee may delegate their authority to a salesperson to both inspect the property and sign the sales inspection report and the agency agreement.
5. An Agent must not act on the sale of a property unless the Agent has conducted a preliminary physical inspection of the property, and on completion prepared and given to the Principal a sales inspection report. The practical approach is to complete the sales inspection report, discuss with the Principal, then complete the agency agreement.
6. The agency agreement must be signed by both the Agent and Principal, and the copy marked "Principal's Copy" must be handed to the Principal. You are advised not to deliver the sales inspection report unless you have a signed agency agreement.
7. The agency agreement must be served on the Principal(s) within 48 hours in the manner provided by the Act and Regulations. Failure to do so may result in loss of commission.
8. The licence number of the agent must appear on the agency agreement. If the Agent trades as a corporation the licence number is the corporation's licence number, if as a sole trader the Agent's licence number, if as a partnership it is one of the partner's licence numbers.
9. The Agent's opinion as to the current estimated selling price or price range must reflect the Agent's true estimate of the sales price. This is important as the Agent may be called upon to substantiate the estimate if there is a complaint to the Office of Fair Trading about underestimating or overestimating prices to consumers.
10. The time period for the agency agreement must be completed and should state the period of the fixed term, called the Exclusive Agency Period. The Principal may, however, terminate the fixed term period after the end of 90 days by giving the Agent 30 days notice in writing, effectively making it a 120 day agency agreement.
11. The Agent's remuneration for payment of commission, which is calculated as a percentage of the sale price, must state the amount of the remuneration calculated on the estimated sale price.
12. There is a warning clause to Principals about their liability to pay two commissions under certain circumstances. The Agent should make enquiries of the Principal as to whether the Principal has signed any other current agency agreement(s). If so, the Agent should direct the Principal to check the agency agreements as to whether they are sole or exclusive and whether they have expired. If there is an existing sole or exclusive agency agreement you must not enter into any sales agency agreement with the Principal, as to do so is a breach of the Act. You will not be entitled to commission and will be liable for penalties.
13. GST
 - i GST is payable by the Agent to the ATO in respect of the performance of the Agent's services under this agency agreement. The agency agreement provides that the Agent is entitled to recover GST from the Principal.
 - ii In accordance with ACCC guidelines, all amounts referred to in this form, including fees, expenses and outgoings are expressed as inclusive of GST.
 - iii Where the Agent incurs an expense in the course of providing services such as advertising, these expenses are considered a taxable supply, even if the expense is GST free in the Agent's hand. When recovering disbursements Agents should subtract the input tax credit received on the original expenses and then add on GST when charging the Principal. Example: advertising of \$990.00, Agent can claim an input tax credit of \$90.00 The Agent charges the Principal \$900.00 plus \$90.00 GST being a total of \$990.00. The Agent remits the \$90.00 to the ATO.
 - iv Where expenses are paid by the Agent, as agent for the Principal, and the account is addressed directly to the Principal, the Agent should pass the account to the Principal without adding any further GST (e.g. owners corporation levy, accounts for repairs and maintenance).
 - v The Agent's Fee is calculated on the GST inclusive sale price.
14. Ensure that all costs and expenses are included in the agency agreement.
15. The fees and expenses cannot be varied except as agreed by the Principal in writing.
16. Special conditions where space is insufficient (e.g. where the Agent is to perform additional services or where they are to advertise): write "See Annexure Hereto" and then attach to each copy of the agency agreement. The annexure must also be signed by both parties.
17. An Agent must not provide financial advice. Any person seeking the Agent's opinion should be advised to consult with their own independent financial and/or investment advisor.
18. Agents have an obligation to advise a prospective purchaser of all material facts in respect of the Property. The material fact clause will assist in that process, but will not of itself discharge the Agent's obligations. You should raise this issue with the Principal and also undertake reasonable research to become aware of the material facts pertaining to the Property.
19. An Agent must disclose, on the agency agreement, any rebates, discounts or commissions that the Agent may receive in respect of expenses claimed by the Agent in relation to the real estate transaction. If this disclosure is not made, the Agent will not be entitled to recover those expenses.
20. It should be noted that there are other disclosure requirements under the Act and Regulations which are required to be given separately from the agency agreement under certain circumstances.
21. The Agent must give the Principal a copy of the consumer guide "Agency Agreements for the Sale of Residential Property" prior to the signing of the agency agreement and this must be acknowledged by the Principal in the agreement.
22. A Cooling-off period of one business day, that is until 5pm on the next business day, applies to agency agreements. Saturday is included for the purpose of the Cooling-off period. For example, if the Agent and Principal sign on a Friday the Cooling-off period runs out at 5pm on Saturday. The Principal may terminate the agency agreement during that time. The Cooling-off period may be waived in writing by the Principal, as a result of the Agent serving a 'Notice of Waiver of Cooling-off period', a copy of the proposed (unsigned) agency agreement, and the "Agency Agreements for the Sale of Residential Property" consumer guide on the Principal at least one business day before the Principal signs the agency agreement. The waiver of Cooling-off period must be signed by the Principal prior to signing the agency agreement.
23. Ensure that a person signing on behalf of a Principal corporation identifies their status on the agency agreement, e.g. Director, Secretary.

