



Oxbridge Group Pty Ltd  
 Level 5 and 6, 616 Harris Street Ultimo NSW 2007  
 Tel: 1300 680 690 Agent No: 10077341  
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Member of REINSW

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# OPEN RESIDENTIAL SALES AGENCY AGREEMENT

The Vendor appoints the Agent to sell the property. The Agent accepts the appointment and the parties agree that the appointment is subject to the terms as set out herein.

### Vendor (the Principal as defined in the Act)

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Mobile 1 \_\_\_\_\_ email 1 \_\_\_\_\_  
 Mobile 2 \_\_\_\_\_ email 2 \_\_\_\_\_

### Vendors Conveyancer / Lawyer

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Mobile \_\_\_\_\_ Phone \_\_\_\_\_  
 email \_\_\_\_\_ Fax \_\_\_\_\_

### Agent (Licensee)

Name Oxbridge Group Pty Ltd Level 5 and 6, 616 Harris Street Ultimo NSW 2007  
 Salesperson Dr Paul Howe  
 email admin@oxbridge.com.au Mobile 1300 680 690

### Property Report

being improved / unimproved land situated at and known as

\_\_\_\_\_

and being Allotment / Lot / Unit \_\_\_\_\_ on Plan \_\_\_\_\_

and being whole / portion of Certificate of Title Volume / Folio \_\_\_\_\_

**see detail on Inspection Report below; the Agent must inspect and deliver that report prior to this Agreement being signed**

#### AGENT'S ESTIMATE OF PRICE

SINGLE AMOUNT \$ \_\_\_\_\_

OR BETWEEN \$ \_\_\_\_\_ AND \$ \_\_\_\_\_

**Note:** If a price range is specified in advertising the difference between the upper and lower amounts cannot be more than 10% of the lower amount, and representations must not be outside the range or price estimate of the Agent (Section 72A Property, Stock and Business Agents Act 2002) This is not a valuation nor a financial advice and only the Agent's reasonable opinion.

**VENDOR'S ASKING PRICE** \$ \_\_\_\_\_

### Marketing and Sales Report

**MARKET WITH A FIXED PRICE** \$ \_\_\_\_\_

**MARKET IN THE RANGE**  Yes

**MARKET WITH NO PRICE**  Yes

**METHOD OF SALE** \_\_\_\_\_  
auction, list with price or range, no price, expressions of interest, tender

**AUCTION**  Yes  No

Proposed Auction Date \_\_\_\_\_ time \_\_\_\_\_

**SETTLEMENT DATE**  30 days  other \_\_\_\_\_

**Term of Agency**

The agency is **from** (and including) \_\_\_\_\_ **until** midnight on \_\_\_\_\_ and is an **open** agency except as detailed below and it continues as a n open agency after that period until notice of not less than 1 month is given in writing to the Agent at the end of the agency. If the agreement is for a **FIXED TERM** that exceeds 90 days, the Vendor can terminate this agreement (without penalty) by giving 30 days notice in writing to the agent at any time after the end of the first 90 days of the term .

Open Agency  Yes  No - Detail other type if not open \_\_\_\_\_

**IMPORTANT:** This is a sole or 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 Purchaser 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 two commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

**Associated and Previous Agents**

The Agent is authorised and can appoint other agents to assist in the sale but only one commission is payable if so .

The Property was previously listed for sale  No  Yes Agent \_\_\_\_\_

**Chattels Included with Property Sale (if any)**

Detail all other property to be included in sale that are not part of the property's fixtures and fittings

\_\_\_\_\_  
\_\_\_\_\_

**Exclusions from Sale (if any)**

Detail other property (fixtures and fittings and other property) not included in the sale (use an Annexure as necessary) [such as any fixtures / pot plants and garden ornaments etc]

