

# Standard Clauses for Residential Agency Agreements

## Information Sheet

This information sheet provides information about the standard clauses for residential agency agreements.

### Background

The Real Estate Agents Authority (REAA), together with the Real Estate Institute of New Zealand (REINZ), has developed standard clauses for residential agency agreements. These clauses create greater certainty around the cancellation of agency agreements and when an agent is entitled to commission.

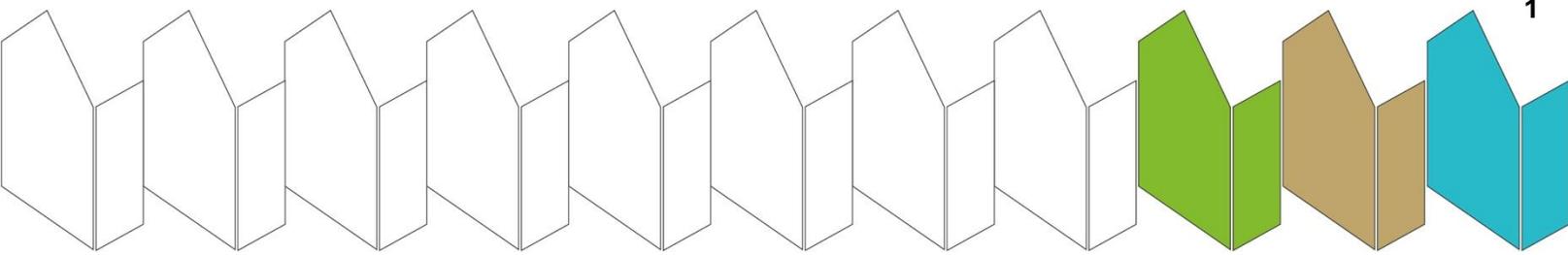
Use of these standard clauses in residential agency agreements is voluntary. To promote them, from 3 November 2014, we will publish a list of agencies that use these clauses on our website [www.reaa.govt.nz](http://www.reaa.govt.nz). We will be encouraging consumers to only enter into agency agreements with agencies that include these clauses.

We also encourage other sectors of the real estate industry to include these clauses in their agency agreements.

The standard clauses are available to be used from 4 August 2014.

### What are the residential agency agreement standard clauses? Are there any copyright restrictions?

See **Appendix A** below for a copy of the standard clauses. They will be available on our website from 3 November 2014. The clauses may be used free-of-charge.



## What are the key features of the clauses?

The vendor<sup>1</sup> must choose either to contract with the agent under a sole or general agency. The agent deletes the option that is not applicable. They then fill in the date when the agency agreement commences. The main elements of the standard clauses are:

### Sole agency agreements

- ✓ If the agreement's end date is not specified the sole agency agreement will automatically expire after 90 days
- ✓ For an agent to claim a commission an agreement for sale and purchase must have been entered into during the term of the agency and that agreement must eventually become unconditional

### General agency agreements

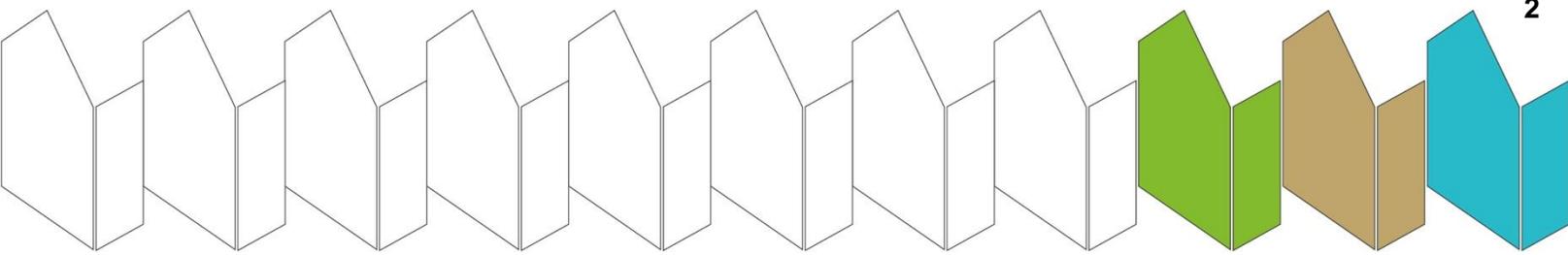
- ✓ Can be cancelled on 7 days' written notice
- ✓ For an agent to claim commission a sale and purchase agreement must have been entered into during the term of the agency to sell the property, either:
  - through the instrumentality of the agent and that sale and purchase agreement must eventually become unconditional, or
  - to a person introduced by the agent and that sale and purchase agreement must eventually become unconditional

### Vendor selling privately to someone the agent has previously introduced the property to

If the vendor cancels the agency agreement and then sells privately to someone the agent has previously introduced the property to, the agent's right to claim a commission will be limited to six months after the agency agreement has been cancelled.

