

SALES INSPECTION REPORT AND EXCLUSIVE AGENCY AGREEMENT AND CONTINUING AGENCY

The Property and Stock Agents Act 2002 (NSW) and Regulation require all agents' instructions to be in the form of a written agreement.

PARTIES

Principal

Gregory Roy Upton and Simone Suellyn Upton	
ABN / ACN Not Applicable	GST Registered ☐ Yes ☒ No
Address 33 Prentice Avenue	
Tamworth South	Postcode 2340
Phone: Work Not Applicable	Home Not Applicable
Mobile 0427 962 247	
Email* (see note) simoneupton2060@gmail.com	
* Note: By including your email address, you consent to service of any documents, including this agreement and any documents required to be served under or because of this agreement, by way of email.	

Agent

J.K.L Real Estate Pty Ltd	
Licensee's Licence No.** (see note) 10036894	
ABN / ACN 16 134 434 727	GST Registered ☒ Yes ☐ No
Trading as J.K.L Real Estate Pty Ltd	
Address Shop 4 The Marina, 2 Little Street	
FORSTER, NSW	Postcode 2428
Phone: Work 02 65548717	Mobile
Email*** (see note) alex@jklrealestate.com	
** Note: If the Agent trades as a corporation the licensee's licence number is the corporation's licence number.	
*** Note: By including your email address, you consent to service of any documents, including this agreement and any documents required to be served under or because of this agreement, by way of email.	

Note: If there is a joint agent, refer to and complete the Annexure to this agreement titled "Joint Agent Annexure". If none, the Annexure titled "Joint Agent Annexure" does not need to be completed or included in this agreement.

PROPERTY

Address of Property for Sale

Unit 1001 Twin Pines 21-25 Wallis St,	
Forster	Postcode 2428

Description of the Property

Not Applicable

Other details required to identify the Property

Not Applicable

Inclusions (including any fixtures and fittings)

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

Others As per contract

Covenants/easements/defects/notices/orders as specified in the contract for sale, if known

As per contract

Offered: ☐ with vacant possession ☐ subject to existing tenancies

Special Conditions (if any) as specified in the contract for sale

As per contract

Refer to Clauses 4 & 5 regarding special instructions about the marketing and showing of the Property.

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PRICE

The Agent's opinion as to current estimated selling price (or price range) \$ 1,300,000 - \$1,400,000

Note: This opinion is not to be construed as a valuation and if a price range is used then the highest price in the price range must not be more than 10% higher than the lowest price in the price range.

The Principal instructs the Agent to market the Property (including GST, if any) at: \$ 1,300,000 - \$1,400,000

Note: The price at which the Property is marketed cannot be less than the Agent's current estimated selling price for the Property.

The Agent's recommended method of sale Private Treaty

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

Firm West Tamworth Legal

Name of Solicitor/Conveyancer Judy Jackson

Address 1. Business 127 Bridge St, Tamworth 2340

2. Address for Service of Documents PO Box 1570, Tamworth 2340

Phone: Work 02 6766 2593 Mobile Not Applicable Email admin@dunmac.com.au

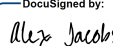
DATE REPORT WAS PREPARED:

26 / 06 / 2021

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

**Signature of Agent/
Authorised Representative**

Date

DocuSigned by:

 CDCB8B6D681A744C...

26/6/2021

Name of Signatory

Alex Jacobs

Note 1: This part of the agreement may be signed by an assistant agent.

Note 2: If there is a joint agent refer to and complete the Annexure to this agreement titled "Joint Agent Annexure". If none, the Annexure titled "Joint Agent Annexure" does not need to be completed or included in this report.

SALES INSPECTION REPORT

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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 26 / 06 / 2021 to 26 / 09 / 2021 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 Agent shall be entitled to a fee of 3% (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 \$42,000 (GST incl.)
- vi The fee to which the Agent is entitled shall be due and payable upon demand:
 - (a) on completion of the sale; or
 - (b) if the sale is not completed owing to the default of the Principal after the parties have entered into a binding contract; or
 - (c) if after the entering into of the contract the Principal and the purchaser mutually agree not to proceed with the contract; or
 - (d) upon the termination of the contract by the Principal if the sale is not completed owing to the default of the Purchaser and the fee is the same or less than the amount of the deposit which is forfeited to the Principal.