\_\_\_\_\_  
\_\_\_\_\_

**Tenancies**

No  Yes Managing Agent \_\_\_\_\_ Tenancy End Date \_\_\_\_\_

**Known Encroachments and Fences not on Boundary or Orders and Notices**

\_\_\_\_\_  
\_\_\_\_\_

**Alterations and Works made without Consent (if any)**

\_\_\_\_\_  
\_\_\_\_\_

**Swimming Pool and Spa Compliance**

Not Applicable  Pool / Spa on Property  Pool /Spa Complies

**CGT Withholding Tax (Sale Price is \$750,000.00+)**

Vendors must have a CGT clearance at settlement to avoid 12.5% withholding tax being paid to Taxation Office (ATO). If Applicable  Vendor to apply; or  Vendor's Accountant or Tax Agent to apply

**GST issues relating to the Property**

The Vendor is or is required to be registered for GST  No  Yes ABN \_\_\_\_\_

The Vendor must obtain advice from their accountant regarding GST issues if the property is not their home and exempt .

**Special Terms and any Contract special terms required (if any)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Professional Fee**

The Vendor will pay the agreed Professional Fees to the Agent on the following basis:

**Basis of Professional Fees (including GST)** - Calculated as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Other Services**

\_\_\_\_\_  
\_\_\_\_\_

**Estimated Fees based on the Agent’s maximum estimated selling price the Fee would be (including GST)**

*This Fee will vary based on the actual Sale Price of the Property*

**IMPORTANT:** This is a sole or 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 Purchaser 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 two commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

**Vendor’s Marketing Costs**

The Vendor will reimburse and pay to the Agent all marketing expenses approved from time to time by the Vendor (and as may be increased by amending this Agency), to include a ny searches any government charges and are payable irrespective of whether or not the property is sold. The following marketing expenses and other fees are as approved by the Vendor at the time of signing this Agency and payable as they arise.

Item	When Payable	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**APPROVED AMOUNT (inclusive of GST)**

\_\_\_\_\_

**Disclosure of Rebates, Commissions and Discounts (if applicable)**

The Agent may receive benefits which if so are disclosed in an Annexure  Not Applicable

**ACCEPTANCE**

*Electronic signing: The Vendor and Agent each acknowledge and consent to the Vendor and the Agent or their attorneys and representatives signing this form and agreement and any Notices under the Act by electronic and/or digital signatures under the Electronic Transactions Act (Cth) and (NSW) and delivering this Authority and any Notices under the Act by email.*

**VENDOR**

**DATED**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Vendor is  Owner  Mortgagee in possession  \*Attorney / \*Executor for \_\_\_\_\_

**COOLING OFF PERIOD:** You (the Vendor (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 the next business day or Saturday.

**AGENT**

**DATED**

\_\_\_\_\_

\_\_\_\_\_

**Acknowledgements**

The Vendor acknowledges receipt of the following prior to entering into this Agency Agreement - *\*tick/cross applicable*

- Yes\* Sales Inspection Report
- Yes\* Consumer Guide – “*Agency Agreements for sale of residential property*”
- Yes\* General Conditions (attached) which are and form part of these terms.

## Sale Inspection Report

**PROPERTY PARTICULARS**

Approximate Age of Building \_\_\_\_\_

Council Area \_\_\_\_\_

Council Rates \$ \_\_\_\_\_

Water Rates \$ \_\_\_\_\_

Sewer Rates \$ \_\_\_\_\_

Emergency Services Levy \$ \_\_\_\_\_

Land Tax \$ \_\_\_\_\_

**Insurance**

The Vendor agrees to immediately advise its insurance company of the agency and will obtain increased cover (if necessary) to cover invitees and any claims arising from open inspections and auctions (refer clause 12)

Yes

**Owners Corp./Community Title**  No  Yes

Owners Corporation Title  Community Title

Strata / Community Manager \_\_\_\_\_

Strata / Community Levy \$ \_\_\_\_\_

Other Details \_\_\_\_\_

**SERVICES TO PROPERTY**

Mains Water Supply	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Sewer	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Septic	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Common Effluent	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Hot Water System	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Gas	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Electric	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Solar	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Instant	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Storage	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ceiling	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Mains	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Gas	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Mains	<input type="checkbox"/> No	<input type="checkbox"/> Yes
LPG	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Power	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Telephone	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Cable TV / Satellite	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Owned or leased	_____	
Other	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	

