



**NZ Certificate in Real Estate (Salesperson) (Level 4)**

**MODULE 3 – UNIT STANDARD 23140 (V5)**

**Develop marketing plans for real estate, qualify customers, and present properties for sale**

**(Level 4, Credits 5)**

**Learner Guide**



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## Introduction

This learner guide covers:

- agency agreements
- methods of sale
- the development of marketing plans and activities in consultation with a client who is offering a property or business for sale or a space for lease
- qualifying and meeting the needs of customers.

All activities are considered in relation to a licensee's legal and professional obligations.

For the purposes of this learner guide, we will look at agency agreements and marketing activities where the client is a vendor or lessor who is selling or leasing their property, business, or space.

The learner guide for unit standard 23135 covers in more depth the law of contract and the law of agency in a real estate context. You may wish to refer to this to refresh your memory of this topic.

## Agency agreements

An agency agreement is a legally binding contract between the client (the principal to the contract) and the real estate agent. It confirms the agency relationship and places a fiduciary duty on the two parties, which includes all licensees employed or engaged by the agent in relation to the transaction. See Section 126 REA Act 2008 and Rules 9.6 through to 9.13 & Rule 10.6 of the Code of Conduct to uncover the obligations and requirements and importance of an Agency Agreement

In a real estate context, a client is most often a vendor offering a property or business for sale, or a lessor offering a space for lease through a real estate agent.

In some circumstances, a purchaser or lessee may sign an agency agreement with a real estate agent who is helping them secure a property, business or space for purchase or lease.

### Information included in an agency agreement

Licensees use standard written agency agreements approved by their office. These Agency agreements will differ between agencies in layout and content but should include the following information:

Details about the property, business or space being offered for sale or lease.

- The address and legal description.
- Chattels to be included in the transaction.
- Further details about the property, business, or space, such as land size, tenure, and outgoings.
- Details about the parties to the agreement.
- Names, addresses and other contact details.
- Lawyer's or conveyancer's name and contact details.
- The name and address of the real estate agent.
- Details about what the real estate agent is authorised to do.
- Agreed marketing method – for example with a price, or without a price
- The agreed method should include any conditions, for example, price or date of auction,
- Confirmation of the agent's entitlement to commission from deposit paid.
- Confirmation of the client's agreement to pay any marketing expenses.
- Confirmation of the type of agency agreement in place - its start and end date and how it may be cancelled.

A statement by the real estate agent about any rebate, commission, or discount they receive (or not) in connection with any work they do for you.

Signatures of the parties to the agreement and/or authorised persons.

Reference: <https://www.settled.govt.nz/selling-a-home/selling-your-property/signing-an-agency-agreement/>

### **Agency agreements must be in writing**

Section 126(1) of the Real Estate Acts 2008 confirms that an agent is not entitled to a commission or expenses from a real estate transaction unless there is a signed, written agency agreement in place.

Section 126(1) also confirms that the agency agreement must be in accordance with the Real Estate Agents Regulations 2009, and that a signed copy of the agency agreement must be given to the client within 48 hours of signing.

#### **126 No entitlement to commission or expenses without agency agreement**

- (1) An agent is not entitled to any commission or expenses from a client for or in connection with any real estate agency work carried out by the agent for the client unless—**
  - (a) the work is performed under a written agency agreement signed by or on behalf of—**
    - I. the client; and**
    - II. the agent; and**
  - (b) the agency agreement complies with any applicable requirements of any regulations made under section 156; and**
  - (c) a copy of the agency agreement signed by or on behalf of the agent was given by or on behalf of the agent to the client within 48 hours after the agreement was signed by or on behalf of the client.**
- (2) A court before which proceedings are taken by an agent for the recovery of any commission or expenses from a client may order that the commission or expenses concerned are wholly or partly recoverable despite a failure by the agent to give a copy of the relevant agency agreement to the client within 48 hours after it was signed by or on behalf of the client.**
- (3) A court may not make an order described in subsection (2) unless satisfied that—**
  - the failure to give a copy of the agreement within the required time was occasioned by inadvertence or other cause beyond the control of the agent; and**
  - the commission or expenses that will be recoverable if the order is made are fair and reasonable in all the circumstances; and failure to make the order would be unjust.**
- (4) This section overrides subpart 5 of Part 2 of the Contract and Commercial Law Act**

**A complete copy of the Agency Agreement can be found in the Portal under Resources.**

Once the agency agreement has been filled in and explained, best practice is that before the prospective clients sign and date the agreement, they should initial each page. All required signatories must initial and sign the document unless you have written evidence that one signatory is authorised to sign on behalf of another.

**While we are focussing on the Agency Agreement many of the obligations under the Rules and Regulations included in this Guide that relate to agency agreements, also apply to sale, and purchase agreements and lease agreements.**

# Real Estate Agency Agreement Residential Property

## Real Estate Agency Agreement Residential Property



### 1.0 Appointment

("The Client") appoints \_\_\_\_\_ a licensed real estate agent, REAA 2008 ("the Agent") as the Client's real estate agent for the sale of the property at

\_\_\_\_\_ described in **the attached Property**

**Description** ("the Property"). Pursuant to this appointment, the Agent is authorised to market the Property, conduct negotiations and to prepare any Sale and Purchase Agreements, Auction or Tender documents and do all other things as may be necessary or required to give effect to a sale of the Property. Such work may be conducted by the Agent or through a Branch Manager or Salesperson of the Agent and those persons conducting such work are referred to as Licensees in this agreement.

### 1.0 Appointment

This is where you enter the name(s) of the owner(s) of the property, the real estate company you work for and the address of the property. You need to make sure these are the official owners (proprietors) shown on the record of title document.

This information can be typed in prior to the meeting with the prospective clients.

### 2.0 Agency

This is where you state whether this will be a sole agency or general agency. You need to delete the one that doesn't apply and enter the start date. You need to explain each type and the prospective client(s) need to advise you which agency type they want.

#### ***The Agency Agreement***

### **2.0 Agency (Choose either Sole Agency (2.1) or General Agency (2.2) - delete one)**

#### **2.1 Sole Agency:**

The Client appoints the Agent as sole agent. The agency commences on .....("Commencement Date") and

continues until midnight on .....; or, if no end date is provided, 90 days from the Commencement Date.

This sole agency may be terminated by the Client, by written notice to the Agent by 5 pm on the first working day after the day on which a copy of this agreement is given to the Client.

Note: Any party to a sole agency agreement that relates to residential property and is for a term longer than 90 days may, at any time after the expiry of the period of 90 days after the agreement is signed, cancel the agreement by written notice to the other party or parties.

**OR**

#### **2.2 General Agency:**

The Client appoints the Agent as general agent. The agency commences on ..... and continues until midnight on

..... unless cancelled prior by either party giving seven (7) days' written notice to the other party; or, if no end date is provided, until cancelled by either party by giving seven (7) days' written notice to the other party.

## Types of agencies

There are two types of agencies: sole agency and general agency.

### Sole agency

Under a sole agency agreement, one real estate agent (and the licensees they employ or engage) has the exclusive right to market and arrange the sale or lease of the property, business, or space on behalf of the client.

Only the real estate agent named on the agency agreement (and the licensees they employ or engage) can carry out the real estate agency work specified in the agency agreement for the duration of the sole agency.

The client signs a sole agency agreement with one licensed agent.

There could be greater security of the property, the advertising will be more cohesive however you may have less people view the property and the client cannot sell privately to avoid commission

**Note:** There can also be a sole agency agreement for the purchase of a property, business, or space as a buyer's agent.

### General agency

A general agency agreement is not exclusive. The client may engage more than one real estate agent (and the licensees they employ or engage) to work on a transaction at the same time.

Under a general agency, a client may also market and arrange the sale or lease of the property, business, or space privately.

The client needs to sign a general agency agreement with each different real estate agent they engage.

While there may be more agents selling the property, commission is only paid to the company that secures the sale so they may be less motivated without the commitment from the vendor. Usually there is only a limited or no budget for advertising. Security could be an issue with more people accessing the property and the vendor would have the option of selling privately without paying commission

**Note:** There can also be a general agency agreement for the purchase of a property, business, or space as a buyer's agent.

Many franchise agencies use a version of 'master agency,' which gives the listing agency a sole agency but allows all members of the group/franchise to promote and sell the property. All members of the group/franchise will have a fiduciary obligation to the client and must ensure that they appreciate the potential for conflicts of interest including purchases by a licensee or related persons (Real Estate Act 2008, sections 134 to 137).

## 3.0 Prior Agency

You need to explain the prospective clients' obligations in terms of other agency agreements. You need to confirm with the prospective client whether they have appointed any other agency to sell the property. Here sub-clause 3.2 has been deleted because the clients had not signed any agency agreement with another agency.

**The Agency Agreement****3.0 Prior Agency (Choose either 3.1 or 3.2 - delete one)**

3.1 The Client has not appointed any other real estate agent to sell the Property prior to signing this agreement.

**OR**

3.2 The Client has appointed the following real estate agent/s prior to signing this agreement

Name of agency \_\_\_\_\_ Period of agency \_\_\_\_\_

Name of agency \_\_\_\_\_ Period of agency \_\_\_\_\_

Name of agency \_\_\_\_\_ Period of agency \_\_\_\_\_

Note: If a sale is affected by or through the instrumentality of any other real estate agent authorised by the Client, then the Client may be liable to pay full commission to more than one agent.

**Note:** The method of sale chosen may impact on the individual benefits that the Licensees may receive.

**Meeting legislative and professional requirements in relation to agency agreements**

Licensees must meet their legislative and professional obligations in all real estate agency work including agency agreements, marketing activities, client communication and presentation of written offers.

**Rule 9.10 of the Code of Conduct** confirms that licensees have a positive obligation to explain the risks of double commission to a client before they sign an agency agreement.

**Rule 9.10 A licensee must explain to a prospective client that if he or she enters or has already entered into other agency agreements, he or she could be liable to pay full commission to more than 1 agent if a transaction is concluded.**

Rule 5.1 of the **Code of Conduct** outlines our obligations to make sure we meet the requirements of legislation and professional standards that impact on the real estate industry.

**Rule 5.1 A licensee must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work.**

Rule 5.2 clarifies that licensees must have a sound knowledge of all relevant legislation and professional standards.

**Rule 5.2 A licensee must have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules) and other legislation relevant to real estate agency work.**

Rule 5.2 means that licensees must understand their obligations under the Real Estate Agents Act 2008, the rules from the Code of Conduct, the Real Estate Agents (Duties of Licensees) Regulations 2009 and other relevant consumer protection legislation such as the Fair-Trading Act 1986.

All real estate agency work must be carried out to the required standard, under the direction and control of a supervising agent or branch manager.

*Requirements in relation to agency agreements and marketing activities, client communication and presentation of written offers will be discussed later in this learner guide.*

It is important to remember that breach of the Real Estate Agents Act 2008 and rules from the Code of Conduct can result in a complaint being raised. A breach may also result in a finding of unsatisfactory conduct or misconduct being made against the licensee and/or agent, along with fines and other disciplinary consequences.

Breach of other consumer legislation may lead to proceedings and consequences as laid out in the relevant legislation.

### **Parties' rights to seek legal and technical advice**

An agency agreement is a legally binding document. Before signing, it may be in the client's best interests to obtain legal and/or technical advice, especially if they are unsure about the implications of entering into the contract.

**Rule 9.7** requires licensees to inform clients of their rights in relation to independent legal and technical advice. It also requires licensees to give the client sufficient time to seek independent advice if they choose to.

**Rule 9.7 Before a prospective client, client, or customer sign an agency agreement, a sale and purchase agreement, or other contractual document, a licensee must—**

- (a) recommend that the person seek legal advice; and**
- (b) ensure that the person is aware that he or she can, and may need to, seek technical or other advice and information; and**
- (c) allow that person a reasonable opportunity to obtain the advice referred to in paragraphs (a) and (b).**

### **Parties' inability to understand legal implications**

Rule 9.8 acknowledges that many people are not familiar with legal documents. Documents must be explained carefully and a party's inability to understand the legal implications must not be taken advantage of.

Particular care must be taken with vulnerable parties, such as those with limited English ability or the elderly. The licensee should make sure the client obtains independent advice and support, if necessary, to increase their level of understanding.

**Rule 9.8 A licensee must not take advantage of a prospective client's, client's, or customer's inability to understand relevant documents where such inability is reasonably apparent.**

## **The importance of obtaining signatures from the appropriate parties**

It is crucial that the appropriate parties sign an agency agreement.

The appropriate signatories are the parties to the contract, or a nominated authorised person who they have authorised to sign on their behalf. For example, a power of attorney.

In situations when one owner is signing on behalf of others, or a party to the contract has nominated an authorised person to sign on their behalf, it is important to get written confirmation of this authority.

Written confirmation of authority varies depending on the types of parties involved.

### **Obtaining incorrect signatures on an agency agreement can have a number of implications.**

#### **These include:**

- The transaction being delayed or unable to proceed
- Impact on the agent's entitlement to commission or expenses.
- A complaint being made and upheld against the agent or licensee.
- Damage to the reputation of the agent and licensee.

