



REAL ESTATE AGENTS

January 2010

Changes are afoot in the Real Estate industry, both from a new Agreement for Sale and Purchase introduced by the REINZ in July and through the requirements introduced by the Real Estate Agents Act 2008.

The New REINZ Sale and Purchase Agreement

Lawyers and Real Estate agents have, for 20 years now, used the ADLS/REINZ standard form of Agreement for Sale and Purchase. The form was developed jointly by lawyers and agents, is tried and tested, and very familiar to both real estate agents and conveyancing professionals. In July, the Real Estate Institute introduced a new 'plain english' agreement. While undoubtedly containing some positive changes, the REINZ were reluctant to work closely with the Law Society on the final version of the new agreement and, consequently, there has been extensive discussion and critique of the new form.

The new REINZ Agreement for Sale and Purchase contains some notable changes. Unfortunately it has also introduced a large element of controversy and is likely to lead to uncertainty for both the vendor and the purchaser, an increased number of disputes as the 'crinkles are ironed out' and a resulting increase in legal costs. We strongly recommend that both vendors and purchasers seek legal advice before signing any new agreement for sale and purchase.

New Practice Requirements for Real Estate Agents

From mid November, the Real Estate agents Act 2008 creates new practice requirements and a new disciplinary framework for real estate agents. Some points of interest to vendors and purchasers include:

Agency Agreements (otherwise known as Listing Agreements)

An agent is not entitled to commission unless they have a written agency agreement signed by the client and the agent. A copy of the signed agreement must be provided to the client within 48 hours of execution or the agent can lose their entitlement to commission in some circumstances.

Before an agency agreement is signed for residential property, the agent must give the vendor a copy of an *approved guide* and obtain a signed acknowledgment of receipt. Failure however does not affect validity of the agreement.

Rebates, discounts and commission receivable by the agent on expenses being charged to the client must be disclosed in the agency agreement. Failure may affect the agent's recovery of expenses.

Sole agency agreements have a cooling off period and can be cancelled up to 5pm on the first working day after a copy of the agreement has been given to the client. The agent is entitled to commission on any sale effected prior to cancellation.

Sole agency agreements for residential property can be cancelled after 90 days even if the agency agreement provides for a longer period.

Sale and Purchase Agreements

Prospective residential purchasers must be given an *approved guide* relating to that agreement *before* they sign a contractual document and the agent must obtain a signed acknowledgment of receipt. Failure does not affect validity of any purchase agreement.

No licensee/agent may purchase land from a client without the client's express consent, and if consent is given, no commission is payable by the client and a client can cancel such a contract in some circumstances. A licensee cannot carry out agency work if they know or should know that the transaction is likely to result in someone related to the licensee in some way acquiring a client's property. Licensees must disclose to all parties to a transaction, at the time of presenting contractual documents to that party, any other financial benefits from the transaction which may be received by the agent or any person related to the agent.

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Disciplinary Issues

Complaints must be lodged with the new Real Estate Agents Authority. Complaint Assessment Committees consider the allegations first, which may be defined as *unsatisfactory conduct* or *misconduct* and there is a right of appeal to a Tribunal and then to the High Court.

Tougher penalties apply, including disciplinary remedies and significant financial penalties should any person suffer loss by reason of a licensee's misconduct.

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