

Commission

Information Sheet

Most real estate agents¹ (agents) charge for their services on the basis of a commission, rather than a fixed fee.

How is commission calculated?

Commission is usually made up of:

- A set amount, plus
- A percentage of the selling price achieved, plus
- GST.

Before you sign an **agency agreement**, your agent is required, under the Real Estate Agents Authority's Code of Professional Conduct and Client Care, to:

- Explain to you how the commission is calculated (usually it will be on the formula above, but there may be variations); and
- Tell you what you would be likely to pay in dollar terms, on the basis of the price that the agent provided to you when they carried out a market appraisal of your property.

¹ Real Estate Agent (agent) is a general term and refers to agents, branch managers and salespersons.



Example

The agent has estimated your property could sell for around \$450,000. The commission is based on:

- set fee of \$500
- 3.75% on the first \$300,000 (\$11,250)
- 3.25% on the balance of \$150,000 (\$4,875)
- GST (\$2,078)

Amount of commission payable on selling price of \$450,000 = \$18,703 (including GST).

When you appoint an agent you will sign an agency agreement. An agent cannot legally charge commission on any work undertaken for you unless it is done under an agency agreement.

The agency agreement should set out the commission to be paid (usually this will be the formula for calculating the commission, rather than a fixed amount, as it is not possible to know in advance exactly how much the property will sell for). The agency agreement will also state when you have to pay the commission.

Is the amount of commission negotiable?

The amount of commission is negotiable. You can negotiate with the agent to vary any aspect of the formula. Make sure you check that your agency agreement reflects what has been negotiated.

Do I have to pay commission even if my property does not sell?

You only have to pay commission if the agent achieves an unconditional offer from a buyer. It does not matter how much work an agent does, or how long they work for you – commission is paid on the basis of results i.e. actually selling your property, not just making an effort.



When do I pay commission?

The agency agreement will usually state that the agent becomes entitled to payment on the date that an offer to buy your property becomes unconditional (rather than on the settlement date). This is an important distinction.

When you accept an offer from someone to buy your property, the offer will usually be in the form of a **sale and purchase agreement**. The sale and purchase agreement usually includes two key dates:

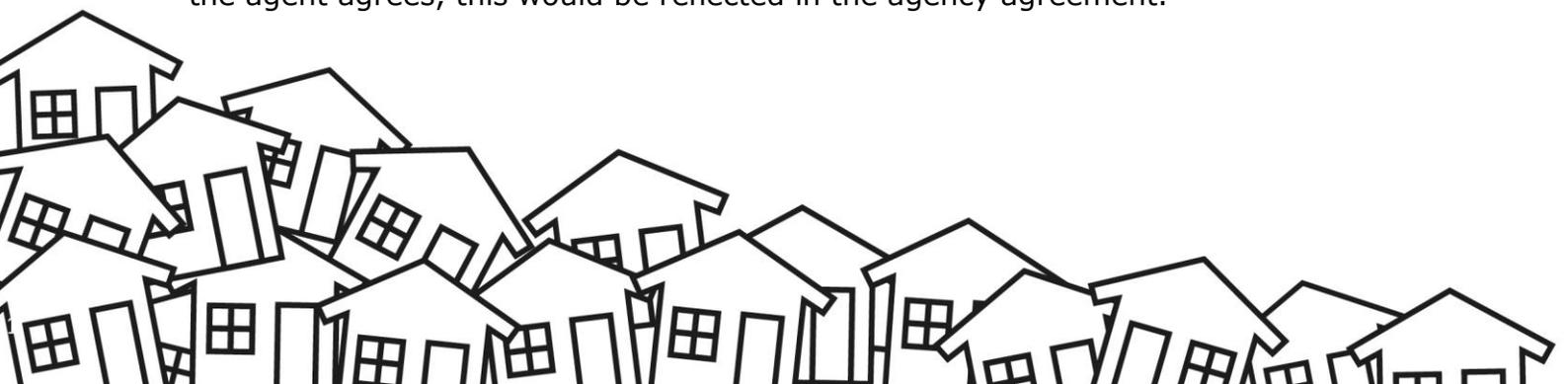
- The date on which the offer will become **unconditional**: this means that any conditions that the buyer set out in the sale and purchase agreement, for example, getting a LIM, doing a search of the title or arranging finance, have been fulfilled. At that point the offer becomes unconditional, meaning that the buyer is now legally bound to go through with the purchase of the property.
- The **settlement** date: this is the date on which the buyer actually pays for the property and usually obtains legal possession of the property.

The settlement date can be some time after the date the offer becomes unconditional.

This means that the commission will usually have to be paid before you receive payment in full for the sale of your property. The agent's commission is usually covered by the amount of the deposit that the buyer pays when you accept his or her offer. The agency agreement will normally authorise the agent to deduct the commission (when due) from the deposit.

When you accept an offer for your property, the sale and purchase agreement usually includes payment of a deposit by the buyer. Any deposit should be sufficient to cover the value of the commission that you have to pay. If no deposit is paid, you will have to ensure that you have funds available to pay the agent when the commission payment is due.

You can seek to negotiate with your agent over the date on which commission is paid. You could, for example, ask the agent to wait until the settlement date. If the agent agrees, this would be reflected in the agency agreement.



Is there anything else that I need to know about the payment of commission?

There are a few other points to note about payment of commission:

You are not liable to pay commission to an agent unless the agreement becomes unconditional.

Commission is always owed to the agent (the person or company that is named in the agency agreement), not the salesperson who may have undertaken the day to day work. If a salesperson asks you for payment, you should refer them back to the agent.

You have to pay the agent commission when any work the agent (or a salesperson working for that agent) did for you under an agency agreement **does** result in an unconditional agreement. This obligation may apply, even if, the agency agreement has expired. For example:

- Your agent brings you an offer in the form of a sale and purchase agreement. You negotiate but you do not reach agreement at the time. Some months later, the same buyer comes back to you with a further offer. The buyer on this occasion approaches you directly, and does not involve the agent. You negotiate directly with the prospective buyer and this time you reach agreement and an unconditional agreement results. At this point you have to pay the agent commission, even if the agent was not involved in this second round of negotiations, and even if the agent was not aware that the buyer had approached you.
- Your agent holds an open home, or shows a prospective buyer through your property. The prospective buyer does not make an offer and there is no negotiation. Sometime later the same prospective buyer makes an offer. If that agreement becomes unconditional, the agent is owed commission, even if the agency agreement has expired.
- You have a sole agency agreement with an agent, but you locate a buyer yourself. This results in an unconditional agreement: the agent did not introduce the buyer and was not involved in the negotiations. You still have to pay the agent commission. This is because a sole agency agreement gives



that agent the sole right to act as your agent – you cannot therefore act on your own behalf. If you do want to reserve the right to sell your own property, you must make sure the agency agreement allows for this – otherwise you will be liable to pay commission.

- If you are unsure about whether you will have to pay commission, we recommend that you consult your lawyer.
- If you sign a sole agency agreement you must ensure that you do not then enter into an agency agreement with any other agent during the term of the sole agency. If you do appoint another agent or agents after signing a sole agency agreement, you may become liable to pay commission to all of the agents, regardless of which agent sold the property.

Information sheets that provide further information on the property buying and selling process are available from www.reaa.govt.nz or by calling **0800 for REAA** (0800 367 7322) or (04) 471 8930.

Real Estate Agents Authority

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To the best of the Real Estate Agents Authority knowledge, the information in this guide is accurate at the date shown below. However, the requirements on which this information is based can change at any time and the most up-to-date information is available at www.reaa.govt.nz [Version 1.2, 22 March 2012].