**IMPROVEMENTS**

Heating	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Gas	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Open Fires	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Combustion	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Radiant	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Detail	_____	
Air Conditioning	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ducted R/C	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ducted Evaporative	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Wall/Window unit	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ceiling Fan	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Other	_____	
Water Treatments	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Softener	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Filter	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Watering System	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Fully Reticulated Grounds	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Automatic Control	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Insulation	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Ceiling	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Exterior Walls	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Type	_____	
Electronic Security	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Rented	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Monitored	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Details	_____	
Security Hardware	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Deadlocks	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Sensor Lights	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Window Locks	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Details	_____	
Swimming Pool	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Concrete	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Fibre Glass	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Gas Heated	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Solar	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Salt	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Safety Compliant	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Safety Upgrade Needed	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Pool Equipment included	_____	
Details	_____	
Spa	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Tennis Court	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Lights	<input type="checkbox"/> No	<input type="checkbox"/> Yes
White Ant/Termite Treatment (recent)	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Details	_____	
Electrical	_____	
Hard Wired Smoke Alarm	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Safety Switches	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Surge Arrestors	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Solar	_____	
Electrical Panels	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Hot Water	<input type="checkbox"/> No	<input type="checkbox"/> Yes

**GENERAL CONDITIONS****1 AUCTION (if applicable)**

The Agent will offer the Property for sale by public auction at the time and in the manner detailed herein and or as further detailed in any auction direction forms or otherwise in writing.

**2 AGENTS AUTHORITY**

2.1 The Vendor authorises the Agent to accept the deposit or other moneys due to the Vendor under the contract for the sale of the Property and the Agent will hold any moneys received in accordance with the provisions of the *Property, Stock and Business Agent's Act 2002*. The Agent will be entitled to receive a deposit guarantee in lieu of a cash deposit.

2.2 The Vendor irrevocably authorises the Agent to transfer to itself from trust all professional fees and expenses and all claimed interest and costs upon settlement.

2.3 The Agent is not authorised to sign a Contract for the Sale of the Property unless expressly instructed and authorised in writing by the Vendor to do so either prior to auction or otherwise for a Contract by private treaty.

**3 CONTINUING AUTHORITY**

3.1 If there is a continuing authority period, it starts on the day after the day on which the exclusive authority ends and

3.1.1 lasts for the number of days specified in the Term of Appointment, unless cancelled, and

3.1.2 on the day it starts, the Agent's exclusive appointment ends.

3.2 The Vendor may cancel the continuing authority period at any time by written notice to the Agent.

3.3 If the continuing authority period is cancelled, any Professional Fee remains payable.

**4 FORM OF AGENCY**

4.1 The Agent will be the Exclusive Agent (unless the initial appointment is as a Sole or Open Agency) for the sale of the Property during the Term. The Agent may determine this Agency agreement at any time.

4.2 The Vendor will not be entitled to withdraw the Agency granted during the term agreed unless the Agent is in fundamental breach of this Authority and is not using its reasonable endeavors to market the Property after prior written notice from the Vendor. If there is a dispute as to this clause and entitlements the parties will arbitrate the dispute pursuant to clause 16. If the Vendor was not entitled to terminate then the Agent will be paid damages by the Vendor for wrongful termination to be determined by the arbitrator.

4.3 An Open Agency will entitle the Agent to promote the Property and introduce or procure a Purchaser for the Property and the Vendor will in all things assist the Agent in the Agent's endeavors to sell the Property.

4.4 The Vendor warrants that no other agent will be appointed during the period of any Exclusive or Sole Agency unless otherwise specified herein.