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<sup>1</sup> Referred to as the Client in the standard clauses



## **Why have the standard clauses been introduced?**

REAA and REINZ developed these clauses to:

- ✓ create greater certainty about how and when an agency agreement can be cancelled
- ✓ create greater certainty around when commissions can be claimed
- ✓ reduce the number of commission-related disputes and complaints coming to REINZ, REAA and the courts for resolution
- ✓ ultimately saving people (both agents and vendors) time, money and stress in having to resolve commission-related disputes

## **What type of agency agreements do the standard clauses cover?**

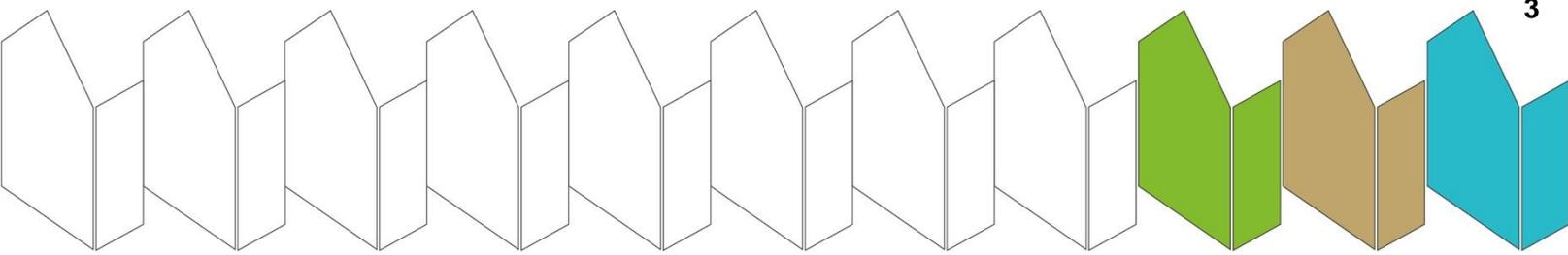
We are promoting the use of the standard clauses within residential agency agreements. However we encourage all other sectors to use them as well.

## **Are the standard clauses compulsory?**

No. The standard clauses are being introduced on a voluntary basis. However, we recommend that all real estate agents in the residential sector use them. We will be promoting their use by publishing the names of agencies that have agreed to include them in their agency agreements on our website from 3 November 2014. We also encourage all other sectors of the real estate industry to use them as well.

## **What will happen if an agency does not use the clauses?**

The use of the standard clauses is entirely voluntary. However, we will only publish the names of those agencies on our website that include the standard clauses in their agency agreements.



### **Can an agency alter the standard clauses?**

We will generally only publish the names of those agencies on our website who use the standard clauses unaltered. However, if an agency decides to set terms and conditions that are more favourable to the vendor than the standard clauses – for example by reducing the amount of time that the vendor is bound to pay a commission for a private sale to a purchaser previously introduced, we will publish the name of that agency.

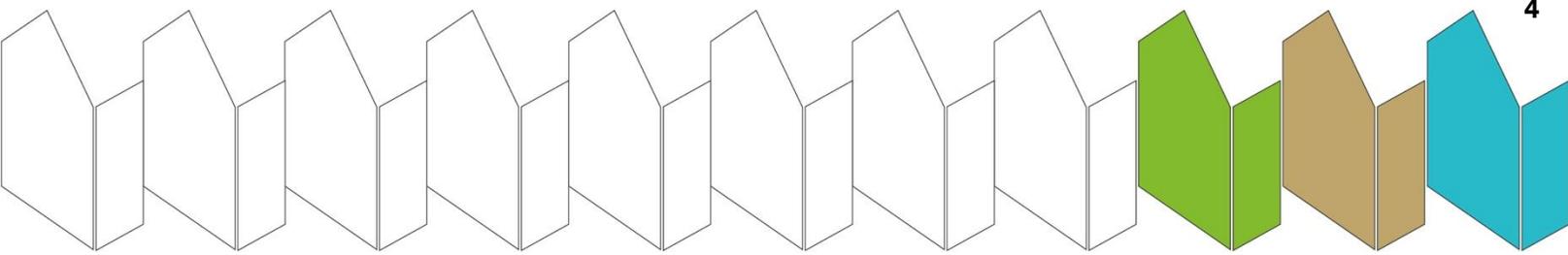
### **Can an agency put other clauses in the agency agreement that qualify or limit the operation of the standard clauses?**

We will only publish the names of those agencies that use the clauses without limiting their operation in any manner.