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the property or introduces 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).

WARNING: The term immediately above provides that a commission is payable under this agreement even if the sale of the property is not completed.

Inspection

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

With JKL Sales Representative

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, In house colour brochure, TV Display, Window Display

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.

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EXCLUSIVE AGENCY AGREEMENT

Marketing Sales Contract

5A. Does the Principal wish for a marketing sales contract to be prepared by REI Quicontract and e-mailed to the Principal, the Agent and the Principal's lawyer / conveyancer (if any) for approval? ☐ Yes ☒ No

If the Principal has not yet nominated a lawyer / conveyancer to act on the sale, does the Principal wish for its conveyancing to be conducted for a fixed fee by REI Quicontract, with that cost to be paid by the Principal? ☐ Yes ☒ No

Note: The marketing sales contract referred to in this clause may not include copies of all documents prescribed by law to be attached to a contract for sale and should be forwarded to a lawyer or conveyancer appointed by the Principal for review.

Services, Charges and Expenses

6. The Agent shall perform the following services and be entitled to reimbursement of the following charges and expenses incurred by them:

Service	Amount	When due and payable by the Principal
Not Applicable	\$	
	\$	
	\$	
	\$	
	\$	
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 Services, Charges and Expenses

7. The services to be provided by the Agent and any charges 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. i 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. If the Agent agrees at the Agent's sole discretion to release deposit monies to the Principal before settlement of the contract for sale, then prior to any sum being released, the Principal must give an irrevocable direction and authority to the Agent to retain a sum in trust sufficient to cover the Agent's fees, expenses and charges (payable under this agreement) and attend to payment of such fees, expenses and charges to the Agent from the sum retained when due and payable under clause 3(vi).
- ii If the Agent at the Agent's sole discretion agrees in writing for deposit monies to be held by the Principal's solicitor or conveyancer in trust or if the Agent does not hold sufficient funds in trust to cover all monies that would be payable to the Agent under this agreement, then the Principal must give an irrevocable direction and authority to the Principal's solicitor or conveyancer to attend to payment of the Agent's fees, expenses and charges (payable under this agreement) to the Agent in the following manner: (a) from the deposit monies and (to the extent applicable, if the deposit monies are insufficient) the balance of proceeds from the sale; (b) in respect of timing, when due and payable under clause 3(vi); and (c) before accounting to the Principal the remaining balance of proceeds from the sale, as applicable.
- iii For the avoidance of doubt, where the deposit monies are held by the Principal's solicitor or conveyancer in trust under this clause and a purchaser under a contract for sale of the Property authorises or agrees for the deposit monies to be released to the Principal before settlement of the contract for sale, then prior to any sum being released, the Principal must give an irrevocable direction and authority to the Principal's solicitor or conveyancer to retain a sum in trust sufficient to cover the Agent's fees, expenses and charges (payable under this agreement) and attend to payment of such fees, expenses and charges to the Agent from the sum retained when due and payable under clause 3(vi).

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 fees, expenses and charges set out in this agreement 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 To be Advised

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* (NSW)), 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.

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EXCLUSIVE AGENCY AGREEMENT

Conjunction

14. Unless otherwise instructed, the Agent may allow other agents to act in conjunction with the Agent 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, Liability and Release

17. The Principal will hold harmless and keep indemnified the Agent against, and release the Agent from, 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, Investment, Taxation and Other Advice

18. **WARNING:** The Principal acknowledges that any financial, investment, taxation or other 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, investment and/or taxation advisor or other appropriately qualified expert.

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 and will keep the Agent updated in writing of any changes to material facts.
- ii The Principal acknowledges that the *Property and Stock Agents Act 2002* (NSW) 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 for the purposes of section 52 of the *Property and Stock Agents Act 2002* (NSW).