**5 WARRANTY BY AGENT**

The Agent will at all times act in the best interests of the Vendor and comply with the provisions of the Act and ethics. The Agent warrants it is authorised to enter into this agreement.

**6 DEEMED SALE**

The Agent will be deemed to have effected a sale of the Property;

6.1 if during the term of the Agency the Agent introduces a prospective Purchaser who does not settle on the Property as a result of the Vendor failing to enter into a contract for an amount at or above the Vendor's Selling Price in the Schedule or at (or more than) the price later agreed to be offered or the auction reserve price (for whatever reason), or failing to use its best endeavors as required by Clause 14 of this Authority; or

6.2 if the Vendor sells to a Purchaser not introduced by the Agent which sale is entered into during the Sole or Exclusive Agency, and which sale is not effected by the Vendor exercising its right to sell privately; or

6.3 if during the term of the Agency the Agent introduces a Purchaser who enters into a contract after the expiry of the Sole or Exclusive Agency but before the Vendor enters into another Sole or Exclusive Agency with another Agent.

7 In the event there is a transfer of the beneficial ownership of the Property to a Purchaser introduced or procured by the Agent and the transfer is effected by some means other than a transfer of legal ownership from the Vendor, then that transfer of the beneficial interest will be deemed a sale effected by the Agent and in particular but without limiting the effect thereof:

7.1 in the event one of the Vendors is a corporation, a transfer of the shares of that corporation giving control to another will be deemed a transfer of that Vendor's interest in the Property;

7.2 in the event one of the Vendors owns its interest in the Property as trustee, a transfer of the beneficial interest of that trust will be deemed to be a transfer of that Vendor's interest in the Property; and the Agent's Professional Fee will be calculated by reference to the 'Professional Fee' in the Schedule and calculated to the value of the Property to the extent of the beneficial interest transferred.

**8 TRANSFER NOT FOR MONEY**

Should the consideration to be given by a Purchaser be expressed other than in monetary terms, the Professional Fee will be calculated by reference to the scale or amount under 'Professional Fee' in this Authority.

**9 VALUATION**

For the purposes of clauses 7 and 8 above and in the absence of agreement between the parties as to the value of the Property, either party may request the President of the Society to appoint a valuer to ascertain the value of the Property. The costs of the valuation will be borne equally by the parties.

**10 EXPENSES AND PROFESSIONAL FEE**

10.1 The Agent is authorised by the Vendor to incur the expenses set out in this Authority. The Agent may expend more on one expense than another in the Agent's discretion but such that the total is not exceeded without the consent of the Vendor.

**10.2 Fixed Fees, Commissions and When Payable**

The Professional Fee is based on any or all of the following as may be agreed;

- (a) a commission;
- (b) part fixed fee/s and part commission;
- (c) a fixed fee/s; and / or
- (d) or any other basis.

The Professional Fees are payable at the time or times during the sale program as agreed and or at latest at settlement, and if expressly agreed are payable regardless of whether or not a sale and settlement is achieved.

In any event and notwithstanding the above should a Contract be entered into and subsequently is terminated by the Vendor for breach by the Purchaser then the Agent will still be entitled to the Professional Fee/s agreed and in such circumstances the Agent is entitled to its fees and commission from the deposit held and the deposit is a collateral security charge to the Agent under *Personal Property Securities Act* to the funds arising for payment to the Vendor from the deposit when being released. The Agent can register this charge.

10.3 The Vendor will pay the amount of the expenses and Professional Fee within 7 days after invoice, or at settlement (if so agreed) is the earlier, and in the event they are not paid then the Agent may issue a written notice by letter or other form requiring immediate payment.

