

NOTES CONCERNING THE FORM YOU ARE USING
MULTILIST AUCTION AGENCY SELLING AGREEMENT

(WARNING: These notes are to direct you to specific parts of the document for you to be concerned with. It is not intended and cannot be relied upon as any form of legal advice or recommendation as to what should be included or not included in the agreement. At all times when you have queries or concerns as to what information is to be included or excluded, you must seek your own independent legal advice and rely on it.)

The *Property, Stock and Business Agents Act 2002* and the *Property, Stock and Business Agents Regulation 2003* require all agreements to be in writing and contain prescribed terms.

Knowledge of Act and regulations

An agent (a holder of a licence or certificate of registration) must have knowledge and understanding of the *Property Stock and Business Agents Act 2002* (the Act) and *Regulation 2003* (the regulations) and any other relevant laws including fair trading, trade practices, privacy, residential tenancy and anti-discrimination. An agent must understand the terms of the agency agreement and be able to explain them to the principal.

More Information

Agency agreements

http://www.fairtrading.nsw.gov.au/Property_agents_and_managers/Agency_responsibilities/Agency_agreements.html

Property, Stock and Business Agents Act 2002

<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+66+2002+cd+0+N>

Property, Stock and Business Agents Regulation 2003

<http://www.legislation.nsw.gov.au/fullhtml/inforce/subordleg+490+2003+FIRST+0+N>

Rules of conduct

http://www.fairtrading.nsw.gov.au/Property_agents_and_managers/Rules_of_conduct.html

IMPORTANT INFORMATION

The *Residential Tenancies Act 2010* and *Regulation 2010* commenced 31 January 2011. You are required to have thorough knowledge and understanding of legislation and recommend that you familiarise yourself with all of the provisions – see links below.

Residential Tenancies Act 2010

<http://www.legislation.nsw.gov.au/fullhtml/inforce/act+42+2010+FIRST+0+N>

Residential Tenancies Regulation 2010

<http://www.legislation.nsw.gov.au/fullhtml/inforce/subordleg+664+2010+FIRST+0+N/>

Because of disclosure requirements contained in the residential tenancies legislation, it is important to be aware that certain information is required to be collected from the landlord. The EAC *Residential Leasing Marketing Assistance Form* can be used for this purpose. The information collected will also assist in satisfying inquiries from prospective tenants as

E. Other services

The terms of the agency agreement and circumstances will determine whether a particular amount forms part of the consideration for the supply of agency services, an expense or a reimbursement of costs. In this section the agent itemises all the services (if required) the Licensee will carry out and the specified fee (GST inclusive) or (NIL fee).

For example, the agent may charge a fee to coordinate cleaning or refurbishment. If the charge forms part of the consideration for the services performed by the agent, GST will be payable by the agent on these amounts.

Take care specifying fees, charges and expenses and when they are due and payable. Consider the recovery of these fees in the context that you may not be successful in selling the property or the listing is withdrawn. Below is an example of a service fee to coordinate refurbishment work for section E of the agreement. The appropriate wording for when the fee is due and payable will vary to suit the individual circumstances.

Example

<i>Service</i>	<i>Amount (GST inclusive)</i>	<i>When due and payable</i>
Coordination fee for refurbishment	\$200	'within 7 days of signing the agreement' or 'at settlement or on withdrawal' or 'by account 30 days'

F. Advertising and promotion

This section relates to instructions on HOW the property is to be advertised or promoted. For instance, whether there will be a signboard, specific print and electronic media and open for inspection. For example, in the case of an auction campaign, write 'See Annexure 1 attached – Auction Marketing Campaign.' Ensure that this advertising schedule specifies when the amount is due and payable and it is dated and signed by all parties.

G. Inspection of property

Record in this section access arrangements such as preferred days and times for inspections and tenant contact details.

H. Disclosure of rebates, discounts and commissions

An agent is not entitled to recover any expense in connection with a real estate transaction claimed under the agreement unless the agent has disclosed in the agency agreement that they may receive rebates, discounts or commissions in respect of those services e.g. advertising rebates. The source and estimated amount of them to the extent that the amount can reasonably be estimated must be specified in the agreement. If no rebates, discounts and commissions are received, write 'NIL' in each box.

Other disclosures

Note there are other disclosure requirements in respect of referring a principal or prospective buyer to service providers (Section 47) and acquiring a beneficial interest in any property that the agent has listed (Section 49). Download forms here:

http://www.fairtrading.nsw.gov.au/pdfs/About_us/Forms/psbsection47form.pdf

http://www.fairtrading.nsw.gov.au/pdfs/About_us/Forms/psbsection49form.pdf

More information on Duty of Disclosure available at:

http://www.fairtrading.nsw.gov.au/Property_agents_and_managers/Rules_of_conduct/Conduct_requirements/Duty_of_disclosure.html

Cooling-off period

If the agreement is for the sale of residential property or rural land, the principal (client) has a cooling-off period. The cooling-off period commences when the client signs (or where there is more than one client, when the last client signs) the agreement and ends at 5 pm on the next day that is a business day or a Saturday.

The agent may extend this cooling off period in the agreement or in writing before the end of the cooling off period. The client can waive their cooling-off right when signing the agency agreement by signing a separate waiver form, download here
http://www.fairtrading.nsw.gov.au/pdfs/About_us/Forms/psbasection59form.pdf

Waiver of cooling-off rights

There is no cooling-off period if:

- (a) at least 1 business day before the client signs the agency agreement the agent provides the client with a copy of the proposed agency agreement together with (in the case of an agreement that relates to residential land) a copy of the approved consumer fact sheet, 'Agency Agreements for the sale of residential property', <http://www.fairtrading.nsw.gov.au/Factsheet_print/Tenants_and_home_owners/Selling_property/Using_an_agent/FTR32_Agency_agreements.pdf> and
- (b) before the client signs the agency agreement the client signs the waiver form.

EAC MEMBERS can obtain compliance advice and practice support on 1300 137 161
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