### **Appropriate signatories in agency agreements**

An agency agreement is between the real estate agent and the client (the principal to the contract). Usually, the salesperson licensee who has obtained the listing will sign on behalf of the agent as the agent's authorised person.

Normally, the client will sign the agency agreement, unless they have nominated an authorised person to sign on their behalf. For example, a person who has power of attorney, or a solicitor.

### **Confirming legal ownership when completing an agency agreement**

Where the client entering the agency agreement is offering a property, business or space for sale or lease, legal ownership and the name(s) of the owner(s) should be confirmed against the ownership details provided on the current record of title.

#### **When there is more than one owner**

It is very common for a property, business, or space to have more than one owner. For example, tenants in common who own a property, partners in a business partnership, or trustees acting on behalf of a trust.

Where a property, business or space has more than one owner and all owners do not sign the agency agreement, the licensee must sight and keep a record of written confirmation that one owner has the authority to sign on behalf of the other owners.

## Parties involved in a real estate transaction and who may be required to sign agency agreements.

<b>Nominated 'authorised persons'</b>
<p>If a nominated authorised person (for example, a party with power of attorney) is signing documents on behalf of a party to the contract, it is important to check that the power of attorney has come into force (has been invoked), and to obtain a non-revocation confirmation form (signed by the attorney). A copy of this should be kept by the licensee with a copy of the power of attorney document.</p>
<b>Individuals</b>
<p>When working for an individual client offering a property for sale (including sole traders), licensees must check that the individual signing an agency agreement is the registered owner on the current record of title.</p> <p>If the individual has nominated an authorised person to sign an agency agreement, the licensee must obtain written evidence of this authority.</p>
<b>Co-owners (joint tenants or tenants in common)</b>
<p>When working for co-owner clients offering a property for sale, licensees must check that the co-owners signing an agency agreement are the registered owners on the record of title.</p> <p>A licensee must make sure that all co-owners sign an agency agreement or obtain written evidence that one co-owner can sign on behalf of the other(s).</p>
<b>Partnerships</b>
<p>A licensee must obtain written evidence that one partner(s) can sign on behalf of other(s), if not, all of the partners must sign the agency agreement.</p>
<b>Companies</b>
<p>When working in a transaction involving company ownership, licensees should check the number of directors on the companies register on the New Zealand Companies Office website.</p> <p>If there is more than one director, and one director is signing contracts on behalf of the other directors, the licensee must obtain written evidence of this authority.</p> <p>The licensee should ask to sight the company constitution, and a resolution approving the transaction. If power of attorney has been approved, a certificate of non-revocation will also be needed.</p>
<b>Executors of an estate</b>
<p>If a property was held in a deceased person's name as sole owner or as tenants in common, the property forms part of the deceased person's estate.</p> <p>An executor is the person who has been appointed in the will to manage the person's estate after death. An administrator is appointed when someone doesn't have an executor.</p> <p>Before the property can be sold, the following must have occurred: Probate (if there is a will) or Letters of Administration (if there is no will) must have been completed. An Application for Transmission (Personal Representative) (in all cases) will need to have been completed. When the transmission is registered, the property will be put into the name of the deceased person's estate</p>

### Trustees (acting on behalf of a trust)

The names of the trustees of a trust offering a property for sale need to be checked on the certificate of title.

A licensee must make sure that all trustees sign an agency agreement unless there is written evidence that a trustee(s) can sign on behalf of other(s). For example, a trust deed.

### Termination of an agency agreement

In real estate, an agency agreement will terminate when the transaction completes, when the term of the agency expires on a specified date, or through cancellation by notice in writing.

It is important to make sure that the client understands the type of agency agreement they are entering into and their rights and obligations under that agreement.

The Real Estate Agents Act and the Code of Conduct do not set requirements in terms of cancellation of a general agency. Industry practice is generally to require a notice period of between 7 and 14 days.

There are legal requirements that must be followed in relation to sole agency agreements.

#### Client may cancel sole agency agreement by 5 pm next working day

Under section 130 of the Real Estate Agents Act 2008, clients who have signed a sole agency agreement can change their mind and cancel the agreement by 5pm on the first working day after they have been given a copy of the agreement.

#### Cancellation must be in writing to the agent/licensee.

If any work is carried out before the agreement is cancelled that results in the sale or lease of the property, business or space, the client must still pay the agent commission.

### Real Estate Agents Act 2008

#### 130 Client may cancel sole agency agreement by 5pm next working day

- (1) A client who is party to a sole agency agreement with an agent may, by 5pm on the first working day after the day on which a copy of the agreement is given to the client under section 126(1)(c), cancel the agreement by written notice to the agent.
- (2) A notice under subsection (1) may be served by fax or email.
- (3) Subsection (1) has effect despite any provision to the contrary in any agreement.
- (4) Even though a sole agency agreement has been cancelled, an agent may rely on that agreement if, before that cancellation -
  - (a) the agent carries out any agency work in accordance with the agreement; and
  - (b) that agency work enables the conclusion of a contract that effects a transaction to which the agreement relates.

## Uninvited direct sales

Consumer protections, under Subpart 2 Uninvited direct sales (sections 36K to 36S) of the Fair-Trading Act 1986, alter the 'normal' conditions for cancellation of sole agency agreements. These protections apply to situations where a consumer is approached by uninvited salespeople at their home or workplace or by telephone.

These protections also require the licensee to give additional notifications to a client who was approached through an uninvited direct sale before they sign the agency agreement, and in the agency agreement itself.

A summary of the key information from sections 36K to 36S is:

### **An uninvited direct sale is when:**

- **A person is approached at their home or workplace, or over the telephone, by a business or agent trying to sell goods or services.**

**and**

- **The person enters into an agreement for goods or services that cost least \$100 (or a price that is uncertain at the time).**

### **An uninvited direct sale also includes when:**

- **a consumer gives their contact details to a business for one purpose (such as a competition entry) and the business then uses their details in attempt to sell them goods or services**
- **a consumer responds to a missed call (or other unsuccessful attempt, such as a missed calling card) from a business to contact them.**
- **a consumer starts negotiating with a business upon receiving an unsolicited quote or estimate.**

**If a consumer initiates the contact, it is not considered an uninvited direct sale. An uninvited direct sale agreement does not include a renewal agreement.**

### **The Fair-Trading Act is found at:**

<http://www.legislation.govt.nz/act/public/1986/0121/61.0/DLM96439.html>

**Note:** Marketing via electronic messaging is not covered by this legislation. It is covered under the Unsolicited Electronic Messages Act 2007.

**Under sections 36K to 36S, important points for real estate agencies and licensees are as follows:**

- Any agency agreements that result from unsolicited door-to-door or telemarketing sales is an uninvited direct sale.
- A client who is approached through an uninvited direct sale and enters into an agency agreement, has the right to cancel the agreement within five working days after the date on which the consumer receives a signed copy. Note: This extends the usual cooling off period for sole agency agreements.
- The licensee must make sure that the client knows before the agreement is signed (give the client oral notice) of their right to cancel the agreement within five working days after the date on which the consumer receives a signed copy of the agreement. The licensee must also inform the client of how they may cancel the agreement.
- There is specific information that the licensee must include on the front page of written agency agreements. This must include a summary of the client's right to cancel the agreement within five working days.
- Real estate agencies must have policies and procedures in place to manage relationships that fall within the definition of 'uninvited direct sales and licensees must follow these policies and procedures.
- Procedures and documentation used must ensure compliance with the extended cooling off period and related disclosure requirements.

**Cancellation of sole agency agreement for residential property after 90 days**

Under section 131 of the Real Estate Agents Act 2008, the client or the agent can cancel a sole agreement after 90 days or at any time after that if the agreement is for a residential property and for a term longer than 90 days.

**Real Estate Agents Act 2008**

**131 Parties may cancel sole agency agreements in respect of residential property 90 days after agreement is signed**

- (1) Any party to a sole agency agreement that relates to residential property and is for a term longer than 90 days may, at any time after the expiry of the period of 90 days after the agreement is signed, cancel the agreement by written notice to the other party or parties.
- (2) If the parties to a sole agency agreement to which subsection (1) relates agree in writing to renew the sole agency agreement, the signing of the renewal agreement is, for the purposes of that subsection, taken to be the signing of a new sole agency agreement.
- (3) For the purposes of subsection (1), a sole agency agreement is signed when it is signed by or on behalf of the client or, if there is more than 1 client, when the agreement is signed by the last client.
- (4) A notice under subsection (1) may be served by fax or email.
- (5) This section has effect despite any provision to the contrary in any agreement.
- (6) In this section, residential property does not include any property that—
  - (a) has been developed with other properties in a continuous area; and
  - (b) is proposed to be sold or otherwise disposed of by a vendor who also proposes to sell or otherwise dispose of, or who has sold or otherwise disposed of, some or all of those other properties.

### **Standard clauses in agency agreements for residential and rural property transactions**

If a client decides to change their real estate agent, it can sometimes be confusing as to what notice period they need to give to cancel the original agency agreement, or if they will still need to pay commission to the former agent.

This can be unclear for clients and can cause complaints. It can also lead to disagreements between licensees.

The REA and REINZ have standard clauses that real estate licensees are encouraged to use in agency agreements for residential and rural property transactions.

These clauses are designed to help to remove uncertainty about an agent's right to claim commission under sole and general agency agreements when a new agency agreement is signed with another agent, or if the property is sold privately later on.

Agents using the standard clauses are not entitled to commission unless a sale and purchase agreement is signed during the term of their agency and their entitlement to commission will relate only to that particular sale and purchase agreement.

Under the standard clauses, the agent only has a right to claim commission in the following situations:

**For Sole Agency** – when the vendor enters into a sale and purchase agreement during the sole agency period and that agreement is unconditional or becomes unconditional later.

**For General Agency** – when the vendor enters into a sale and purchase agreement during the general agency period with a purchaser introduced by that general agent (or where the agent has been instrumental in the sale), and that agreement is unconditional or becomes unconditional later. 7 days' notice is needed to cancel a general agency agreement.

In residential transactions, the vendor is liable to pay the agent commission if the vendor sells the property privately within **6 months** of the agency coming to an end (either sole or general agency) to a person introduced by the agency or where the agency was instrumental in the sale.

A private sale to a person introduced by the agent would not require commission to be paid if it occurred more than 6 months after the agency agreement finished.

**Rule 9.11 of the Code of Conduct** confirms that if an agency agreement is cancelled, the client must be given a written list of customers to whom commission would relate if the client entered into a transaction with them later on.

**Rule 9.11 On notice of cancellation of an agency agreement being given or received by the agent under the agreement, the agent must advise the client, in writing, of the name of each customer (if any) in respect of whom the agent would claim a commission, were the customer to conclude a transaction with the client.**

## Conflict of interest

### The Real Estate Agents Act relating to Conflicts of Interest

#### Sections 134 -137

If you or a “related person” wishes to take an interest in your client’s property the procedure for dealing with a conflict of interest is laid out in the Real Estate Agents Act 2008 (Real Estate Agents Act, section 134, and section 135). The independent valuation by a registered valuer is at your cost to confirm that a fair price is being offered for the property.

You must inform a seller if yourself or a person(s) connected to you will benefit financially from a transaction.

People considered to be a related person to you are outlined in Section 137 and include:

- Any partner you may have under a partnership agreement
- Anyone in your employment
- A branch manager or salesperson engaged by you
- Your spouse or civil union or de facto partner
- Your child, grandchild, brother, sister, nephew, niece or their spouse or civil union or de facto partner
- A grandparent, parent, aunt or uncle of the licensee or their partner (under a partnership agreement), their employee or a salesperson or branch manager engaged by them or their partner (spouse, civil union, or de facto partner)
- Any other child cared for by you, your spouse or your civil union or de facto partner
- Your parent(s) or spouse of your parent(s) or their civil union or de facto partner
- Any entity that has an interest in you or in which you have an interest (that is not an entity listed on the New Zealand Stock Exchange)

**Section 136** outlines the need to notify all parties if you or a related person will benefit financially from the transaction other than your normal commission

### The Code relating to Conflict of Interest

**Rule 9.14 of the Code of Conduct** confirms that licensees cannot act as a seller’s agent and a buyer’s agent in the same transaction.

**Rule 9.14** A licensee must not act in a capacity that would attract more than 1 commission in the same transaction.

**Rule 9.15 of the Code of Conduct** requires licensees to avoid conflicts of interest that may arise from providing help or advice about property-related activities, such as buying insurance or making finance arrangements.

#### Conflicts of interest

**Rule 9.15** A licensee must not engage in business or professional activity other than real estate agency work where the business or activity would, or could reasonably be expected to, compromise the discharge of the licensee’s obligations.

## Unfair contract terms

Section 26A of the Fair-Trading Act confirms that clauses that conflict with the interests of the consumer cannot be used in consumer contracts.

Section 46L defines when a contract term is unfair.

### Fair-Trading Act 1986

#### Declaration of unfair contract terms

##### 46L When term in consumer contract is unfair

**A term in a consumer contract is unfair if the court is satisfied that the term—  
would cause a significant imbalance in the parties' rights and obligations arising under the contract; and is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and  
would cause detriment (whether financial or otherwise) to a party if it were applied, enforced, or relied on.**

A roll-over clause, which was previously used to turn a sole agency into a general agency automatically after 90 days had lapsed, would be a potential example of an unfair contract term in an agency agreement.