- 10.4 In the event any moneys demanded by a notice issued pursuant to clause 10.3 are not paid within the time stipulated in the notice, those moneys will then upon such default become a charge over the Property and any other real property the Vendor may own from time to time until paid in full to the Agent. The Agent will not be entitled to caveat the Property or such other real property owned by the Vendor to secure payment of the moneys due under the charge herein granted but may apply to register a mortgage over any land owned by the Vendor to secure the charge and the Vendor will consent and not object if the debt is due and outstanding even pending any dispute between the parties. All costs incurred by the Agent in collecting the moneys demanded in the notice issued pursuant to clause 10.3 including stamp duty and all legal costs of any applications and recovery costs on a solicitor client basis will be payable by the Vendor and the Agent will be entitled to \$300 for each notice issued.
- 10.5 The Agent may receive rebates on advertising and associated expenses from 3<sup>rd</sup> parties as disclosed under the Act and the Vendor acknowledges and agrees the Agent will not be required to account for any disclosed rebates. The Vendor acknowledges any rebates are in addition to the Professional Fees payable. Any prepaid expenses not expended by the settlement date will be repaid to the Vendor.
- 10.6 Notwithstanding the above, the Vendor agrees to pay all expenses and Professional Fees no later than settlement if the property is sold.
- 10.7 The Vendor will pay interest on any outstanding monies payable to the Agent calculated at 10% per annum.
- 10.8 In the event GST is imposed on any service in respect of this Agency Agreement, any amount payable by the Vendor to the Agent or a third party (for all other goods and services to include advertising) in respect of those services will be increased by the rate at which GST is imposed at that time. The Vendor will pay the increased amount to the Agent at the same time payment is due under this Agency Agreement to the Agent for the services and the Agent will render a tax invoice.
- 11 FORM AND MANNER OF CONTRACT**
- 11.1 The Agent will offer the Property for sale in the form of Contract complying with the Act as varied from time to time and complete the parts allowable under the Act.
- 11.2 The Agent will not offer the Property for sale unless all required documents are prepared including the proposed Contract of Sale and they are available for inspection by any prospective Purchaser.
- 11.3 The Agent will not participate in exchange of final Contracts unless expressly authorised by the Vendor or its advised lawyer under section 64 of the Act.
- 12 INDEMNITY TO AGENT**
- The Vendor indemnifies the Agent against all costs, expenses, damages and loss (including any loss of fees) suffered by the Agent and holds harmless the Agent against claims, demands, actions and losses arising from the Agent acting for the Vendor save and except to the extent that the costs, expenses, damages and losses are a result of the negligence of the Agent. The Vendor indemnifies and holds harmless the Agent for any loss or damage whatsoever to the Property or to any goods and chattels of the Vendor or any third party in or on the Property arising from the act or omission of any third party during any inspection of the Property or during the auction. The Vendor further warrants the Vendor has or will provide suitable insurance cover for the Property, the Vendors (or any tenant's) personally therein and for all persons invited onto the Property for the purpose of offering the Property for sale directly or indirectly.
- 13 VENDOR'S WARRANTIES**
- 13.1 The Vendor warrants the Vendor has good authority and full capacity to sell the Property.
- 13.2 The Vendor warrants all information detailed in this Agency agreement and otherwise provided to the Agent is accurate and correct. The Vendor will promptly advise the Agent of any changes to the information given which comes to the Vendor's knowledge or attention.
- 13.3 The Vendor warrants there is no other information material to the sale which the Vendor is aware of and should be brought to the attention of the Agent and all equipment and operating fixtures are in good working condition.
- 14 BEST ENDEAVOURS**
- In the event the Agent introduces a prospective Purchaser offering to purchase the property at or above the price to be offered, the auction reserve price or such lower price as may be agreed with the Vendor, the Vendor undertakes to enter into a contract of sale of the Property. The Vendor further undertakes to observe, perform and carry out any contract of sale of the Property effected by the Agent and will use its best endeavors to ensure that settlement occurs.
- 15 TERMINATION**
- Where the Vendor has contracted to purchase another property marketed by the Agent and that contract is terminated for any reason the Vendor may withdraw the Property from sale and terminate this Agency agreement.
- 16 ARBITRATION**
- Disputes involving the sum of \$60,000 or less will be determined by an independent arbitrator appointed by the President or CEO of the Law Society of NSW or the Institute of Arbitrators or similar organisation in NSW at the request of either party. The determination of the arbitrator will be final and binding between the parties and the provisions of the *Commercial Arbitration Act 2010* as amended will apply. The costs of the arbitration will be paid by the party/s as directed by the arbitrator. The arbitrator will advise of procedures and will request payment of reasonable fees prior to acting and in default of payment may refuse to act. The parties will have no right of appeal save for manifest error to apply with respect to a question of law under the *Commercial Arbitration Act NSW* applicable.
- 17 AFTER AUCTION AUTHORITY BECOMES GENERAL PRIVATE TREATY AUTHORITY**
- If this Authority is for and specifies an Auction Sale program then immediately after the Auction or if the property is withdrawn from Auction by the Vendor and is not an Auction Authority then this Agency agreement automatically becomes an open Agency agreement for Sale by Private Treaty and is not an Auction Authority from that time onwards.

