

Conflicts of Interest

Information Sheet

What is a conflict of interest?

A conflict of interest with a real estate agent¹ (“agent”) happens when they or someone connected to them wants to buy the property they are selling for you, or when they or someone connected to them has a financial interest in the property you want to buy.

Conflict of interest extends to a wide range of people, including an agent’s colleagues, employees and certain persons connected to the agent (a full list is below).

Agents must disclose any conflict of interest. It is important that your agent is independent and acts in your best interests (unless to do so would be against the law).

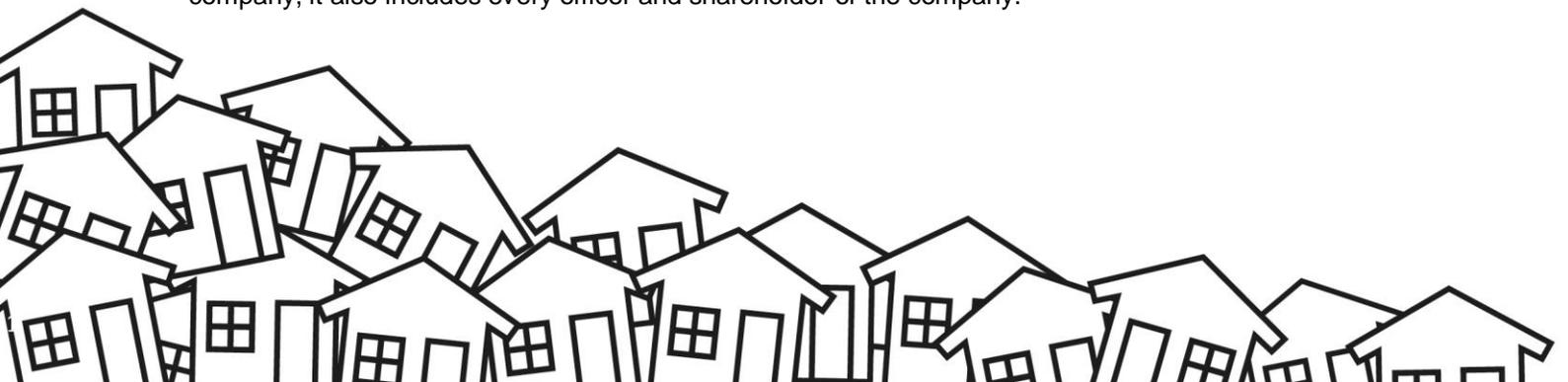
Conflict of interest for sellers

Can a real estate agent or someone connected to them make an offer to buy my property?

An agent who is working for you under an Agency Agreement, or someone connected to that agent, can offer to buy your property (or business).

If it is the agent that wants to buy your property (rather than someone connected to them) we recommend the agent no longer acts for you and another agent from

¹ Agent is a general term that refers to an agent, branch manager or salesperson licensed under the Real Estate Agents Act 2008. However, for the purposes of managing conflicts of interest, where the agent is a company, it also includes every officer and shareholder of the company.



the real estate agency represents you.² An agent who wants to buy your property has a conflict between wanting to buy the property and advising you and acting in your best interests as their client. It is important that you have someone independent working for you to sell your property. This is the service you are paying for.

What must the agent do?

When there is a conflict of interest there are certain things, under the Real Estate Agents Act 2008, that must be done. These requirements are outlined in sections 134 to 137 of the Act and are intended to protect your interests. These requirements must still be met even if another agent in the agency ends up acting for you (which we recommend) as this is still a conflict of interest situation.

You should make sure you receive the information listed below. If an offer is made and you are unsure of your rights, or need further information, you should consult your lawyer before signing anything.

Before signing the sale and purchase agreement, the agent must first:

- (a) Get your informed consent (see below for an explanation of this);
- (b) Provide you with the prescribed consent form for you to consider and sign if you are happy to proceed; and
- (c) Provide you with a valuation of your property or business.

Informed consent

There are things the agent must do to get your informed consent. Simply telling you that a conflict exists is not enough. Before they ask you to sign the consent form they must explain to you the nature of the conflict and the consequences of you giving consent e.g. that they could use the confidential information they have got through their relationship with you for their own benefit and advantage, and

² If it is a one-person agency then we recommend that you go to another real estate agency or have the agent deal directly with your lawyer (rather than you).



whether they will receive a commission on the sale. The agent's disclosure of this information might be relevant to the price you are willing to accept.

Exactly what information the agent needs to disclose to enable you to provide your informed consent will depend on the specific circumstances. While it is up to the agent to disclose this information, you should always ask whether there is anything else you should be told before deciding whether to provide your consent.

Signing the consent form means you give your consent to your property being sold to the agent or someone connected to them. You should consult your lawyer for advice on this.

The valuation

The valuation must be made by an independent registered valuer, or in the case of a business be made by an independent chartered accountant. This valuation is not the same as the market appraisal that the agent originally gave you when you listed the property for sale. The agent must pay for the valuation.

You can ask to see the valuation before you decide whether to sign the consent form and the sale and purchase agreement.

If you decide to sign the consent form before receiving the independent valuation, the agent **must**:

1. Give you a provisional valuation (this is the same as the agent's market appraisal); and
2. Give you the valuation made by an independent registered valuer or chartered accountant within 14 days of you signing the consent form.

If the independent valuation is greater than the provisional valuation, you can cancel the contract for the sale of your property (if you have already signed one) without any penalty.



When can an agent act for you in a conflict situation?

A listing agent who wishes to buy your property should not negotiate the purchase with you, they should arrange for a different agent to act on your behalf and that agent will do the negotiating.

If the agent who wishes to buy the property is not the listing agent, they should negotiate with the listing agent who is acting on your behalf – just as they would for any other potential buyer.

In both situations, the agent still needs to obtain your informed consent and provide you with an independent valuation.

Conflict of interest for prospective buyers

If you are a prospective buyer, the agent must tell you in writing if they are selling a property or business in which they, or someone connected to them, has a financial interest and if they or the person(s) connected to them will benefit financially from the transaction. The agent must advise you of this using a specific form and they must also advise you to seek legal advice about this disclosure before signing any sale and purchase agreement.

Who is covered by the above requirements?

These requirements apply to the agent, and where the agent is a company, to the company and every officer and shareholder of the company. They also apply to any person connected to that agent.

A person is said to be connected to the agent if the person is -

- (a) A partner of the agent under a partnership agreement ;
- (b) An employee of the agent;
- (c) A branch manager or salesperson engaged by the agent;
- (d) The agent's spouse, civil union partner or de facto partner;



- (e) A child, grandchild, brother, sister, nephew or niece of the agent or of any persons referred to in paragraph (d);
- (f) Any other child who is being, or is to be, cared for on a continuous basis by the agent or of any person referred to in paragraph (d);
- (g) A grandparent, parent, uncle or aunt of the agent or of any person referred to in paragraph (d);
- (h) An entity that has an interest in the agent or an entity (that is not an entity listed on the New Zealand Stock Exchange) in which the agent has an interest.

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 1.4, xx August 2016].