Inclusion of a roll-over clause meant that clients needed to officially cancel the general agency agreement (that had started automatically) if they did not want to work with that agency anymore. This is yet to be tested and would require a decision by the court before it would be confirmed as an unfair term.

## Approved Guides

**Section 127- Approved guide to be provided before agency agreement for residential property signed applies to residential property sales only.**

### Real Estate Agents Act 2008

#### 127 Approved guides to be provided before agency agreement for residential property signed

- (1) An agent must not enter into an agency agreement with a person for the sale of residential property unless the agent or a licensee on the agent's behalf—
  - (a) has provided the person with a copy of the approved guide before the agreement is signed by or on behalf of the person; and
  - (b) has received a signed acknowledgment from the person that the person has been given the approved guide.
- (2) In this section—
  - (a) approved guide means a guide that—
  - (b) is about the sale of residential property;
  - (c) has been approved by the Authority for the purposes of this section

**residential property** does not include any property that—

  - (a) has been developed with other properties in a continuous area; and
  - (b) is proposed to be sold or otherwise disposed of by a vendor who also proposes to sell or otherwise dispose of, or who has sold or otherwise disposed of, some or all of those other properties.
- (3) A contravention of this section does not affect the validity of the agency agreement.

Before the agency agreement is signed, the licensee must give the client a copy of the New Zealand Residential Property Agency Agreement Guide published by the REA and the client must provide signed acknowledgement to confirm they have received it.

Some real estate agencies provide the Residential Property Sale and Purchase Agreement Guide at the time of signing the Agency Agreement but regardless, you must provide the Sale and Purchase Agreement Guide before the negotiation process and signing of the Sale and Purchase agreement (Section 133).

Agency agreements differ between the various real estate agency brands. However, the key clauses are similar.

Agencies will also have different processes around the presentation of the agency agreement and obtaining acknowledgement of receipt of the approved guides.

Some obtain the signed acknowledgement as part of their agency agreement, and some having a separate document acknowledging receipt of the guides.

### **All material particulars must be included or attached**

Rule 9.9 requires that a licensee makes sure that all material particulars are included and attached to an agency agreement before a client is asked to sign it.

**Rule 9.9** A licensee must not submit an agency agreement or a sale and purchase agreement or other contractual document to any person for a signature unless all material particulars have been inserted into or attached to the document.

This includes all information that relates to the agreement such as all required details and terms, relevant clauses, Form 1 (discussed later in this learner guide), and any other relevant information. While we are looking at how rule 9.9 relates to agency agreements, these requirements also apply to sale and purchase agreements and lease agreements.

REA agency agreements information sheet provides an information for licensees which can be found here:

<https://www.rea.govt.nz/assets/Uploads/Resources/Info-sheets-280318/Agency-agreements-information-sheet.pdf>

## Methods of offering a property, business or space for sale or lease

There are various methods that are available to client vendors and lessors to offer a property, business or space for sale or lease.

You need to explain the different methods of sale to the prospective client and obtain confirmation of the method of sale they want to use.

It is important to have a conversation with a prospective client about the method of sale early on in the discussions about listing a property, business, or space.

The marketing plan will need to be appropriate to:

- the property, business or space being offered for sale or lease
- the method of sale selected
- the client's time-frame requirements and budget
- the target market, and market conditions etc.

Here is a summary of information about different methods of sale.

### Private treaty – with a price (with a fixed price without a deadline date)

A private treaty sale is a standard marketing method where the property, business or space is usually offered for a fixed price without a deadline date for offers.

The real estate licensee negotiates individually with potential customers to achieve an offer as close to this price as possible.

The price can be adjusted throughout the marketing process, based on qualified customer feedback and local market conditions.

The standard ADLS/REINZ sale and purchase agreement 'Agreement for Sale and Purchase of Real Estate' is used for a private treaty sale. (Note: these agreement forms are updated regularly, so licensees need to ensure they are using the latest version).

### Sale by negotiation – without a price (without a fixed price and without a deadline date)

A client may choose to sell by private treaty but without an advertised price. In these situations, advertising would state 'sale by negotiation.'

In a 'sale by negotiation' transaction there is usually no deadline date for offers.

Sale by negotiation may be the chosen marketing option when it is difficult to gauge the market price of a property, perhaps because it is a very unusual property or in uncertain market conditions.

'Price on application' (POA) is another term that is sometimes used when a client has chosen to sell by private treaty but without an advertised price or price range and without a deadline date. In this situation there is a price, or price range, but it is not advertised and only available by contacting the licensee. This method is used in certain circumstances where the client doesn't want to publicise their expectation of price. The licensee must have authority to disclose the price.

The standard ADLS/REINZ sale and purchase agreement 'Agreement for Sale and Purchase of Real Estate' is used for a sale by negotiation. (Note: these agreement forms are updated regularly, so licensees need to ensure they are using the latest version).

### **Deadline private treaty sale (also called 'deadline sale' or 'private treaty by deadline')**

(without a fixed price and with a deadline date)

This method can be used to market without an advertised price or price range and with a deadline; for example, through a four to five-week advertising campaign. In a deadline private treaty sale, the client sets the deadline date by which all offers must be accepted.

Deadline private treaty sales can create a call to action, i.e., they can create a sense of urgency as there is a closing date that interested parties must meet or risk missing out.

This method may be used in less buoyant markets, to try to address the issue of properties staying on the market for extended periods while potential purchasers wait to see if a better option comes along, or to see if the asking price comes down.

The client can also decide to include a provision where prior offers can be accepted. Advertising would use the term 'Deadline sale, unless sold prior' or similar wording.

The standard ADLS/REINZ sale and purchase agreement 'Agreement for Sale and Purchase of Real Estate' is used for a deadline private treaty sale. (Note: these agreement forms are updated regularly, so licensees need to ensure they are using the latest version).

### **Tender (without a fixed price or price range but with a deadline date)**

The tender sales method is often used to sell commercial property and rural real estate, it is also used to sell some residential property.

In a sale by tender, prospective purchasers are called the 'tenderers.' Each tenderer must make a confidential written offer and submit their offer to the real estate agency managing the tender process before the given deadline (closing) date and time. The tenderers are given no information about the quality of the competing offers

Written offers made by tender may have any terms and conditions required by the potential purchaser incorporated into the offer. Each tenderer must be informed that they need to prepare their best offer.

Tender sales can create a call to action, i.e., they can create a sense of urgency as there is a closing date that interested parties must meet or risk missing out. Marketing is planned to the deadline date; for example, a four to five-week advertising campaign.

The ADLS/REINZ 'Particulars and Conditions of Sale of Real Estate by Tender' is the sale and purchase document commonly used for sales by tender. (Note: these agreement forms are updated regularly, so licensees need to ensure they are using the latest version).

A client can ask to have a provision included that a property for sale by tender can be sold before the tender closing date and time; however, this practice is discouraged. Advertising would need to use the term 'For sale by tender, unless sold prior' or similar wording.

### **Auction (without a fixed price or price range and with a deadline date)**

A real estate auction is an intense, accelerated real estate marketing process (for example, a four to five-week advertising campaign) that involves the public sale of property through open cry, competitive bidding on the day of the auction.

Auctions are often used to market unusual and desirable or more expensive residential properties. Mortgagee sales are also often conducted through auction (and sometimes tender). The vendor will usually set an undisclosed reserve price. This means they decide on the minimum price the bids must reach in order for a sale to be achieved.

The client may withdraw a property from sale before the auction and may choose to accept an offer before auction day. The conditions of sale should indicate this, and advertising would use the term 'For sale by auction, unless sold prior' or similar wording. Alternatively, the date of the auction may be brought forward, and the offer made used as the opening bid.

The ADLS/REINZ 'Particulars and Conditions of Sale of Real Estate by Auction' is the sale and purchase document commonly used for sales by auction. (Note: these agreement forms are updated regularly, so licensees need to ensure they are using the latest version).

REINZ provides Best Practice Guides for Auction and Tender for their members. These guides outline best practice for licensed real estate agents.

Note: The information in the table above provides a brief description of different methods of sale only. Sales processes, sale and purchase agreements and legal and professional responsibilities of licensees associated with different methods of sale are covered in detail in Learner guides for unit standards 23137 and 26150.

## Explaining licensee benefits in relation to method of sale

**Rule 10.5 of the Code of Conduct requires a licensee to explain to the client how their chosen sales method could impact on the benefits that the licensee may receive.**

Rule 10.5 Before a prospective client signs an agency agreement, the licensee must explain to the prospective client how choices that the prospective client may make about how to sell or otherwise dispose of his or her land or business could impact on the individual benefits that the licensee may receive.

This has particular relevance in the situation where the licensee is paid a larger percentage of the commission based on the method of sale they have utilised. For example, if the licensee gets paid more by the agent for a sale by auction than they would, say, for a sale by private treaty, then the client is entitled to know this benefit so they can assess whether the chosen method is in their best interest and not the licensee's.

Once the approved guides have been presented, you can complete the agency agreement with the prospective client, explaining key points as you go through before they sign it. The various agencies will have differing guidelines for what needs to be explained to prospective clients before signing. Here we have shown the agency agreement for a fictional real estate company and covered some key points regarding that agreement. This form will be used for the assessment task.

If the sale method is to be by auction or tender, the prospective clients' authorisation needs to be recorded in the Agency Agreement.

You need to record the Auction Date or Tender Date if either of these methods are being used.

### ***The Agency Agreement***

#### **4.0 Additional Authorities – Sale Method**

If the Client does not complete these Additional Authorities, then these Additional Authorities do not apply to this agreement.

##### **4.1 Auction Authority:**

The Client appoints the Agent to offer the Property for sale by public auction on the Auction Date ( / / ). If the Property for sale by auction is subject to a reserve price, this must be notified to the Agent in writing prior to the auction. If the Property is sold by public auction the Client authorises the Agent to sign on its behalf the agreement that forms part of the particulars and conditions of sale used by the Agent for conducting the sale by auction.

##### **4.2 Tender Authority:**

The Client appoints the Agent to offer the Property for sale by public tender with the public tender closing on the Tender Date ( / / ) or as otherwise agreed.

**Note:** The method of sale chosen may impact on the individual benefits that the Licensees may receive. See rule 10.5

## Commission and Expenses in the Agency Agreement

You need to explain how the agency's commission is calculated. Based on the appraised price the commission must be stated as an actual dollar amount. If the appraised price is given as a range, then the commission calculation should be based on the higher end of the range.

### ***The Agency Agreement***

#### **5.0 Commission and Expenses**

##### 5.1 Payment of Commission:

The Client must pay the Agent the commission, on the terms set out in this agreement, if:

- 5.1.1 in the case of a sole agency, the Client enters into an agreement to sell or exchange the Property (or part of it) at any time during the term of the agency and the agreement is or becomes unconditional (whether during or after the term of the agency); or
- 5.1.2 in the case of a general agency, the Client enters into an agreement to sell or exchange the Property (or part of it) at any time during the term of the agency, through the instrumentality of the Agent or to a purchaser introduced by the Agent and the agreement is or becomes unconditional (whether during or after the term of the agency); or
- 5.1.3 in the case of either a sole or general agency, the Client enters into a private agreement to sell or exchange the Property (or part of it) within a period of 6 months following the date of expiry, cancellation, or termination of the agency, through the instrumentality of the Agent or to a purchaser introduced by the Agent, and the agreement is or becomes unconditional (whether during or after the 6 months period). In this subclause 'private agreement' means any agreement to sell or exchange the Property (or part of it) in the absence of any effective agency agreement between the Client and a real estate agent holding a licence under the Real Estate Agents Act 2008.

##### 5.2 Unless otherwise stated the commission will become payable immediately upon the contract for the sale of the Property becoming unconditional.

##### 5.3 How Commission is calculated:

The Agent's commission is calculated as follows:

A basic fee of \$ .....; plus % of the first \$ of the sale price.

plus .....% of the balance of the sale price.

plus, GST.

For example, based upon (tick one )

the Client's asking price (where an appraisal was not possible to be given) or

the appraised value,

a sale price of \$..... would mean an estimated commission of \$ ..... plus GST.

##### 5.4 Payment of Expenses:

In addition to and separate from the commission, the Client agrees to pay the Agent the sum of \$ including GST for advertising and marketing the Property as agreed in **the attached Marketing Plan** upon signing this agreement.

**Note:** The Client is not obliged to agree to the additional expenses related to advertising and marketing.

You need to have explained the marketing plan to the prospective client and they need to have chosen the options they want and agreed to the related costs.

Enter the amount agreed with the prospective client for their contribution to marketing costs.

Carefully check all calculations and check that the amount specified here matches the marketing plan documents that have been presented and agreed on.

## Agent's Statement relating to Rebates, Discounts and Other Commissions

Agents must disclose any known rebates, discounts, and commissions (not already stated under 5.3 Agents Commission) they may receive in the course of this transaction. [Section 128](#), Real Estate Agents Act 2008.