INSTRUCTION TO SOLICITOR/CONVEYANCER

TO: Solicitor/Conveyancer

Address

My/our property has been listed for sale with (Agent)

and I/we wish you to act in the matter as my/our solicitor/conveyancer.

Address of Agent

Telephone Email

Please obtain on my/our behalf all the necessary searches, certificates and documentation, prepare a contract for the sale of the property and forward the original and the counterpart to my/our listing Agent as soon as possible.

I/we undertake to pay your reasonable fees and out of pocket expenses in this matter when notified of the amount. The following details are supplied to assist you:

1. VENDORS: Name

Address

Telephone: (Home) (Work)

Fax Mobile

Email

2. PROPERTY: Address

House/Unit/Vacant Land/Other:

Lot No: D.P. No:

Volume: Folio:

Folio Identifier:

3. INCLUSIONS: ☐ blinds ☐ curtains ☐ insect screens ☐ stove ☐ range hood ☐ fixed floor coverings
☐ built-in-wardrobes ☐ dishwasher ☐ light fittings ☐ pool equipment ☐ clothes line ☐ TV antenna

Others

4. EXCLUSIONS:

5. VACANT POSSESSION ☐ OR SUBJECT TO EXISTING TENANCY ☐

Copy of lease located at: ☐ enclosed OR ☐ other location details

The Agent is the managing agent ☐ Yes ☐ No If no, name and contact details of managing agent

6. WHEREABOUTS OF TITLE DEEDS:

Mortgagee:

Branch:

Account No:

7. DEPOSIT TO BE HELD BY: ☐ Agent ☐ Solicitor/Conveyancer ☐ Other:

8. THE PROPERTY IS TO BE SOLD BY: ☐ Auction ☐ Private Treaty

9. THE AGENCY AGREEMENT IS: ☐ Open ☐ Exclusive ☐ Sole

10. The solicitor/conveyancer is instructed to attend to payment of Agent's fees, expenses and charges at settlement if the Agent does not hold the deposit or holds insufficient funds to attend to the payment of all monies due to the Agent.

11. s.149(2) CERTIFICATE TO BE OBTAINED BY: ☐ Agent ☐ Solicitor/Conveyancer

12. POSSIBLE AFFECTATIONS OF THE PROPERTY YOU SHOULD DISCUSS WITH ME:

13. SPECIAL CONDITIONS YOU SHOULD DISCUSS WITH ME:

Would you kindly contact me if any further information is required.

SIGNED

DATE

/ /

SALES INSPECTION REPORT AND EXCLUSIVE AGENCY AGREEMENT AND CONTINUING AGENCY

The Property, Stock & Business Agents Act 2002 and Regulations requires all Agent's instructions to be in the form of a written agreement.

PARTIES

Principal

ABN / ACN		GST Registered <input type="checkbox"/> Yes <input type="checkbox"/> No	
Address		Postcode	
Phone: Work	Mobile		
Phone: Home	Fax		
Email			

Agent

Licensee's Licence No.* (see note)		GST Registered <input type="checkbox"/> Yes <input type="checkbox"/> No	
ABN / ACN		Postcode	
Trading as		Postcode	
Address		Postcode	
Phone: Work	Mobile		
Fax	Email		

* **Note:** If the Agent trades as a corporation the licensee's licence number is the corporation's licence number.

PROPERTY

Address of Property for Sale

Address of Property for Sale	
Postcode	

Together with inclusions as specified in the Contract for Sale

Together with inclusions as specified in the Contract for Sale	
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Covenants/easements/defects/notices/orders as specified in the Contract for Sale, if known

Covenants/easements/defects/notices/orders as specified in the Contract for Sale, if known	
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Offered: ☐ with vacant possession ☐ subject to existing tenancies

Special Conditions (if any) as specified in the Contract for Sale

Special Conditions (if any) as specified in the Contract for Sale	
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Refer to Clauses 4 & 5 regarding special instructions about the inspection of and promotional activities for the Property.