Privacy

20. i The *Privacy Act 1988* (Cth) (the **Privacy Act**) allows certain information collected, held, used and disclosed for the purposes which it was collected as notified to users, and otherwise in accordance with the Privacy Act.
- ii This clause outlines how the Agent collects, holds, uses and discloses the Principal's personal information (as that term is defined in the Privacy Act). This clause only applies to the extent the Agent collects, holds, uses and discloses personal information.
- iii The Agent may collect, hold, use and disclose personal information the Principal provides the Agent in connection with this agreement or collected from other sources for the following purposes: (a) identifying and verifying the Principal and the Property; (b) acting on behalf of the Principal in accordance with this agreement; (c) where applicable, advertising, promoting and, otherwise, marketing the Property for sale; (d) negotiating any prospective sale of the Property; (e) liaising and exchanging information with the Principal, the ultimate purchaser, prospective purchasers and each of their legal and other advisors in relation to or in connection with any sale of the Property (including with respect to the contract for sale); (f) complying with this agreement, any applicable law and any dispute resolution process; (g) managing, serving and signing (or arranging signing of) this agreement and managing any sale of the Property (including assisting with the exchange of the contract for sale and the preparation of any required statements of account); and (h) contacting and liaising with third parties (including, without limitation, goods and services providers and insurers) and to provide those third parties with the Principal's personal information.
- iv If the personal information outlined in this agreement or requested by the Agent is not provided by the Principal, the Agent may not be able to act on behalf of the Principal effectively or at all. The Agent may also not be able to discharge its obligations in this agreement. It is impracticable for the Agent to deal with a Principal who has not identified him, her or itself or used a pseudonym.
- v Personal information collected about the Principal may be disclosed by the Agent for any of the purposes for which it was collected (as outlined above) to other parties including actual or prospective purchasers, the legal and other advisors of the Agent, Principal, purchaser and/or prospective purchasers, and any agent (if applicable), clients of the Agent both existing and potential, advertising and media organisations, property data service providers, valuers, parties engaged to evaluate the Property, owners' corporations, government and statutory bodies, financial institutions, REINSW (which provides technical and other assistance to the Agent to effect the matters set out above) and other third parties (including, without limitation, goods and services providers and insurers), government agencies, courts, regulatory bodies, and law enforcement agencies, or as required, authorised or permitted by any applicable law.
- vi The Agent may also use the Principal's information including personal information for marketing and research purposes to inform the Principal of products and services provided by the Agent, which the Agent considers may be of value or interest to the Principal, unless the Principal tells the Agent (by ticking the box below) or has previously told the Agent not to.
- vii If the Principal **does not** wish to receive any information about such products and services then please tick this box: ☐ or otherwise notify the Agent using the Agent's contact details set out earlier in this agreement.

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EXCLUSIVE AGENCY AGREEMENT

- viii The Principal has the right to request access to any personal information held by the Agent which relates to it, unless the Agent is permitted by law (including the Privacy Act) to withhold that information. The Principal also has the right to make a complaint about the way in which the Agent has handled the Principal's personal information or that the Agent may have breached this clause or the Privacy Act. The Principal also has the right to request the correction of any personal information which relates to the Principal that is inaccurate, incomplete or out-of-date.
- ix Any requests for access to the Principal's personal information or any complaints should be made in writing to the Agent at the contact details included in this agreement.
- x The Agent may charge a reasonable fee where access to personal information is provided (no fee may be charged for making an application to access personal information).
- xi The Agent will take reasonable precautions to protect the personal information it holds in relation to the Principal from misuse, loss, unauthorised access, modification or disclosure.
- xii The Agent may disclose the Principal's personal information outside of Australia. In doing so, the Agent will take reasonable steps that are reasonable in the circumstances to ensure that any overseas recipient will deal with such personal information in a way that is substantially similar to, or consistent with, the way in which the relevant Australian Privacy Principles in the Privacy Act protects such personal information.
- xiii By signing this agreement, the Principal: (a) acknowledges that it has read, understands and accepts the terms of this clause; and (b) provides express permission to the Agent to collect, hold, use and disclose personal information in the manner described in this clause.