### Real Estate Agents Act 2008

#### 128 Agency agreement must disclose rebates, discounts, and commissions

**(1) An agent is not entitled to any expenses from a client for or in connection with any real estate agency work carried out by the agent for the client in connection with a transaction unless the agency agreement under which the agent performs that work contains a statement that—**

**(a) identifies the source of all rebates, discounts, or commissions that the agent will or is eligible to receive in respect of those expenses; and**

**(b) specifies the estimated amount of those rebates, discounts, or commissions (to the extent that the amount can reasonably be estimated).**

**(2) This section does not limit the liability of any person under the Secret Commissions Act 1910.**

Your Agency Agreement must include or have attached a statement (as per Form 1), relating to all rebates, discounts, and other commissions (from the Real Estate Agents (Duties of Licensees) Regulations 2009).

#### Note:

Click on this link to see what must be included in a Form 1.

Source: <http://www.legislation.govt.nz/regulation/public/2009/0281/latest/DLM2372545.html>

### The Agency Agreement

#### 6.0 Agent's Statement relating to Rebates, Discounts and Other Commissions

6.1 The Agent confirms that, in relation to any expenses for or in connection with any real estate agency work carried out by the Agent for the Client in connection with the transaction covered by this agency agreement: (Choose either 6.1.1 or 6.1.2)

6.1.1 the Agent will not receive, and is not entitled to receive, any rebates, discounts, or commissions

**OR**

6.1.2 the Agent will receive, or is entitled to receive, the rebates, discounts, and commissions specified below.

Expenses to be incurred <i>[specify goods or services to which rebate, discount, or commission relates]</i>	Provider of rebate, discount, or commission <i>[specify name of person or organisation]</i>	Amount of rebate, discount, or commission <i>\$(specify actual or estimated amount*(including GST))</i>

*\*Estimates must be clearly marked as such*

**Note: Expenses means any sum or reimbursement for expenses or charges incurred in connection with services provided by an agent in the capacity of agent.**

If your agency will not receive any rebate, discount, or commission (additional to that covered in clause 5), you need to cross out sub-clause 6.12. If they will receive any discount rebate, discount, or commission (additional to that covered in clause 5) then you will need to cross out sub clause 6.11 and completed the required details in subclause 6.12.

## Deposit

The deposit clause needs to be explained as it allows your agency to receive and hold the deposit from a buyer in a Trust account. It also allows the deduction of commission and expenses from the deposit once the agreement is unconditional, and the deposit has been held for ten working days.

### ***The Agency Agreement***

#### **7.0 Deposit**

7.1 The Client agrees:

7.1.1 the Agent is entitled to receive a deposit on the Client's behalf.

7.1.2 the Agent is entitled to deduct its commission and expenses from the deposit. Where the Property being sold is a unit title the Client agrees that this deduction will be delayed until completion of the obligations under sections 147 and 148 of the Unit Titles Act 2010; and

7.1.3 if the deposit is not received by the Agent, the Client will pay the Agent the commission and expenses immediately on receipt of an invoice in accordance with clauses 5.1 - 5.4 (as applicable).

## Disclosure of Information

Explain that by law you are required to disclose known defects and other property-related issues to customers, and you cannot withhold information that should, in fairness, be provided to buyers or potential buyers and that if it's likely that the property is subject to defect, you must get confirmation, supported by evidence or expert advice from them that it is not subject to defect. If you don't get this confirmation you have to inform potential buyers of any 'significant potential risk'.

### ***The Agency Agreement***

#### **10.0 Disclosure of Information**

10.1 The Client acknowledges that the Agent is required under the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 to disclose known defects to purchasers or potential purchasers and not to withhold information that should by law or in fairness be provided to purchasers or potential purchasers. The Client also acknowledges that where it would appear likely that the Property may be subject to hidden or underlying defects, then the Agent is required to either:

10.1.1 obtain confirmation from the Client, supported by evidence or expert advice, that the Property is not subject to defect; or

10.1.2 ensure that purchasers or potential purchasers are informed of any significant potential risk so that they can seek expert advice if they so choose.

10.2 If the Agent is unable to obtain confirmation under clause 10.1.1, the Agent will inform purchasers or potential purchasers of any significant potential risk identified by the Agent consistent with rule 10.7(b) of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

10.3 If at any time during the term of the agency the Client directs the Agent not to disclose to purchasers or potential purchasers any known defects or any significant potential risks for hidden or underlying defects identified by the Agent contrary to the terms of this agreement or to the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, the Agent may then cancel this agreement by written notice.

## Health and Safety

This section states the client and agency's responsibilities under the Health and Safety at Work Act 2015.

### ***The Agency Agreement***

#### **15.0 Health and Safety**

- 15.1 The Client acknowledges and understands that the Agent has obligations under the Health and Safety at Work Act 2015 to ensure the health and safety of workers (including employees, contractors, and employees of contractors) and the general public while undertaking work in relation to the sale and purchase of the Property in accordance with this Agreement.
- 15.2 The Client shall give the Agent all reasonable assistance and information to ensure that no hazards or risks at, or arising from, the Property affect the health and safety of any person while the Agent is performing its role under this Agreement, including by:
  - 15.2.1 promptly providing to the Agent information about any and all hazards or risks at the Property which are known to the Client; and
  - 15.2.2 complying with any reasonable instructions given by the Agent about actions required to be taken to address any identified hazards or risks at the Property in order to ensure the health and safety of people visiting the Property at the request or invitation of the Agent.
- 15.3 In circumstances where the Client is a 'person conducting a business or undertaking' (as that term is defined in the Health and Safety at Work Act 2015) it must:
  - 15.3.1 comply with its obligations under the Health and Safety at Work Act 2015 (and supporting Regulations) at all times during the term of the Agreement; and
  - 15.3.2 consult, cooperate, and coordinate activities with the Agent and any other relevant party in respect of any work undertaken in relation to the sale and purchase of the Property so as to ensure that all parties understand the nature of the work, the risks arising from the work, and the controls to be implemented to mitigate those risks, and to enable the Client and the Agent to verify that the risks are being controlled and the work is being performed safely and in accordance with this Agreement

You need to check that the details on the Property Description attached to the Agreement are correct. If any details have changed (e.g., a new chattel that was excluded has now been included) you need to amend the Property Description before these pages of the document are initialled by the prospective client/s. You also need to check that the client doesn't know of any defects, hazards, requisitions, or notices, and if there are any, they need to be noted under clause 15 (Disclosures).

Explain the importance of the prospective client providing accurate information and informing the agency of all relevant information regarding the property (e.g., defects). Explain that clause 9 means the agency is not liable for any losses, damages, claims or other liabilities if the information they provided was inaccurate or the client(s) didn't tell the agency material information.

18.0 Client Acknowledgements

Go through each one of these to make sure you have explained these as they link back to points you should have covered off when completing the Agency Agreement.

18.0 Client Acknowledgements – PLEASE READ CAREFULLY	Initial where applicable
18.1 The Client, prior to signing this agreement, acknowledges and agrees that the Client has been:	
18.1.1 recommended to seek legal advice and a reasonable opportunity to obtain legal advice was allowed by the Agent.	.....
18.1.2 recommended that the Client can, and may need to, seek technical or other advice and information and a reasonable opportunity to do so was provided.	.....
18.1.3 given a copy of the approved guide relating to agency agreements published by the Real Estate Agents Authority.	.....
18.1.4 given a copy of the approved guide relating to sale and purchase agreements published by the Real Estate Agents Authority. Further information on agency agreements and contractual documents is available from the Real Estate Agents Authority ( <a href="http://www.reaa.govt.nz">www.reaa.govt.nz</a> ).	.....
18.1.5 made aware of the Agent's in-house complaints and dispute resolution procedures and that a copy of this has been made available.	.....
18.1.6 made aware that the Client may access the Real Estate Agents Authority's complaints process without first using the Agent's in-house procedures and that any use of the in-house procedures does not preclude the making of a complaint to the Real Estate Agents Authority.	.....
18.1.7 advised and has had an explanation of the circumstances in which the Client could be liable to pay full commission to more than one Agent in the event a transaction is concluded.	.....
18.1.8 advised when this agency agreement comes to an end.	.....
18.1.9 made aware of the various possible methods of sale and how the chosen method could impact on the individual benefits that the Licensees may receive.	.....
18.1.10 made aware of the Agent's disclosure obligations as set out in clauses 10.1 and 10.2; and	.....
18.1.11 given an appraisal for the Property in writing or where no directly comparable or semi-comparable sales data exists, this has been explained in writing	.....

Signed by the Client(s) or authorised person

Date: / /

Signed by the Agent or authorised person

Date: / /

Signed by the Client(s) or authorised person

Date: / /

Signed by the Client(s) or authorised person

Date: / /

## Completing an Agency Agreement

**NOTE: Agency Agreements vary between companies so there is no right or wrong way to complete an agency agreement, but always complete it logically and professionally.**

**Before you can receive a commission or expenses** - you have to meet these requirements to meet your obligations under the REA Act and the CODE of Conduct.

- There must be a written agency agreement in place before you do any work.
- You must give a written appraisal of the property- This is your estimate of the sale price of the property. It must realistically reflect current market conditions and be supported by comparable information about sales of similar properties. This applies to all transactions, including commercial leases.
- If it is not possible to provide comparable information, you should say so in the appraisal.
- The agency agreement must be signed by or on behalf of the vendor and the agent.
- You must give a copy of the agency agreement to the vendor within 48 hours of being signed.
- You must give the vendor a copy of the [New Zealand Residential Property Agency Agreement Guide](#) before they sign the agreement and ask them to confirm in writing that they have received it. (It can be emailed or in hardcopy)
- Inform the vendor that if you have a conflict of interest, for example, if you or someone connected to you is interested in buying the property, you must inform the vendor and follow the prescribed process.

**1.0 Appointment** - Explain the Agency Agreement is between the client and Agency

**Explain to the vendor when the agency agreement will end** and how the vendor can cancel it.

**2.0 Agency** - Explain the different types of Agency – Sole and General. Include which one is required for an Auction

Explain the risk of paying a commission if a previous agency is not cancelled

- a) You need to warn the vendor they could be at risk of paying two commissions if the buyer has been introduced by another agent or if they have an existing agency agreement that has not been cancelled.
- b) You must also warn them that, if they cancel the agency agreement with you and then sell privately to a person introduced by you, they may still be liable to pay a commission.

**3.0 Prior Agency** – It is important to check that the client has not signed any other agencies prior to this as they risk the likelihood of paying a double commission. In explaining the risk of double commission, it is important to advise the client that if they are signing a sole agency, they should not sign any other Agency Agreements during the term. See **Rule 9.10**

**4.0 Additional Authorities applying to Sole Agency** - Complete the Auction Authority or Tender Authority if applicable.

**5.0 Commissions and Expenses** - Provide a clear written estimate of your commission

This should explain how the commission will be calculated, the conditions under which it must be paid and the estimated total sum they will pay based on the estimated sale price.

Be clear about whether the figures are inclusive or exclusive of GST.

**Explain marketing and advertising costs** – as per the marketing plan previously explained. Make it clear what advertising you provide as part of your service and what the vendor has agreed to be charged for.

**6.0 Agent's Statement relating to Rebates, Discounts and Other Commissions** - You must include a statement about any rebates, discounts, or commission you will receive and specify the amount. You are not entitled to receive any expenses from a vendor if this information is not included in the agency agreement. **Most companies will ask you to cross out (b)**

- 7.0 Deposit** – Explain that the Agency is entitled to receive the deposit, deduct their commission and the process if the Agency doesn't receive the commission
- 8.0 Clients Warranties** – Explain what they are warranting, examples include that the information in the property description is correct, the chattels will be in working order and unencumbered at the time of settlement. This warranty also includes disclosure of defects, hazards requisitions and any omissions.
- 9.0 Indemnity** – Explain that this means that the client may be responsible for any errors or omissions in the Property Description sheet.
- 10.0 Disclosure of Information** – Explain disclosure obligations as set out in **Rule 10.7 (Rule 10.8)** and highlight that any defects discovered during the marketing period will be discussed and consent to disclose will be obtained.
- 11.0 Data Collection** – Explain and who will get this information and when. Remember your Privacy Act principles.
- 12.0 Use of Materials** – Explain the use of photographs as used in the marketing campaign
- 13.0 Confidentiality** – think about Rules 9.16, 9.17, 9.18 and the Privacy principles
- 14.0 Authority to use property information** - Explain how the marketing and promotional activities are used and on what web sites they will be seen.
- 15.0 Health and Safety** – Explain your responsibility at Open Homes and ask about hazards around the property. This includes the client's obligation to comply with any actions identified by the Agent to ensure safety of all visitors to the property.
- 16.0 Notices** – the options for how a copy of this agreement may be delivered.
- 17.0 General** – Explain Agents rights to commission and a “working day.”

**18.0 Client Acknowledgements** - Go through each one of these to make sure you have covered off everything, these link back to points you covered off as you completed the *Agency Agreement*.