PRICE

Price at which the Property is to be offered (including GST, if any) \$

Recommended method of sale

Agent's opinion as to current estimated selling price (or price range) \$

(this opinion is not to be construed as a valuation)

PRINCIPAL'S ☐ **SOLICITOR** ☐ **CONVEYANCER**

Firm	
Name of Solicitor/Conveyancer	
Address 1. Business	
2. Document Service	
Phone: Work	Mobile
Fax	Email

Signature of Agent	Date of report / /
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SALES INSPECTION REPORT AND EXCLUSIVE AGENCY AGREEMENT AND CONTINUING AGENCY

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EXCLUSIVE AGENCY AGREEMENT

Agency Period

1. In consideration of the Agent promising to use their best endeavours to sell the subject Property, the Principal hereby grants to the Agent exclusive selling rights of the Property for a period from
 / / to / / inclusive now called the "Exclusive Agency Period".
2. i In addition to the exclusive selling rights granted to the Agent under Clause 1, the Principal also grants to the Agent non-exclusive selling rights of the Property commencing on the expiry of the Exclusive Agency Period specified in Clause 1 and until such time as either the Property is sold or this agreement is terminated by either party giving notice in writing, but without prejudice to either party's rights accrued or obligations incurred prior to the effective termination, now called the "Continuing Agency Period".
- ii If the Exclusive Agency Period is for a fixed term exceeding 90 days, then the Principal can terminate this agreement without penalty at any time after the end of the first 90 days by giving 30 days notice in writing (this clause does not apply where the Contract for Sale provides for the construction by the Principal of a dwelling on the Property).

Agent's Remuneration

3. i The Exclusive Agent shall be entitled to a fee of
 (GST incl.)
 if during the Exclusive Agency Period the Property is sold either:
 (a) by the Agent; (b) by any other agent; or (c) by the Principal.
- ii The Agent shall be entitled to a fee at the agreed amount if at any time following the expiration of the Exclusive Agency Period the Principal enters into a Contract for the Sale of the Property with a purchaser effectively introduced to the Principal or the Property during the Exclusive Agency Period by the Agent, by any other agent or by the Principal.
- iii The Agent shall be entitled to a fee at the agreed amount if during the Continuing Agency Period the Agent effectively introduces to the Principal or the Property a purchaser who subsequently enters into a binding contract.
- iv The Agent's fee is calculated on the selling price. If the sale is subject to GST then the Agent's fee is calculated on the GST inclusive selling price.
- v The Agent's remuneration in the event of a sale at the Agent's estimate of selling price would equate to
 \$ (GST incl.)
- vi The fee to which the Agent is entitled shall be due and payable on completion of the sale or upon demand if the sale is not completed owing to the default of the Principal after the parties have entered into a binding contract or if after the making of the contract the Principal and the purchaser mutually agree not to proceed with the contract.

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sell the property or introduce a buyer who later buys the property.

WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

Inspection

4. Unless otherwise instructed by the Principal, any prospective purchaser is entitled to inspect the Property in the following circumstances:

Promotional Activities

5. The sale of the Property is to be advertised and/or otherwise promoted
☐ as per the attached schedule **OR** ☐ not advertised
OR as follows:

For Sale Sign: Permission is hereby granted for the Agent to erect "For Sale" signage ☐ Yes ☐ No

It is acknowledged that the Agent is not responsible for any liability, damages or injuries incurred as a result of the erection of the signage.

SALES INSPECTION REPORT AND EXCLUSIVE AGENCY AGREEMENT AND CONTINUING AGENCY

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EXCLUSIVE AGENCY AGREEMENT

Expenses

6. The Agent shall be entitled to reimbursement for the following expenses incurred by them:

Item	Amount	When due and payable
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
TOTAL amount of expenses or charges the Agent expects to incur and for which the Agent is entitled under this agreement to be reimbursed (incl GST where applicable).	\$	

Variation of Fees and Expenses

7. The services to be provided by the Agent and any fees or expenses payable by the Principal to the Agent pursuant to this agreement cannot be varied except as agreed by the Principal in writing.

Deposit

8. It is irrevocably agreed that all monies paid by the purchaser as deposit monies shall be held by the Agent in trust as stakeholder pending completion.

Authority to Deduct

9. If any money is received by the Agent on behalf of the Principal, then the Principal authorises the Agent to deduct all of the Agent's above mentioned fees, expenses and charges before accounting to the Principal or the Principal's solicitor/conveyancer.

Payment to Principal

10. If money held by the Agent becomes due to the Principal, then the Principal directs the Agent to pay that money by:

Cheque ☐ Yes ☐ No Electronic Funds Transfer (EFT) ☐ Yes ☐ No

If by EFT: Account Name

BSB / Account No.