Disclosure of Rebates, Discounts, Commissions or Benefits

21. In respect of any expenses to be incurred by the Principal or the Agent on behalf of the Principal pursuant to this agreement or if the Agent refers a person to a non-independent service provider, the Agent discloses that the Agent may receive, or expects to receive, the following rebates, discounts, commissions or benefits from third parties as specified below or as notified by the Agent to the Principal in writing from time to time after the date of this agreement:

Name of Third Party	Nature of relationship with Third Party	The nature and value of any estimated amount of rebate, discount, commission or benefit
Not Applicable	Not Applicable	\$ NIL
		\$
		\$
		\$

If no rebate, discount, commission or benefit, write "nil".

Principal's Authority

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

Service and Signing

23. The Principal acknowledges being served with a copy of this agreement.
24. If the Agent causes this agreement to be electronically served on and /or signed by the Principal by way of electronic communication (including the use of a third party platform to facilitate the service and signing of this agreement), the Principal agrees that the Principal's electronic signature and initials created for the purpose of signing this agreement will be the electronic representation of the Principal's signature and initials for all purposes when the Principal electronically signs this agreement, just the same as a pen-and-paper signature or initial.
25. The Principal acknowledges that by signing this agreement the Principal is denied the right to sell the Property without paying a fee.

Warranty

26. The Principal warrants that all information provided by it to the Agent and in this agreement is true, correct and complete and that the Agent can rely on the information provided. The Principal agrees to keep the Agent updated, in writing, of any changes to such information to ensure that it remains up-to-date and accurate at all times.

Work, Health and Safety

27. The Principal acknowledges that, at all material times:
- i the Principal has sole management and control of the Property listed for sale to the exclusion of the Agent;
 - ii the Agent acts under the direction, management and control of the Principal to facilitate the real estate transaction between the Principal and the purchaser; and
 - iii the Principal is the person conducting a business or undertaking for the purposes of all work, health and safety laws, regulations and other requirements.
28. The Principal acknowledges, so far as reasonably practicable, that the Principal has thoroughly inspected the Property prior to sale and that the Property is:
- i without risk to health and safety ☒ Yes ☐ No
- OR**
- ii subject to the defects and risks outlined in the contract for sale ☐ Yes ☐ No

Joint and Several

29. If a party consists of more than one person or legal entity, this agreement binds them jointly and each of them severally.

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Annexure

30. In the interpretation and application of this agreement, a reference to an annexure is a reference to an annexure to this agreement and a reference to this agreement includes any such annexure.

Consumers Guide

31. 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 26 / 06 / 2021

Cooling-Off Period:

COOLING-OFF PERIOD: You (the vendor) 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

PRINCIPAL

If Principal is an individual

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

Signature of Principal /
Authorised Representative

Date

DocuSigned by:
Gregory Roy Upton
7B06FB6C3394DF...

26/6/2021

Name of Signatory

Authority of Signatory (delete whichever is not applicable)

~~Power of Attorney / Authority Letter~~
(attach a copy)

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

Signature of Principal /
Authorised Representative

Date

DocuSigned by:
Simone Suellyn Upton
DB14657BF1D14E8...

26/6/2021

Name of Signatory

Authority of Signatory (delete whichever is not applicable)

~~Power of Attorney / Authority Letter~~
(attach a copy)

Note: The "Authority of Signatory" box above only needs to be completed if the signatory is an Authorised Representative of the Principal signing this agreement on behalf of the Principal. If so, please attach either a copy of the power of attorney or authority letter.

If Principal is a corporation (to be signed by 2 directors, or 1 director and 1 secretary, or sole director and sole secretary, or authorised officer or Attorney)

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

EXECUTED for and on behalf of Not Applicable

ACN Not Applicable

pursuant to section 127 of the Corporations Act 2001 (Cth):

Signature of Director / Secretary /
Authorised Representative

Date

Name of Signatory

Authority of Signatory (delete whichever is not applicable)

~~Director / Secretary / Authorised Officer /
Attorney~~ (attach a copy of Power of Attorney
if applicable)

Signature of Director / Secretary /
Authorised Representative

Date

Name of Signatory

Authority of Signatory (delete whichever is not applicable)

~~Director / Secretary / Authorised Officer /
Attorney~~ (attach a copy of Power of Attorney
if applicable)

AGENT

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

Signature of Agent /
Authorised Representative

Date

DocuSigned by:
Lauren Hoswell
9F35A0902C3148A...