- Recommend that the vendor seeks legal and other advice before signing and give them a reasonable amount of time to do this before signing the agency agreement.
- Make sure they are aware they can and may need to seek technical or other advice and information.
- Provide a copy of the approved guide relating to agency agreements and the approved guide for sale and purchase agreements published by the Real Estate Agents Authority (residential only). Further information on agency agreements and contractual documents is available from the Real Estate Agents Authority ([www.reaa.govt.nz](http://www.reaa.govt.nz)).
- Explain the Agent's in-house complaints and dispute resolution procedures and how a copy of this can be obtained and informed them that they may access the Real Estate Agents Authority's complaints process ([www.reaa.govt.nz](http://www.reaa.govt.nz)) without first using the in-house procedures and that any use of the in-house procedures does not preclude your making a complaint to the Real Estate Agents Authority.
- Explain the circumstances in which the Client could be liable to pay full commission to more than one agent in the event a transaction is concluded.
- Ensure the client is advised when this agreement comes to an end.
- Has been made aware of the various possible methods of sale and how your chosen method could impact on the individual benefits that the Licensees may receive. This relates to **Rule 10.5**
- Has been made aware that where the Agent or Licensees believe that the Property may be subject to hidden or underlying defects and the Client confirms that there are no such defects, the Client is to provide evidence or expert advice confirming same. This relates to **Rule 10.7**
- Has been made aware that the Agent is required by law to ensure that all prospective buyers are informed of any significant potential risk associated with such suspected or hidden defects.
- Has been made aware if there are no comparable properties and this has been explained in writing.
- **The client must be** given a copy of this agreement immediately after signing it.

**You need to ensure that required client signatories sign the agency agreement.**

Details need to be checked for accuracy before the 'Property Description' pages are initialled by the clients, and the last page signed. You need to confirm with the client(s) that nothing has changed since these details were recorded during the property inspection.

## Marketing Plan

### Marketing

All marketing activities must be in accordance with the law and professional requirements. More information about these obligations follows in the section 'Meeting legislative and professional requirements in relation to marketing.'

### Developing a marketing plan

A marketing plan will typically involve a variety of approaches.

These approaches may include signage, digital marketing, print media, marketing to contacts on a database, open homes, and private viewings.

Each real estate agency will have its own policy on the level of financial contribution it will make to advertising and a marketing campaign. This might include:

### Exposure on company website.

- Standard for sale sign.
- Small ads in company magazine.
- Flyers/letter box drops.
- Contacting database leads.
- Running open homes.
- Private showings of the property.
- A client will usually be asked to contribute to additional marketing activities.

These might include:

- Cost for a display sign board.
- Cost for professional photography (including video).
- Cost for printed advertisements.
- For example, Property Press - ¼ page; ½ page; whole page.
- For example, company magazines - ¼ page; ½ page; whole page
- For example, newspaper advertising.
- Cost for high profile advertising on websites - premium exposure slots.
- In the case of an auction, cost for an auctioneer.
- Advertising package options may be tailored to varying levels of marketing programmes.

When establishing the marketing programme with your client, it becomes a two-way accountability agreement. You, as licensee, are committing to provide the specified services; the client is committing to work with you in whatever way possible to help you achieve the agreed plan, such as, preparing the property for private viewings and open homes and allowing and/or arranging access.

## Marketing options

Depending on circumstances, the following marketing approaches are commonly used in the real estate industry.

### Signage

Street signage outside the property, business or space is an excellent method of promoting its availability to the local marketplace.

Additionally, depending on the office location, window signage in the real estate agent office can also create awareness.

- It helps raise awareness in the market that the property is for sale.
- It will provide a strong call for action.
- It will provide details of open homes, contact details, and website references.

### Internet advertising

In the real estate industry, online marketing is now considered a key advertising medium, with the opportunity to list properties on general real estate sites; for example, [www.realestate.co.nz](http://www.realestate.co.nz), as well as company specific sites set up by individual offices or national real estate companies.

- Online advertising is cost-effective and is excellent for reaching prospective customers wherever they are located.
- Internet advertising enables licensees to provide comprehensive information to prospective customers, often including video tours or photo galleries of the property.
- Online information can also be updated and adapted easily as required.
- Will raise awareness of the property amongst prospective customers active in the market.
- Internet real estate sites are often used by prospective customers to obtain a list of properties of interest to them through searching by property type, area, and price.
- Will potentially put the property on a prospective customer's shortlist.
- Will provide a point of reference for prospective customers wanting more information about the property after seeing print advertising.

Social media platforms have also become increasingly effective. For example, a specific property, space, or business can be promoted on a licensee's business page on platforms such as Facebook, Twitter, or LinkedIn.

### Real estate publications

In addition to free community newspapers, homes in many parts of the country receive regular free property publications. These publications are solely for real estate advertising and are often well-read by prospective customers currently in the market for property, as well as passive customers.

Advertising in these publications is an ideal method for reaching prospective customers and enables a high-quality presentation of the property. Various advertising options are available in such **publications**.

### In-house publications

Many real estate companies produce their own in-house advertising publications. These publications may be office-specific or nationwide, depending on the company, and are distributed by local offices. They can serve as useful additions to other advertising media.

## **Newspaper advertising**

Most newspapers (national, regional, local, and community) include a real estate advertising section. Newspapers will be able to provide readership statistics to determine how well read these sections are.

Newspaper advertising can provide a wide coverage, good reproduction, and an opportunity to provide a reasonable amount of information on the property, business, or space.

Newspaper advertising options can be as simple and cheap as a 3-line classified advertisement prompting prospective customers to call for further information, or full-page colour display advertisements.

Classified advertising in the suburban newspapers.

- Will prompt early calls from prospective customers in the first two weeks of the marketing period before display advertising can be arranged in more high-profile media.

## **Radio, television, and billboard advertising**

For specific marketing campaigns, radio, television, and billboard advertising may be considered, for example, for a new apartment development, commercial property or for unique high-end residential property.

This form of advertising is likely to be a more expensive option than other media but may be appropriate for increasing awareness amongst the general public and passive customers.

Development of this type of advertising will require specialist skills from an advertising professional.

## **Direct marketing**

Direct marketing, or direct mailing involves sending information about the property directly to prospective customers in the targeted area. It often serves a dual purpose of promoting the property and raising the profile of the real estate licensee and real estate agent at the same time.

It can take a number of forms, including the following:

- A door-knocking campaign to introduce yourself and the property to interested parties (often people in the direct neighbourhood, who might refer you to prospective customers they know).
- A flyer/letterbox drop within the immediate area to promote the property and yourself.
- A second local letterbox drop in the week before the auction will stimulate further interest and create a sense of urgency about the upcoming auction.
- Addressed letters to the homeowner to circumvent “No Junk Mail” signs

## **Database marketing**

Databases are lists of contacts and may be compiled from previous enquiries for properties, open homes, past customers, or purchased from a database broker. Because of its targeted nature, database marketing is considered a highly personal form of direct marketing and is likely to produce a better response if used properly. It includes

- Matching criteria from previous enquiries to your current listing
- Actively contacting all prospective customers on your database, giving them early notice of the availability of the property
- Regular communication to increase your presence and to keep the database current

## Media selection

The type of marketing approach and advertising selected will depend on the type of property, space or business being marketed, the target customers, and the budget available.

With experience, licensees become more aware of:

- what works in the local market?
- where potential customer enquiries are coming from, and
- how competing properties, businesses and spaces are being marketed.

## Marketing budget

The amount of money available to be invested, either by the agent or the client, will determine the level of the marketing programme.

The client will need to be made aware of the benefits of investing in the marketing of their property, business, or space.

Prior to an offer being secured, licensees need to invest a lot of time into the promotion of each property, business or space listed.

This includes:

- pre-inspection research of relevant property-related documents
- physical inspection
- writing an appraisal
- creating a marketing plan
- writing marketing and advertising material (dialogue for the advert)
- facilitating viewings and open homes
- following up with prospective customers
- making regular contact with the client to give up to date feedback on the marketing program and progress to date
- evaluating and making adjustments to the marketing campaign.

Three to four weeks' worth of display advertising in the Property Press, or similar will achieved exposure to the market.

- It will create a high profile for the property in the weeks before the auction, stimulating visits to open homes and arranged appointments.
- References to the company website will ensure that prospective customers have access to full information about the property.
- A final advertisement in the regional newspaper on the day before the auction will heighten the sense of urgency about the auction amongst prospective customers.

**NOTE:** All financial contributions to the marketing campaign should be made by the client and all marketing activities must be authorised by the client and confirmed in writing.

## **Presenting a marketing plan**

### **When presenting the marketing plan to the client**

It is important that a marketing programme and media selection is discussed with, and approved by, the client.

When preparing a marketing plan and budget, consideration needs to be given to how best to achieve a sale for the client in an efficient and cost-effective way. The licensee will need to be able to explain how the various elements of the marketing programme and the budget they have recommended will accomplish this.

### **Marketing plan and budget for a property**

The process for presenting a marketing plan and budget, and the format it is in, will vary across different real estate agencies. Agencies will also have their own way of presenting a proposed marketing calendar. Here we will provide an example (figures shown are indicative only).

#### **Target market**

This property would ideally suit a family as it is fully fenced, close to the beach and it is also zoned for Sea View Primary School. It would also suit early retirees, due to the proximity to the beach and local amenities, and the fact that the sections are flat.

#### **Recommended sale method**

The recommended method of sale would be by auction. We have chosen this method as you have indicated you would like to sell the property quickly. In addition, there is a shortage of properties of this size in this suburb at present, and the market is quite buoyant. The local primary school has become very popular with young families, and this has affected the attraction of the area.

#### **Proposed sale timeline**

We suggest marketing the property for four weeks. This will include advertising online and in print and running six open homes over the course of three weekends (18/19 and 25/26 September, and 1/2 October). This provides a week prior to the start of the campaign to arrange photography and production of proofs. It also allows two days after the last open home to follow-up with people who attended the open home, and make reminder calls about the auction to interested parties.

#### **Proposed marketing method and budget**

As discussed, the proposed budget has been tailored to create maximum impact based on your agreed contribution of up to \$1600 during the 3-week marketing period.

Taking into account the nature of the property and the target buyers being young families with school age children and early retirees, the marketing plan makes use of traditional print advertising as well as digital media.

We suggest advertising in both the Property Press and, in the homes, feature section of the East Courier because research has found that early retirees will access the homes section of the newspaper. All targeted groups will access the Property Press. Research shows both the Trade me and realestate.co.nz sites have high usage, so we feel it is important to have coverage on both sites. The budget also includes details of marketing costs that are covered by the agency.

**NOTE: There is no right or wrong way to present a marketing plan, but always do it professionally. You are marketing yourself to the prospective Vendor/Client to hopefully win a Listing.**

Ask to be shown around the property, note the features both positive and negative. (In real life this would be pre-Appraisal preparation but for this exercise we will do it all at one

Tell them a bit about your Company, the Brand, your Office, and Yourself.

**- Ask questions about the Property - its attributes –**

- Why do they love it? What is their favourite .....
- Why they purchased it (a clue to the target market)

**- Tell them about what is happening in the market now -** Include what is happening in and around the area, average selling time etc.

**- Ask questions about their:**

- **Have you sold property before? How did that go? What method was used?**
- **Dominant selling motive – the why**
- **Their price expectation – what they think it is worth?**
- **Are they in a hurry to sell?**
- **Are there any deadlines that need to be considered?**

**Recommend an overall path, example 4 to 6 weeks marketing xxx later for settlement etc.**

**Ask if they have sold many properties, how and how did they find the experience?**

**Outline the different types of sale method, say 5 key points about each one.**

**Recommended one method and** explaining the benefits of this way.

Ask which method they would be happy with that method.

**Calendar of Events** – Show and explain this, emphasize what they can expect from you. Include start and finish dates, explain about the time frame of the marketing Auction date, feedback, Open Homes etc.

**Promotional Activities:** What promotions will you do and explain the reasons for your choice of Advertising. *(This can be done in conjunction with the budget)*

**Marketing Effectiveness** - How are you going to monitor your Marketing programme?

You need to know be able to explain how you will monitor the effectiveness of the campaign to provide assurance to the prospective client that you are going to spend their advertising budget carefully and if required you can recommend fine tuning the marketing if it is not getting the desired results. See below for ways to measure marketing effectiveness.

**A3 - Marketing Budget**

- Explain the costs to them, what you are going to contribute etc.
- Justify your recommendation and why you think these are important.

**Show and discuss your - CMA** for the property and explain how you came up with that selling range or estimated selling price. Identify the most similar property or two between which it could sit.

**ASK FOR QUESTIONS-----THEN ASK FOR THE LISTING**

## Developing promotional material

Regardless of the choice of media used to promote the property in the market, there is the basic requirement to script a well worded advertisement. There are many varied opinions of what constitutes a great ad; however, there are some general points that help.

### These are as follows:

Highlighting the property features and correlating that with a benefit that is associated with that feature.

'Put the reader in to the advertising.' Use of the word 'YOU' is extremely powerful in drawing the reader in to the advert and the property.