Financial Institution Taxes or Deductions

11. The Agent shall be entitled to be reimbursed for any taxes or deductions debited by banks or other financial institutions against the Agent's account that are attributable to the affairs of the Principal.

Contract For Sale

12. Where the Property is residential property (as defined in Division 8 of Part 4 of the Conveyancing Act 1919), the Agent cannot act on behalf of the Principal in respect of the sale of the Property unless the Agent has a copy of the proposed Contract for Sale in respect of the Property available for inspection.

13. The Agent is not authorised to enter into or sign a Contract for Sale on behalf of the Principal.

Conjunction

14. Unless otherwise instructed, the Agent may allow other agents to act in conjunction with them in order to effect a sale but only one fee will be payable.

Limit of Agent's Services

15. The Agent does not undertake to perform any other services in connection with the sale.

GST

16. i Any amounts referred to in this agreement which are payable by the Principal to the Agent in respect of services provided by the Agent under this agreement, including reimbursement of expenses, are expressed inclusive of the Goods and Services Tax ("GST"), at the rate of 10% (the current rate). If the current rate is increased or decreased, the parties agree that any amounts referred to in this agreement will be varied accordingly.

ii The parties agree that the time of supply for GST purposes shall be the completion date of the sale.

Agent's Indemnity and Liability

17. The Principal will hold and keep indemnified the Agent against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Agent in the course of or arising out of the proper performance or exercise of any of the powers, duties or authorities of the Agent under this agreement.

Financial and Investment Advice

18. The Principal acknowledges that any financial or investment advice provided by the Agent to the Principal is of a general nature only whose preparation does not take into account the individual circumstances, objectives, financial situation or needs of the Principal. The Principal is advised to consult with their own independent financial and/or investment advisor.

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EXCLUSIVE AGENCY AGREEMENT

Material Fact

19. i The Principal warrants that the Principal has supplied the Agent in writing with all the relevant details and information pertaining to all the material facts in respect of the Property.
- ii The Principal acknowledges that the Property, Stock and Business Agents Act 2002 requires the Agent to disclose all material facts to prospective and actual purchasers.
- iii The Principal directs the Agent to disclose all of the material facts provided in writing by the Principal to the Agent to all prospective and actual purchasers of the Property.
- iv In this clause "material fact" has the same meaning as it has in Section 52 of the Property, Stock and Business Agents Act 2002.

Privacy Policy

20. The Agent uses personal information collected from or about the Principal to act as the Principal's Agent and to perform their obligations under this agreement.

The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients.

The Agent may disclose information to other parties including advisors, media organisations, property data service providers, on the internet, to potential buyers, or to clients of the Agent both existing and potential, as well as to parties engaged to evaluate the Property, owners' corporations, valuers, government and statutory bodies and financial institutions.

The Agent will only disclose information to other parties as required to perform their duties under this agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.

If the Principal would like to access this information, they can do so by contacting the Agent at the address and contact numbers contained in this agreement.

The Principal can also correct this information if it is inaccurate, incomplete or out-of-date.

Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act on the Principal's behalf effectively or at all.

Disclosure of Rebates, Discounts or Commissions in Respect of Expenses

21. In respect of any expenses to be incurred by the Principal or the Agent on behalf of the Principal pursuant to this agreement, the Agent discloses that the Agent may receive the following rebates, discounts or commissions from third parties.

Name of Third Party

Estimated Amount of Rebate, Discount or Commission

If no benefit, write in "nil".

Principal's Authority

22. The Principal warrants that the Principal has authority to enter into this agreement.

Acknowledgements

23. The Principal acknowledges being served with a copy of this agreement.
24. The Principal acknowledges that by signing this agreement the Principal is denied the right to sell the Property without paying a fee.

Occupational Health and Safety

25. The Principal acknowledges that
 - i at all material times the Principal has sole control of the Property listed for sale.
 - ii the Agent acts under the direction of the Principal to facilitate the transfer of the Property between Principal and purchaser.
26. The Principal acknowledges that the Principal has thoroughly inspected the Property prior to sale and that the Property is
 - i free from harm ☐ Yes ☐ No
 - OR
 - ii subject to the defects and risks outlined in the Contract for Sale ☐ Yes ☐ No

Consumers Guide

27. The Principal acknowledges that they have been given a copy of the consumers guide "Agency Agreements for the Sale of Residential Property" prior to signing this agreement ☐ Yes ☐ No Date / /

Cooling-Off Period:

You (the Principal) have a Cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5pm on the next business day or Saturday.

Have you waived the Cooling-off period in writing? ☐ Yes ☐ No

Signature of Principal

Date

 / /
 / /

Signature of Agent

Date

 / /