28/6/2021

Name of Signatory

Lauren Hoswell

Note 1: This part of the agreement MUST NOT be signed by an assistant agent.

Note 2: If there is a joint agent, refer to and complete the Annexure to this agreement titled "Joint Agent Annexure". If none, the Annexure titled "Joint Agent Annexure" does not need to be completed or included in this agreement.

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Joint Agent Annexure

**Joint
Agent**

Licensee's Licence No.**** (see note) Not Applicable

ABN / ACN

GST Registered ☐ Yes ☐ No

Trading as

Address

Postcode

Phone: Work

Mobile

Email***** (see note)

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

***** **Note:** By including your email address, you consent to service of any documents, including this agreement and any documents required to be served under or because of this agreement, by way of email.

1. Sales Inspection Report

Note: This signature block for the Sales Inspection Report is to be signed by a joint agent, if applicable.

This part of the agreement may be signed by an assistant agent.

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

**Signature of Agent /
Authorised Representative**

Date

Name of Signatory

2. Exclusive Agency Agreement

Note: This signature block for the Exclusive Agency Agreement is to be signed by a joint agent, if applicable.

This part of the agreement MUST NOT be signed by an assistant agent.

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

**Signature of Agent /
Authorised Representative**

Date

Name of Signatory

JOINT AGENT ANNEXURE

Agency agreements

for the sale of residential property

Selling a home is something many people do only once or twice in a lifetime, so it pays to do some homework before signing up with an agent to sell your property for you.

When you sign up with an agent, you enter into a legally binding contract. This fact sheet explains what your rights and responsibilities are under that contract.

You have a cooling-off period of 1 day starting from when you sign the agreement. You can cancel the agreement in this time if you are not happy with it (more information over the page).

Choosing a real estate agent

To sell a home in New South Wales, an agent must have a real estate agent's licence issued by NSW Fair Trading. You should check the licence details of all agents you are thinking of using before signing up with your preferred choice. You can do a licence check online through the Fair Trading website or by calling 13 32 20.

To find the right agent for your needs, you should shop around. If possible, get the names of one or two agents from other home owners in your area who have recently sold. We suggest you talk to at least three agents and:

- make sure they have a valid licence
- get a list of all their fees
- find out if they have a good knowledge of your area
- ask if they adhere to a code of ethics.

Signing up with an agent

Before the agent can market your property, they must sign a contract with you, called an 'agency agreement'. An agency agreement is a legally binding contract and it is important that you read and understand it.

If you are not sure about the agreement terms you should get legal advice.

Signing an agency agreement means that you authorise an agent to do certain things for you in relation to the

sale of your property, such as arranging advertising and inspections and receiving deposits from buyers. The agreement must specify what the agent is authorised to do for you and must state all commissions and any other costs you may be liable to pay.

What is in the agency agreement

The agency agreement must state:

- the services the agent will provide for you
- the amounts of any fees or commission you agree to pay for those services
- the circumstances in which the agent is entitled to payment – for example, commission is usually payable only when the property is sold
- how and when payment is to be made – for example, whether the agent can deduct their commission from the deposit money paid by the buyer
- warnings about circumstances in which you might have to pay commission to more than one agent (see information on page 2 about the different types of agency agreement)
- from 1 March 2015 inclusive, a warning about the commission if the agreement includes a term that a commission is payable even if the sale of the property is not completed
- the extent of the agent's authority to act for you – for example, whether the agent is permitted to exchange a sale contract on your behalf or make changes to the sale contract
- the agent's estimated selling price for the property. The price may be a single price or a price range. Note: If a price range is used the highest price cannot exceed the lowest price by more than 10%. An agent is required to amend their estimated selling price if it is no longer reasonable, notify you in writing and amend the agency agreement. Your consent is not required to amend the agreement with the revised estimated selling price. The agent must provide you with evidence of the reasonableness of their estimated selling prices.