The acronym below is commonly used as a guideline for the development and design of advertising.  
AIDA

<b>A</b> wareness	<b>potential customers become aware that the property is available for sale</b>
<b>I</b> nterest:	<b>enough information is provided to the audience that they develop an interest in the property and want to know more about it. The communication of key property features is important to stimulate interest</b>
<b>D</b> esire:	<b>benefits to the target market are communicated clearly so that they now actively want to know more about the property, and need to know how they get further information</b>
<b>A</b> ction:	<b>the audience is stimulated into action and take the necessary steps to get further information. Ensure that you know what it is you want them to do next; for example, get further information from the website, call the salesperson, visit the open home. The call to action in any advertisement is critical.</b>

### Writing advertising that works

It is important to ensure that your advertisement stands out from the several hundred listings that you might be competing with. The following pointers will help your client's property stand out in a crowded publication.

#### **GAIN ATTENTION!**

with a large bold headline and a strong customer benefit  
that your potential customers will find compelling

A great headline will draw attention to your advertisement and pull readers through to the other information on the page. Do not make false statements and avoid using 'puffery' statements that, in some circumstances, could lead to complaints. For example: 'not a cent to spend.'

### **USE ATTRACTIVE PHOTOS**

Use one or more attractive photographs showing one of the best features of the property.



A good photograph is more likely to draw attention than a wordy description of the property. Photographs are extremely powerful in real estate advertising. Make sure that any photographs used are the right ones and that they do not misrepresent the property!

### **SPECTACULAR VIEW AND TOP SCHOOLS!**

Stress the benefits of the property to the potential customers.

Ensure that you appeal to your target market, making it meaningful to them.



Stress the benefits to potential customers! For example, if you are targeting a retired couple, is it low maintenance? If you are targeting a family, is it close to good schools? Avoid publishing a statement by the client as fact if it has not been verified!

### **AUCTION NEXT WEEK – WILL SELL!**

Ensure a strong call to action, with appropriate information, your contact details, a website address for further information, property address and open home times.



Inspiring a strong call to action is a useful marketing strategy. Make it easy for interested customers to contact you! Always respond to enquiries as quickly as you can. The real estate industry is a high-speed industry!

Because writing advertisements is not everyone's strong point, many real estate licensees use the services of a copy writer to help them.

Do not forget to include your contact details and the legal requirement to include the fact that your agency is licensed under REAA 2008 in all your advertising material.

### Measuring marketing effectiveness

A critical part of any marketing programme is to measure the results, so that you know what is working and what needs improving. Ensure that every activity you carry out is measured so that you can report results to your client (since often it is their marketing budget you are spending).

You will also be able to use these results as evidence of your success when you are presenting marketing programmes to new prospective clients.

#### You need to measure:

Enquiries resulting from advertising. What areas of advertising brought direct enquiries?

When people call or email, ask them where they saw the advertisement for the property. If you advertised in two publications and enquiries only came from one, you may want to adjust your media selection in later weeks.

- The number of hits on website advertisements for the property.
- This statistical data is also an excellent tool to include in your reporting to your client.
- The number of visitors to your open homes, and other showings of the property.
- Again, include this data in your reporting to your client.
- Effective analysis of the marketing programme is an integral part of providing quality feedback to clients.

Meeting legislative and professional requirements in relation to marketing

Marketing activities must not occur unless an agency agreement is in place

Marketing activities must not occur unless an agency agreement is in place with a client. This requirement is confirmed by rule 9.6 from the Code of Conduct.

An important point about rule 9.6 that is sometimes overlooked, is that it not only prohibits marketing before an agency agreement is in place, but it also prohibits marketing after an agency agreement has ended.

#### Rule 9.6 of the Code of Conduct says

**Rule 9.6** Unless authorised by a client, through an agency agreement, a licensee must not offer or market any land or business, including by putting details on any website or by placing a sign on the property.

When an agency agreement ends, all marketing information must be removed. This includes all physical advertisements, printed and online advertising.

## Agent to display required name information

Section 121 of the Real Estate Agents Act requires that a real estate agent identifies itself by name (or trading name) and confirms its licensed status in all marketing and advertisements, other promotional material, documents, and notices used in real estate work, as well as at their premises and on all websites used by them.

### Real Estate Agents Act 2008

#### 121 Agent to display required name information

- (1) In this section, business, in relation to an agent, means the agent's business as a real estate agent required name information, in relation to an agent, means—
  - a. the name of the agent and the fact that the agent is licensed under this Act; and
  - b. if the agent's business as a real estate agent is not carried on in the agent's name, the name or style under which that business is carried on.
- (2) Every agent must ensure that the required name information is displayed in a prominent place—
  - (a) at each office or shop maintained by the agent for the purposes of the business; and
  - (b) on every website maintained by the agent for the purposes of the business; and
  - (c) on all notices, advertisements, and other material published by or on behalf of the agent in the course of the business; and
  - (d) on all letters, accounts, contractual documents, agreements, and other documents sent or handed out, entered into, or published by or on behalf of the agent in the course of the business.
- (3) The required name information must be capable of being easily read from outside each office or shop maintained by the agent for the purposes of the business.

**This is an important requirement to note as real estate marketing is often very focused on the individual licensee rather than the real estate agency.**

There have been several breaches of section 121 where identification of the real estate agent has been missed out from printed media advertising.

### Best value for the client

#### Rule 9.13 of the Code of Conduct says:

#### Agency agreements and contractual documents

Rule 9.13 When authorised by a client to incur expenses, a licensee must seek to obtain the best value for the client.

Rule 9.13 requires licensees to make sure that expenses that arise (such as advertising and marketing costs) are appropriate and proportionate to the value of the property, business or space being marketed and that additional marketing benefit is gained from the additional expenses. This is another reason why measuring the effectiveness of the marketing is important.

## Confirmation of marketing activities and expenses

Rule 10.6 confirms information that must be explained and confirmed in writing to a prospective client before the client signs an agency agreement.

### 10 Client and customer care for seller's agents - Agency agreements

#### Agency agreements

**Rule 10.6** Before a prospective client signs an agency agreement, a licensee must explain to the prospective client and set out in writing—

- (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the appraisal provided under rule 10.2:
- (b) when the agency agreement ends.
- (c) how the land or business will be marketed and advertised, including any additional expenses that such advertising and marketing will incur:
- (d) that the client is not obliged to agree to the additional expenses referred to in rule 10.6(c):
- (e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.

Rule 10.6 confirms the information that a licensee must explain and supply in writing to a prospective client before the client signs an agency agreement.

Note that the requirement under 10.6(a) about commission reinforces the importance of an accurate appraisal as required by rule 10.2.

Rule 10.6(b) requires clients to be informed when the agency agreement ends.

Rules 10.6(c) and 10.6(d) require that licensees explain the marketing and advertising plan along with expenses that will be incurred, and that the client has no obligation to agree to these expenses. This also relates to rule 10.5 regarding disclosure of individual benefits.

Rule 10.6(d) requires a licensee to explain and confirm in writing that the client is not obligated to agree to paying for marketing and advertising if they do not want to.

10.6(e) requires that licensees explain that the REA can supply further information. The rule does not require information to be provided on the Code of Conduct itself nor on complaints procedures as these can be sourced from the REA. The licensee is required to draw the client's attention to the fact that this information is available. (Sawyers & Jennings, 2013).

In residential sales, under section 127 of the Real Estate Agents Act, licensees are also required to give clients an approved guide before they sign the agency agreement. They must also get a signed acknowledgement that the guide was given.

Agency agreement must disclose rebates, discounts, and commissions

Under section 128 of the Real Estate Agents Act 2008, the agency agreement must disclose rebates, discounts, and commissions that arise from expenses.

Rebates, discounts, and commissions may, for example, relate to benefits received by the agent in relation to marketing or advertising expenses incurred on behalf of the client.

Non-disclosure may result in the agent not receiving payment for those expenses.

## Other consumer law relevant to marketing costs and commissions

Sections 30 and 31 of the Consumer Guarantees Act 1993 relate to requirements for reasonable pricing and timeframes. In relation to marketing, this has relevance in terms of the requirement for timely management when action is required, and appropriate (marketing) costs for the client.

Further to this the Secret Commissions Act prohibits secret commissions. This includes advising a client to take on the services of a third party and receiving, without the knowledge and consent of the person advised, any gift or payment as a reward for giving that advice. This includes any discounts received by a licensee on expenses incurred on behalf of a client, such as for advertising.

### Advertising and marketing (rule 10.9)

Under rule 10.9, all promotional activities must be in accordance with client instructions and authorisation. If the marketing needs to be changed you need the clients' approval even if it is within budget.

#### 10 Advertising and marketing

**Rule 10.9** A licensee must not advertise any land or business on terms that are different from those authorised by the client

Rule 10.9 closely relates to rules 9.6 and 10.4.

### Contractual documentation and record keeping (rules 10.10, 10.11 and 10.12)

Sawyers and Jennings (2013) highlight that Rule 10.10 aims to make sure that clients are aware of all written offers and can consider them. Licensees must not pick and choose which information they pass on.

#### 10 Contractual documentation and record keeping

**Rule 10.10** A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.

Licensees are not obligated to inform clients of verbal offers (although they can decide to do so). The focus on written offers means that clients are informed of all 'serious' offers. It also means that the details of the offer are clearly recorded and can form the basis for negotiations.

### Price or price range

An advertised price or price range must be in accordance with that authorised by the client and must be in line with their realistic expectations.

Customers must not be given misleading information about the price expectations of the client. These requirements are reflected in rules 9.4 and 10.4 which build on the principle of rule 10.9.

It is not acceptable to try to generate the interest of a customer by making unrealistic suggestions that an offer lower than the discussed and realistic expectations of the client would be accepted.

It is important to note that focusing on rateable value (RV) when the RV is unrealistic in terms of market value should be avoided.

**Licensees should not use RV (CV or GV) in written and printed marketing information or give weight to it in verbal discussions where it does not realistically reflect market value.**

## Confidentiality

You must not disclose confidential personal client information unless written consent is given, or you are required to under Rule 9.17, ab, c, and d

**Rule 9.16 A licensee must not use information that is confidential to a client for the benefit of any other person or of the licensee.**

Rule 9.16 recognises that through licensee dealings with the client, confidential information about that client may come to light. This information must not be used to benefit the licensee. For example, through discussions, it may become clear that a vendor is desperate to sell their property quickly because of financial difficulties, because of a relationship breakdown, or a need to relocate for career reasons.

**Rule 9.17 A licensee must not disclose confidential personal information relating to a client unless—**

- (a) the client consents in writing; or**
- (b) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the licensee by the client; or**
- (c) the licensee is required by law to disclose the information; or**
- (d) the disclosure is consistent with the information privacy principles set out in section 22 of the Privacy Act 2020.**

Rule 9.17(a) confirms that only if the client consents in writing, can this kind of confidential information be disclosed.

In some cases, a client may wish certain confidential personal information to be made public in order to assist a quick sale. For example, 'Highly motivated buyer moving overseas Needs to sell!'

However, this must never be assumed. It must be discussed with the client and their written consent be obtained before making reference in any way to their confidential personal information. A licensee's duty of confidentiality to their client continues indefinitely.

Rules 9.17(b) and 9.17(c) acknowledge that there may be legal circumstances in which confidential personal information about the client may need to be disclosed.

Examples include where the licensee needs to defend a complaint, claim, allegation, or proceedings brought by the client against them or if the licensee is required by law to disclose the information.

Rule 9.17(d) confirms that any such disclosure must be in accordance with section 6 of the Privacy Act 1993.

**Rule 9.18 Where a licensee discloses information under rule 9.17(b), (c) or (d), it may be only to the appropriate person or entity and only to the extent necessary for the permitted purpose.**

These privacy principles can be found at:

<http://www.legislation.govt.nz/act/public/1993/0028/latest/DLM297038.html>

Rule 9.18 confirms that if confidential personal information about a client is disclosed under rules 9.17(b), 9.17(c) or 9.17(d), it may only be to the appropriate person, to the extent necessary, for the permitted purpose.

The Privacy Act 1993 is covered off in more detail in the 23141 Learner Guide

## The obligation to not mislead or act dishonestly

Rule 6.4 confirms the fundamental obligation not to mislead or act dishonestly when dealing with clients and customers.

**Rule 6.4 A licensee must not mislead a customer or client, not provide false information, nor withhold information that should by law or in fairness be provided to a customer or client.**

This rule reflects the principles of the following consumer protection law: The Fair-Trading Act 1986 Section 9 which relates to general misleading and deceptive conduct.

Section 12A which relates to unsubstantiated representations.

Section 14(1) which relates to false representations and other misleading conduct in relation to land.

### The Contract and Commercial Law Act 2017

Section 35(1) which relates to misrepresentation.

Consumer protection law was covered extensively in the learner guide for 23136. You may refer back to that learner guide if you need to refresh your memory.

#### Useful questions to ask yourself are as follows:

1. What do you know about the state and circumstances relating to the property, business, or space you are preparing to market? Are there any issues or red flags?
2. What should you know? i.e., what would a competent licensee be expected to know about the state and circumstances relating to the property, business, or space you are preparing to market? Is there anything you are not sure about you need to investigate further?
3. Is any information you have likely to be material to customers (would it be likely to affect their decision-making)?
4. Have you checked facts thoroughly before passing on information?
5. If you do not know (or are not sure about) the answer to a question a client or customer asks you, admit you don't know the answer.