**INTERPRETATION**

Unless this Agency agreement otherwise requires-

**'the Act'** means the *Property, Stock and Business Agent's Act 2002* as amended from time to time. **'the Agent'** means the Agent registered under the *Property, Stock and Business Agent's Act 2002* and any employee or representative of the Agent. **'Commission'** means Professional Fee as referred to and defined herein. **'Contract'** means the sale agreement between a transferee and the Vendor for the transfer of the Property. **'Corporation'** means a corporation as defined under the Corporations Act. **'documentation fees'** means fees charged by the Agent for and incidental to opening files and preparing documents for the Vendor. **'Exclusive Agency'** means the Agent is the only agent appointed and the Vendor does not retain the right to sell privately. **'expenses'** means those costs set out above in Vendors Marketing Costs to include any interest, costs and other expenses properly payable in addition to any GST payable for those services. **'General Agency'** and **'Open Agency'** means more than one Agent may be appointed and the Vendor may act. **'GST'** means *A New Tax System (Goods and Services Tax) Act 1999* or any other Act or Regulation amending, replacing or directly associated with that Act and any goods and services or similar tax imposed thereby. **'land'** and **'Property'** means the freehold land (including a strata unit), leasehold land, or community title, together with all buildings and other improvements thereon the subject of this Agency agreement. **'Professional Fee'** means the amounts agreed as the Professional Fees and if a commission is agreed in whole or in part then it is calculated on the gross price excluding any GST and is in addition to any Administration Fee payable and all expenses payable and any interest accrued. **'Purchaser'** includes the Purchaser's assignee or nominee disclosed. **'Services'** has the same meaning as supply for all purposes of the GST including supply as defined therein and to mean and include Professional Fees and all other fees and costs payable under this Agency agreement. **'Settlement'** means the date referred to in any contract for the sale of the Property or upon a transfer of the Property. **'Sole Agency'** means the Agent appointed is the only appointed Agent for the period. **'Statutory Forms'** means and includes all forms detailing the property searches required to be served and delivered under the *Property, Stock and Business Agent's Act 2002* (as amended) or the Act. A reference to an Act of Parliament or to a section of an Act includes any amendment thereto or re-enactment thereof for the time being in force. Where two (2) or more persons are named in this Agency agreement as the Vendor or the Agent their liability under this Agency agreement is joint and several.

**PRIVACY STATEMENT**

The Agent used personal information collected from you to act as your Agent and to perform its 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 media organizations on the internet to potential tenants, or to clients of the Agent both existing and potential as well as tradespersons, strata/community managers, government and statutory bodies and to other parties as required by law. The Agent will only disclose information in this way to other parties as required to perform their duties under this Agreement for the purposes specified above or as otherwise allowed under the *Privacy Act 1988*. If you would like to access this information you can do so by contacting the Agent at the address and contact numbers in this Agreement. You can correct any information if it is inaccurate, incomplete or out-of-date. Real estate and tax law requires some of this information to be collected.



# 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 may be sent, or fax it to the agent. Be 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 149) 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](http://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.