You have the right to negotiate with the agent about the terms and conditions of the agreement and to ask for any legally permitted changes to be made. Alterations made to the agreement need to be signed by all parties, except if the agent revises their estimated selling price for your property.

The NSW Fair Trading website contains more information about the estimated selling price and what an agent must do when advertising or making a statement about the likely selling price of your property to potential purchasers.

Commission, fees and expenses

The amounts charged by agents are not set by law. You can negotiate with the agent about the amounts of any commissions, fees or other expenses that you may be required to pay. Before signing an agreement, it is a good idea to talk to a few agents and compare their prices. Ask each agent for a printed list of their fees and commission rates and the expenses they charge.

Disclosure of rebates and discounts

The agency agreement may require you to pay the agent for certain expenses in relation to the sale of your home, such as advertising, auctioneer's fee, or any other services the agent may arrange for you, such as cleaning, decorating or landscaping.

Sometimes the amount the agent has to pay for the service is less than what you are being asked to pay. This can occur if the agent receives a commission or discount from the provider of the service for being a regular customer – for example, some newspapers pay a commission to the agency at the end of the year based on how much advertising was placed.

The agency agreement must state the amounts or estimated amounts of any such commissions or discounts and from whom they are received. You can negotiate with the agent about whether you should pay the full amount.

Ending the agreement

The agency agreement usually has a specified period (a 'fixed term') during which the agreement cannot be

ended unless you and the agent both agree. If the agreement is open ended (that is, it does not have a fixed term) it must state how the agreement can be ended.

The length of any fixed term is negotiated between you and the agent, there is no minimum or maximum set term. The fixed term will depend on how long you and the agent think it will take to sell the property.

If the fixed term is longer than 90 days, you can give the agent 30 days written notice to end the agreement after 90 days. Of course, if the fixed term has less than 30 days left to run, you can just give notice to end the agreement at the end of the fixed term – check your agreement to see how much notice you need to give. If you are not sure how to end the agreement, you should seek legal advice.

If you are not happy with an agent's services, it is important to properly end your agreement with them before signing up with another agent. Otherwise both agents may charge you commission when the property is sold.

Types of agency agreements

There are several different kinds of agency agreements for the sale of residential property. It is important to be aware of the kind of agreement you sign, because it affects your rights and the amount of commission you may have to pay. You should discuss the agreement with a legal adviser if you are not sure about your rights. The following is an overview of the different types of agreements.

Exclusive agency agreements

Exclusive agency agreements are commonly used for the sale of residential property. In this kind of agreement, you give exclusive rights to one agent to sell your property. This may entitle the agent to be paid commission if the property is sold during the fixed term of the agreement, even if the property is sold by you or by another agent. The agent may also be entitled to commission if the property later sells to a person who started negotiating for the property with the original agent.

Sole agency agreements

This is similar to an exclusive agency agreement. You give rights to one agent to sell the property but you may find a buyer yourself. If you find a buyer who has not been introduced by the agent, then no commission is payable to the agent.

General listing / Open agency agreement

This lets you list your property with a number of agents. You pay a commission to the agent who finds the buyer.

Multiple listing

This occurs when you deal with an agent who is part of a network of agents working together to sell your home. It covers both auction and private treaty. You pay a commission to the agent you signed up with.

Auction agency agreement

This is effectively an exclusive agency agreement where the property is listed for auction.

Cooling-off period

The agency agreement becomes binding when the principal (that is, you as the owner/s [vendor/s] of the property, or someone who is legally acting for you) and the agent have signed it. There is then a cooling-off period of 1 business day during which you can cancel (or 'rescind') the agreement. Saturday is included for the purposes of the cooling-off period, but public holidays are not.

The cooling-off period starts when you sign the agreement and ends at 5pm on the next business day or Saturday. For example, if you sign the agreement on a Friday, the cooling-off period ends at 5pm on Saturday. If you sign up on Saturday, the cooling-off period would usually end at 5pm on Monday, unless that is a public holiday, in which case it will end at 5pm on Tuesday.