Always recommend they clarify the information they need with a solicitor or that they get appropriate technical advice.

Always work under the direction and control of your supervising agent or branch manager and consult them, as necessary.

## Disclosure obligations to customers

Licensees have an ongoing disclosure obligation up to the point of settlement.

This means that if new material information about the property, business or space, that was not known at the listing stage, is discovered later in the marketing process, the licensee must disclose this (in accordance with discussions with the client). All disclosures need the written consent of the client.

If you have any information that you have not verified, you should disclose that it has not been verified. For example, if the vendor has said that their land can be subdivided, but you have not seen written confirmation of this or checked with the authority, you should explain this to potential purchasers.

### Rule 10.7 of the Code of Conduct says

#### Disclosure of defects

**Rule 10.7** A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Where it would appear likely to a reasonably competent licensee that land may be subject to hidden or underlying defects, a licensee must either—

- (a) obtain confirmation from the client, supported by evidence or expert advice, that the land in question is not subject to defect; or
- (b) ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.

Note that rule 10.7 covers a wide range of defects and is not limited to the examples below:

- Weathertightness
- Unpermitted works
- Limited or no Code Compliance Certificate
- Incorrect boundaries
- Methamphetamine contamination
- Leaks

Rule 10.7 provides a quite specific two-step approach which must be adhered to in situations where a licensee suspects a property may be subject to defect of any kind.

Rules 10.7 and 10.8 strike a balance between the right of buyers/lessees to obtain relevant information about a property they may buy or lease and the limitations of a licensee in terms of what they can know about the property. They also balance the licensee's legitimate obligation to be fair and truthful, and the ethical and moral obligations of the seller/lessor.

Rule 10.7 requires the disclosure of known defects to a customer.

#### Hidden or underlying defects

Rule 10.7 also confirms licensee obligations in relation to disclosure of hidden or underlying defects.

Hidden or underlying defects are not defined in the Code of Conduct, but an example used in the Code of Conduct is a defect relating to weathertightness.

The following footnote about weathertightness is provided in the Code of Conduct:

*For example, houses built within a particular period of time, and of particular materials, are or may be at risk of weathertightness problems. A licensee could be expected to know of this risk (whether or not a seller directly discloses any weathertightness problems). While a customer is expected to inquire into risks regarding a property and to undertake the necessary inspections and seek advice, the licensee must not simply rely on caveat emptor. This example is provided by way of guidance only and does not limit the range of issues to be taken into account under rule 10.7.*

## **Issues that can be considered defects**

### **Stigmatised materials**

**Learner Guides 23141 and 29882 cover off in more detail contamination issues such as methamphetamine.**

Stigmatised materials are materials that raise red flags for people in relation to a property space or business when they are present, either because they can cause actual structural problems or hazards, or because they are perceived to.

Examples of stigmatised materials include the following:

- Asbestos - which can be found in wall cladding, stippled ceilings, or in various parts of commercial buildings. This can cause a serious health risk if disturbed and inhaled.
- Monolithic cladding – because of its association with weathertightness issues when used incorrectly or inappropriately during construction.
- Old electrical wiring (for example, conduit wiring) because of the associated fire hazard.

If presence of stigmatised material is known or suspected, the actions as described in the previous 'Required action' section need to be followed.

Stigmatised materials such as monolithic cladding, asbestos, Dux Quest, or old electrical wiring that may be a fire hazard are covered off in detail in the Learner Guide 23157

### **Stigmatised Property**

The term 'stigmatised property' is sometimes used to describe properties affected by other issues which do not relate to its physical conditions or features but for other reasons such as a murder or suicide having been committed at the location or a particularly violent crime having occurred there. These can also impact on the property.

Disclosure obligations in relation to these types of circumstances are more complicated and less black and white.

**Decisions and actions taken must be in accordance with guidance provided by the supervising agent/branch manager.**

### **Additional disclosure requirements in relation to weathertightness issues**

In the learner guide for unit standard 23136, we looked at Disciplinary Tribunal decisions which have imposed additional disclosure requirements for licensees in relation to weathertightness issues. These decisions have clarified the following points:

Licensees are expected to be able to identify properties that may have issues related to cladding (and therefore potential issues relating to weathertightness).

If a licensee is aware that a property is of a type that is prone to weathertightness issues, they cannot remain silent and simply rely on a vendor's statement that there are no issues, nor the fact that the

purchaser obtained their own building report.

Licensees need to go further and point the weathertightness concern out to the vendor (and obtain confirmation supported by evidence or expert advice that the property is weathertight); or raise the issue with the purchaser and strongly suggest that the potential purchaser obtain a comprehensive building report [after discussions with the vendor]. Rule 10.8 would apply if the vendor refused disclosure.

Refer back to the learner guide for unit standard 23136 if you need to refresh your memory.

*The REA provides some guidance in relation to properties that may be considered stigmatised due to sensitive issues in the Information Sheet – ‘Disclosure of Sensitive issues,’ January 2015.*

*The REA guidance sheet was prepared based on a High Court Appeal Decision.*

### Required action

Under rule 10.7 known defects must be disclosed to a customer (with the client’s informed consent). Rule 10.7 makes it clear that where it would appear likely to a competent licensee that land may be subject to hidden or underlying defects, a licensee must either:

- obtain confirmation from the client, supported by evidence or expert advice, that the land in question is not subject to defect.
- or ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.’

### Rule 10.8 says

**Rule 10.8** A licensee must not continue to act for a client who directs that information of the type referred to in rule 10.7 be withheld.

- Under rule 10.8, licensees must make sure that vendor/lessor clients understand the licensee’s disclosure obligations to purchaser/lessee customers under rule 10.7.
- Vendor/lessor clients must be told that the licensee can no longer act for clients who direct that such information is not to be given to purchaser/lessee customers. In other words, the licensee must cancel the agency agreement.

It is crucial for licensees to talk with the client vendor/lessor first before disclosing information about a property, business or space being marketed.

- Disclosure cannot be made without the client’s informed consent.
- A licensee’s fiduciary obligation to their client (rule 6.1) is a primary duty, and the licensee must act in accordance with the lawful instructions of their client (rule 9.1).
- It is best practice for licensees to obtain written confirmation from the client that they have given informed consent to disclose property related information.

If a licensee believes that disclosure about issues with the property should be made, but the client does not agree, then the licensee must stop acting for the client (rule 10.8) and not disclose the information. When a licensee stops acting for a client in these circumstances, under the continuing fiduciary obligation, the licensee may not disclose the reason for ending the agency relationship.

All disclosure must be confirmed in writing.

Under the direction and control of your supervising agent/branch manager, any identified issues must be fully disclosed, and customers must be advised to seek independent legal/technical advice before proceeding to enter into a transaction (before making a written offer).

Verbal disclosure to customers must be confirmed in writing, for example, by email.

### The case

A complaint was made to the CAC by the purchaser of a residential property who said that they were not told that a suicide had occurred at the location when they bought it. They said that they only learned of the incident through a neighbour when they came to on-sell.

The suicide had taken place in the garage, over 12 months before the sale, and the property had been occupied during that 12-month period since. At the time, there was no industry standard or guidance in relation to whether this type of situation required disclosure.

The CAC found the agent to have been in breach of rule 6.4 of the Code of Conduct and their conduct to have been unsatisfactory because of their failure to disclose this information. No penalty was imposed, however.

The complainant was seeking compensation, so they appealed the non-penalty decision. The agent appealed the unsatisfactory conduct finding to the Disciplinary Tribunal who upheld the unsatisfactory conduct finding.

The agent then appealed to the High Court who overturned the finding of unsatisfactory conduct.

Barfoot and Thompson v REAA & Campbell [2014] NZHC 2817

Based on what the High Court said in this case, the REA guidance sheet suggests the following approaches:

Whether a sensitive issue needs to be disclosed will very much depend on the facts of the case. Considerations might include the following:

The location of the event (could the event be considered more sensitive because it occurred in a residential home than if it occurred in the grounds or a garage?)

How long ago the event happened and whether the property has been used/lived in since.

The reaction of potential purchasers and the possible effect on the price.

Whether the incident had a level of notoriety. Would this affect the licensee's duty to inform potential purchasers?

It is important to note that the High Court acknowledged that a cautious approach of erring on the side of disclosure may well be 'an appropriate rule of thumb in practice.'

The REA advised that if disclosure is to occur in these types of circumstances, this should be handled in a sensitive manner, i.e., the licensee obligation would need to tell potential purchasers who have indicated an interest in submitting an offer on the property.

The REA document can be found at the link below:

<https://www.rea.govt.nz/assets/Uploads/Resources/Forms/Other-forms/Disclosure-of-sensitive-issues.pdf>

### **'As is/where is' provisions do not cancel disclosure obligations**

In a sale and purchase agreement for an 'as is/where is' sale, the standard vendor warranties would be crossed out. Purchasers must be advised to seek legal advice before signing the agreement. The as is/where is provision does not cancel a licensee's disclosure obligations under rules 6.4 and 10.7.

## Issues Beyond the Boundary

**Learner Guides 23134 and 29882 cover off in more detail developments beyond the boundary and unpermitted building work.**

Not all issues that need to be disclosed to a buyer will fall under Rule 10.7. Issues relating to neighbouring properties or developments happening in the general area that may affect the buyers' decision are not always a defect of the actual property. However, under Rule 6.4 these would still need to be disclosed to the buyer with the vendors' written permission.

(Note: A 'reasonably competent licensee' will need to be familiar with zoning and proposed zoning changes or planned developments in the areas in which they carry out real estate agency work so they can provide accurate information to customers. This is considered part of the basic knowledge that a licensee should obtain.)

**If a licensee is aware of, or should be aware of, anything that may be material to a prospective purchaser, in consultation with the client and with their written permission, that information must be fully disclosed in writing, no later than the point of inducement.** Eg a gang headquarters or a half-way house in the immediate surrounding area

### Acting in good faith and fair dealings

Licensees must act in good faith and deal fairly with all parties involved in a transaction. This general obligation is confirmed in rule 6.2.

**Rule 6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.**

Licensees must not mislead customers in what they say and do, nor in what they do not say or don't do.

The concept of acting fairly also includes the requirements as laid out in the Human Rights Act 1993. When working in real estate, it is important to be aware of your obligations not to discriminate when dealing with clients, customers, and other parties.

### Avoiding undue or unfair pressure

The real estate industry can be a high-pressure, fast-moving industry to work in. Buying, selling, or leasing real estate can feel like a stressful experience for some clients and customers.

While some level of urgency may be unavoidable, rule 9.2 seeks to protect consumers. It confirms that licensees must avoid putting clients and customers under undue or unfair pressure.

This involves avoiding the creation of a false sense of urgency and making sure parties are given adequate time to make decisions and to seek independent legal and/or technical advice as required.

### Rule 9.2 of the Code of Conduct says

**Rule 9.2 A licensee must not engage in any conduct that would put a prospective client, client, or customer under undue or unfair pressure.**

Rule 9.2 aims to protect the interests of all consumers. Particular care must be taken with vulnerable clients and customers, for example the elderly or recently bereaved.

## **Qualifying customers and presenting properties**

As we have seen, although a licensee's primary relationship and fiduciary duty is to the client, licensees must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work and must act in good faith and deal fairly with all parties engaged in a transaction.

Being able to build professional relationships with customers is fundamental to being successful in real estate and being able to secure a successful outcome for clients.

### **Determining promising potential customers**

Even though you have run an effective marketing programme for a client's property, business or space which has successfully attracted a number of potential customers, it is still only likely to appeal, or be suitable for, a small proportion of the parties who have responded to your marketing campaign.

Determining the most promising potential customers amongst those who have viewed the property, business or space is another key skill required of a licensee.

Without the ability to assess and prioritise the most promising potential customers, time will be wasted trying to convert those who are unlikely to make an offer.

By correctly assessing and prioritising potential customers, you can focus on this smaller group who are the best match with the particular property, business, or space you are marketing.

### **Qualifying potential customers**

When talking with potential customers, it is important to try to gather information about their needs, wants, and interest in the property, business or space being marketed.

#### **Three important considerations are as follows:**

- How well does the property, business or space meet the needs and wants of the potential customer?
- How motivated is the potential purchaser to make an offer?

Is the potential purchaser in a realistic position to make an offer that would be given genuine consideration by the client? (Given factors such as the potential customer's financial restraints, timeframe etc).

Determining the needs, wants and circumstances of the potential customer and assessing whether they are likely to make a written offer that would be given genuine consideration by the client provides a foundation for qualifying them.

This then directly relates to the time and energy that a licensee should invest in these potential customers.

## Building rapport with potential customers

Building rapport involves developing a good understanding of someone and having the ability to communicate well with them. Rapport can be built with potential customers using a variety of approaches.

These include questioning, active listening and obtaining and giving feedback to gain an understanding of the potential customer's needs and motivations.

### Types of Questioning to establish wants, needs and motivations

An effective way of obtaining information to understand a potential customer's wants, needs and motivations is through the use of questioning.

**A closed question** results in a short yes or no type of answer. For example: Are you looking for a property near the city centre?

**An open question** gives more insight as it encourages a full and more detailed reply, often including personal opinions. For example: Why is it important for you to be near the city centre?

Some examples of different types of questions that would be useful when talking with a potential customer interested in buying a residential property include the following:

1. How many people do you require accommodation for?
2. Is that likely to change? For example, a young married couple may be planning to start a family. Establish if the property is of genuine interest in terms of its size and/or development potential.
3. Where would you prefer to live? Why is that area appealing to you? Establish their requirements for school, work, transport, local facilities, social needs etc.
4. What is your preferred price range? Establish the financial position they are in. Do they have a deposit for a property? Will they need a mortgage? Do they have that pre-arranged?
5. What are your particular property requirements? Are they looking for a villa or contemporary property? Do they have particular needs, for example, a learner, garage, teenage space, garden? What are your priorities for purchasing a property?
6. Do you have a specific time frame when you need to buy?
7. Do you have a property to sell first?

Try to establish their key motivations to buy. Motivations will vary significantly. Assessing each particular situation will help in determining the strength of the motivation.

For example, a family on transfer from another part of the country needing to purchase quickly; a couple who are casually thinking about buying a smaller house because the last of their children has left home, but they need to sell their current property first.

## Active listening

Active listening is a rapport-building technique that involves the following:

- Concentrating fully on what is being said.
- Making sure you understand (ask additional questions if you need to clarify certain points to make sure you have understood what the other person is saying).

Responding (this does not mean interrupting but using communication that encourages the potential customer to carry on talking – for example, “Yes, I understand”, “Tell me more about that” “Do you mean...?”, non-verbal communication such as nodding to show agreement or understanding).

Remembering what was said. You should also keep a detailed record of information you receive.

## Obtaining and giving feedback

Building rapport with potential customers is essential. Through good listening and communication skills, you will be able to obtain information to help you understand their wants, needs and motivations.

Perhaps the property, space, or business they initially contacted you about is not suitable for them. However, if you listen carefully to their feedback, you may be able to provide your own feedback to them and recommend they view alternative listings that suit them better.

You will be able to demonstrate your professionalism to them through the time and effort you spend showing them a property, space or business that meets their needs.

Keep the information flow open – you will need to keep readdressing the situation to ensure that you still understand the potential customer’s wants, needs and motivations.

Their circumstances may change; they may be turned down on finance so have a lower budget than previously stated; they may have been able to access additional finance through family members; they may have viewed all the properties in their initial price range, only to find that they need to raise their budget to secure a property, business or space that more adequately meets their needs; or change and lower their expectations in order to get into a particular area.

## Presentation of features and benefits

When a prospective customer views a property, business, or space, it is an opportunity to present its features and benefits to them.

- Features can be considered to be the physical or actual characteristics of the property, space, or business.
- Benefits can be considered as the advantages the features of the property, space or business have in relation to the wants, needs and motivations of a potential customer.

### Example

The property you are about to show features a newly renovated out-door entertainment space with a swimming pool. You could discuss these features to see if they would suit the customers lifestyle or family situation. Their answers will help narrow down what they are looking for.

Another example could be that a commercial space is located next to a large public carpark. The benefit to the potential lessee would be that access to their business would be convenient for their own customers.

The better the understanding you develop of a potential customer’s wants, needs and motivations during the qualifying process, the more effective you will be in identifying features that will be perceived as benefits by that potential customer.

## Presentation skills

Good presentation skills (the way the property, business or space looks and is presented) and emphasis of desirable features and benefits are essential for turning a prospective customer into a customer who decides they want to make an offer.

Your office may have written guidelines that you can offer to your client to assist in the preparation the property.

### First impressions count!

For a residential property, for example, the client should be advised to try to ensure the following:

#### Outside

- The house has good 'kerb appeal.' Many prospective buyers will do a 'drive by' and will not enter to view the property if it doesn't appeal from the outside.
- Lawns and gardens are well maintained with grass cut and any overgrown trees and shrubs trimmed.
- Minor repairs are done; for example, replace cracked windows, fix loose steps, paint as needed.
- The garden is tidy, and toys and bins are put away.

#### Inside

- The house is tidy with minimal clutter.
- Clothes are hung in wardrobes.
- Wardrobes and storage areas are tidy and not crammed.
- Curtains and blinds are open to maximise natural light and to create a sense of space.
- In colder months, the house is heated.
- The house, especially the kitchen and bathroom(s) are very clean and smell fresh.

In consultation with the client, some agents may employ a cleaner to prepare the property prior to the viewing.

Always keep in mind that there are plenty of other properties on the market where the vendor will have taken extra effort to present their property.

There is no need for the client to spend a fortune to smarten a property up, but they should consider where improvements can be made for little outlay. Sometimes a thorough de-clutter, clean and a lick of paint can work wonders when presenting a property for sale.

### A property, business or space is typically presented as follows:

By private viewing when an appointment is set to show the party privately through the property, business or space at a time that is convenient to them, the licensee, and most importantly, the client.

Residential properties are usually presented at open homes, where all members of the public are welcome to view the property at a set time.

## Private viewings

Private viewings should be arranged at a time that is convenient to the prospective customer, the client, and the licensee.

You may have arranged suitable times that are appropriate for viewings in advance with the client. Nonetheless, ensure you contact the client before every private viewing to ensure that it is convenient for them.

The advantage of a private viewing is that you can allocate 100% of your attention to the prospective customer during this time. Maximise this opportunity by establishing a strong rapport with them, spending time qualifying them, and looking for 'buying signals'.

The client needs to be prepared for private viewings and the property needs to be clean and tidy. If this is a problem, it may be easier to restrict viewings to open homes unless the potential purchaser is likely to make an offer or has already been to an open home and requests a follow up private viewing.

## Open homes

An open home schedule will have been agreed in advance with the client if this is a marketing approach that has been included in the marketing programme.

An open home schedule includes dates and times and is typically featured prominently in all advertising for the property.

The licensee should actively work with the client to ensure the optimum appearance of the property.

Open homes are a time-efficient way to present the property to a larger number of prospective customers, as they come to you. Typically, open homes will provide the first opportunity to meet prospective customers. More personal qualifying of those potential customers may need to occur after during follow up as at the open home you may be talking to several parties at once.

During an open home greet all visitors as they enter the property and collect their names and contact details for security purposes. Also make them aware that you may use their contact information to follow up with them afterwards. The register provides you with a database of prospective customers. It is also used for measuring the effectiveness of your advertising, through assessing the numbers of attendees, and clarifying which advertising media they viewed the property through.

It is important to remember that people attend open homes for various reasons. These might include the following:

- Nousey neighbours who want to see how this property compares with theirs.
- Casual customers who love looking at property.
- Customers who are thinking of making a change; have just begun looking (passive customers).
- Informed prospective customers who have specifically chosen this property to view (active customers).
- Potential clients looking for a trustworthy licensee to list their own property with.

Licensees need to conduct themselves in a professional manner at all times with all parties when running an open home and be able to recognise genuine potential customers.

## Identifying buying signals

When viewing a property, there are a number of buying signals potential customers may give that indicate they are ready to make an offer.

These are usually apparent through a mixture of direct questions and non-verbal signals.

Questions that may indicate readiness to make an offer include the following:

- Asking for further details about the property.
- Asking whether the client is negotiable with the price.
- Raising objections to specific issues of the property - this can be the start of negotiating the price.

## Possible non-verbal signals, or dialogue between potential customers include the following:

Spending a significant amount of time in one room - sitting down for periods of time, standing at a window for a long time whilst looking at a view.

Prospective purchasers listing the benefits of the property themselves.

'Placing' furniture - saying 'the lounge suite could go there.'

Children choosing bedrooms - 'Mum, can I have this room?'

Or the obvious customer signal - 'I really like this property; I'd like to make an offer!'

You will observe that potential customers are beginning to picture themselves in the property.

With experience, you will begin to note the opportunities to start 'closing' a transaction. See if they would consider making an offer.

## Handling objections

Being able to handle objections from potential customers is an integral part of the job!

Look on the positive side of every objection – objections can often be a clear indication of interest.

Objections are often a potential purchaser's way of eliminating or minimising questions in their own mind - help them by answering those questions appropriately and with a genuine response.

## Use the following steps to deal with objections:

Hear the objection out. Listen with empathy and understanding and do not interrupt.

If you are unsure of what is meant, question the objection to get to the basis of the objection. 'Can you elaborate on that?'

Acknowledge the objection. Feed back to the customer e.g., 'so you feel the spare bedroom is small?'

Respond with a statement such as: "apart from (the objection), how do you feel about the rest of the property?"

Try to help to move the potential customer forward from the objection to focusing on the positive aspects of the property or possible solutions.

If they have not seen the property yet, suggest they view the property to determine how much of an objection it is.

## Handling rejection

It is important to understand the difference between an objection and a rejection.

Make sure you listen and move on if you hear a resounding “no.” In a lot of cases, the potential purchaser’s mind will be made up and you may damage the rapport you have with them if you try too bullishly to change their mind.

It may be that there are too many objections in relation to the particular property, business, or space to overcome, or their financial or personal situation has changed. View this as an opportunity. You should suggest some other viewings for listings that are more suitable for the customer in terms of their wants, needs and motivations.

Do not take rejection personally. Real estate licensees put a lot of time and effort into marketing. It is important to learn from your dealings with potential customers and to focus on matching the appropriate parties to properties, spaces, and businesses.

## Security and avoiding risk of damage

Security is critical. The client has placed a great deal of trust in you by allowing you access to their property, business, or space. Under **rule 9.5**, licensees need to be aware when other parties are at accessing a property, business, or space, to conduct viewings and open homes. It is a licensee’s responsibility to ensure the security of the property is maintained and risk of damage by parties on site is avoided.

### Rule 9.5 of the Code of Conduct says

**Rule 9.5** A licensee must take due care to—

- (a) ensure the security of land and every business in respect of which the licensee is carrying out real estate agency work; and
- (b) avoid risks of damage that may arise from customers, or clients that are not the owner of the land or business, accessing the land or business.

For example, having the client remove small valuables which may be easily picked up by members of the public is advised. Use of an open home register keeps a record of parties who have visited.

Remember that while a client might be present during a private viewing, they are often asked to be absent during an open home, which makes security in these circumstances very important.

Licensees also need to ensure a property, business or space is secured properly when leaving it. Licensees must follow all client instructions in relation to security; for example, in relation to passing of keys or access codes to other parties, holding and returning of keys etc. It is best practice to obtain and record client instructions in writing.

If there are any concerns about the security of the property, share those concerns immediately with your client.

## Recording information and the Privacy Act 1993

Ensure that consumers are aware that you are collecting and recording information that they provide you with, and the purpose for collecting that information.

### Under the Privacy Act 1993, you should:

- only collect as much information from the people you deal with as you need to carry out your work
- make it clear what the information will be used for, and it will only be used for the purpose for which it was obtained.

The Privacy Act 1993 was covered in more detail in the learner guide for unit standard 23141.

## **Meeting professional requirements in relation to client communication**

### **Keeping clients informed**

Rule 9.3 requires licensees to communicate regularly with the client and keep them up to date about relevant issues unless instructed otherwise by the client. Communication is the key to maintaining a strong relationship with the client.

**Rule 9.3 A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client.**

Unless the client has instructed otherwise, ensure that you follow up with them after every private viewing and/or open home. You could do this by emailing, phoning, or leaving a note for them. Let them know the result of the private viewing or open home, and whether any potential customers have any further interest in the property.

In some circumstances, a client may say they only want to be contacted if an offer is being made, for example. If a client gives this type of instruction, it is best practice to get the instruction in writing and to keep a written record.

**Meeting professional requirements in relation to written offers** – you must present all written offers

### **10 Contractual documentation and record keeping (Rules 10.10, 10.11 and 10.12)**

Rule 10.10 aims to make sure that clients are aware of all written offers and can consider them. Licensees must not pick and choose which information they pass on.

Licensees are not obligated to inform clients of verbal offers (though they can decide to do so). The focus on written offers means that clients are informed of all 'serious' offers. It also means that the details of the offer are clearly recorded and can form the basis for negotiations. There must be no 'filtering' of offers by licensees.

**Rule 10.10 A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.**

Rule 10.11 allows for the agent's record keeping obligations under rule 10.12

**Rule 10.11 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits**

The requirement for licensees to provide the agent with a copy of a written offer submitted applies to all written offers they submit to clients, including offers that did not result in a transaction.

Rule 10.12 says this requirement applies to all written offers submitted to clients by the agent and by other licensees employed or engaged by them (including offers that did not result in a transaction).

**Rule 10.12 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction**

#### Appendix 1

##### Resources

New Zealand Legislation. (2009). Real Estate Agents (Duties of Licensees) Regulations 2009. <http://www.legislation.govt.nz/regulation/public/2009/0281/latest/whole.html>

Real Estate Authority. (2012). Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012. <https://www.rea.govt.nz/assets/Uploads/Resources/Guides/Code-of-conduct.pdf>

Settled. Signing an agency agreement. <https://www.settled.govt.nz/selling-a-home/selling-your-property/signing-an-agency-agreement/>