The cooling-off period gives you time to read the agreement, consider the terms you have agreed to, including the agent's fees, and get independent advice if you have concerns about any aspect of the agreement. Talk to the agent – they may be willing to change things in the agreement that you are not happy about.

Cancelling the agreement during the cooling-off period

If you decide to cancel (or 'rescind') the agreement during the cooling-off period, you need to deliver a 'notice of rescission' to the agent.

This simply means giving the agent a written notice or letter which:

- is addressed to the agent (use their name as given in the agency agreement),
- states that you are rescinding the agreement, and
- is signed by you (and any other person named on the agreement as a principal [vendor]) or by your solicitor/s.

You can hand the notice to the agent in person, deliver it to or leave it at the agent's office or the agent's address as given in the agency agreement, email it to an address specified by the agent as an address to which emails to the agent must be sent, or fax it to the agent. Make sure to keep a copy for your records.

The agent cannot charge you any fees or costs in relation to an agreement that has been rescinded correctly. Any money you have already paid to the agent must be refunded to you.

Waiving your cooling-off rights

If you are sure that you wish to go ahead with the agency agreement, you can waive, or forego, your right to a cooling-off period by signing a separate waiver form when you sign the agreement.

The cooling-off period can be waived only if the agent gave you the following documents at least 1 business day before you signed the agency agreement:

- a copy of the proposed (unsigned) agency agreement, and
- a copy of this fact sheet.

For example, on Thursday morning the agent gives you a copy of the unsigned agreement and this fact sheet, which you read and consider carefully. On Friday afternoon you sign the agency agreement and the waiver form. The agency agreement immediately becomes

binding and the agent can get to work on selling your home.

The Contract of Sale

A residential property cannot be advertised for sale until a Contract of Sale has been prepared. The contract must contain a copy of the title documents, drainage diagram and the Zoning Certificate (s 10.7) issued by the local council. Property exclusions must also be included and a statement of the buyer's cooling-off rights must be attached.

If you are selling a residential property that has a swimming pool or spa, ensure it is compliant with the **Swimming Pools Act 1992**. For more information and to check your responsibilities, or to check if a property with a swimming/spa pool has a current certificate of compliance, visit the NSW Swimming Pool Register website at www.swimmingpoolregister.nsw.gov.au

The draft contract must be available for inspection at the agent's office. It is important that you consult your solicitor or conveyancer about preparing the contract to make sure that everything is in order.

Exchange of contracts

The contract exchange is a critical point in the sale process. Be aware of the following important conditions in the exchange of contracts:

- The buyer or seller is not legally bound until signed copies of the contract are exchanged.
- Buyers of residential property usually have a cooling-off period of 5 working days following the exchange of contracts during which they can withdraw from the sale.
- If the agent arranges exchange of contracts, the agent must give copies of the signed contract to each party or their solicitor or conveyancer within 2 business days.
- The cooling-off period can be waived, reduced or extended by negotiation.

- There is no cooling-off period for sellers. Once contracts have been exchanged, sellers are generally bound to complete the agreement.
- There is no cooling-off period when purchasing at auction.

If you encounter problems

If an issue arises during the sale process that you are unhappy with, check your copy of the selling agency agreement to clarify your rights and obligations.

Try to sort out the problem by talking to the agent.

Make certain that any instructions you give the agent are in writing, and keep a copy. If you think the agent has charged a fee to which they are not entitled, or believe the fee charged is excessive, you can apply to the NSW Civil and Administrative Tribunal (NCAT) to settle the matter.

Other tips

If you need further assistance to resolve a problem, consider the following:

- If your agent is a member of a professional association, contact that association. They can be helpful in resolving disputes.
- You can also seek legal advice from a solicitor or the Chamber Magistrate at your nearest Local Court.
- If your complaint concerns your solicitor, you can lodge a complaint with the Office of the Legal Services Commissioner.
- If your complaint concerns your conveyancer, you can lodge a complaint with NSW Fair Trading.

More information

NSW Fair Trading can give you more information about the laws applying to property sales and agents. Contact Fair Trading on 13 32 20 or visit the Fair Trading website.

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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