### **What about clauses that allow for an automatic rollover from a sole agency to a general agency?**

The standard clauses prompt the vendor to choose either a sole agency or a general agency, not both. We consider it bad practice to include in the agency agreement an automatic rollover clause from a sole agency to a general agency. This is because most vendors will not understand that when they cancel a sole agency, or when it ends, they could still be liable to pay a commission under a general agency.

The standard clauses remove the confusion that automatic rollover clauses can create. We will not publish the names of agencies if they have a rollover provision.



## **How will an agency be eligible to get their name on REAA's website?**

The principal agent of each real estate agency will be asked to provide us with a copy of their updated agency agreement that includes the standard clauses. The principal agent will also be asked to undertake that they:

- ✓ will be using the standard clauses in all their residential agency agreements from 3 November 2014
- ✓ have not included any other clauses in the agreement that limit or qualify the effect of the standard clauses
- ✓ are not including in their residential agency agreements an automatic rollover clause from a sole agency to a general agency when the sole agency comes to an end
- ✓ will notify us of any change to their commitment to using the standard clauses

## **Does a real estate agency using the standard clauses need to be a member of REINZ?**

No. While we developed the standard clauses with REINZ, any real estate agency may include them in their agency agreement free of charge.

## **If a real estate agent uses the standard clauses, do they still have to comply with the Code of Conduct Rules – particularly Rule 9.10 and 9.11?**

*(Rules 9.10 and 9.11 require an agent to warn a prospective vendor of the risks of double commission and disclose to the prospective vendor the names of people introduced by them during the period of the agency agreement)*

Yes, all Code of Conduct Rules still apply. The standard clauses are voluntary and mean that the agent has contractually given up some of their rights to claim a commission. However, the agent will still be required to explain to a prospective vendor (under Rule 9.10) that they could be liable to pay a commission to more than one agent if they enter into other agency agreements.

The agent will also still be required to provide the vendor with a list of people introduced by the agent, should the vendor subsequently decide to cancel the agency agreement. The right to claim commission under the standard clauses continues to apply for 6 months after the agency ends if the property is sold privately to someone previously introduced.

### **How will you monitor the use of the standard clauses?**

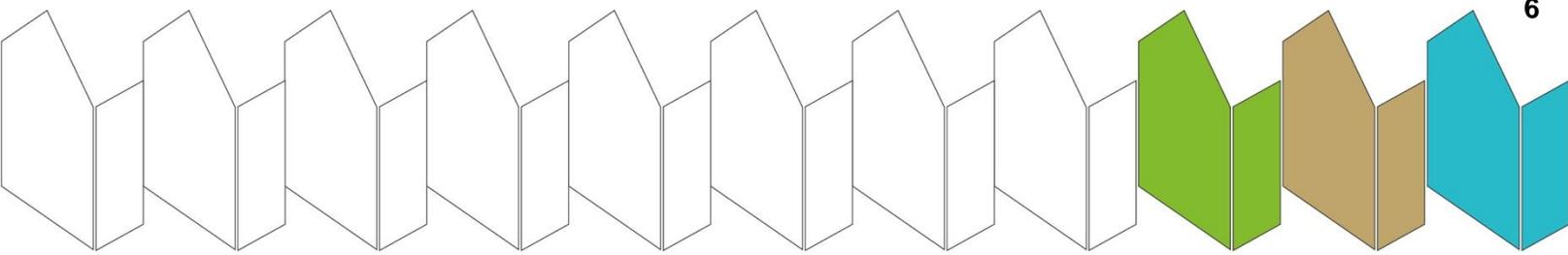
To ensure that an agency has complied with its undertaking to use the standard clauses, when we receive a complaint we will look at the agency agreement used as part of any investigation process. Any non-compliance will be a disciplinary issue.

### **How will you know how effective the use of the standard clauses have been?**

We will monitor how the standard clauses are being used for a one year period from 3 November 2014. The data collected during this time will help us to assess whether the commission-related problems we have identified continue to exist. We will then report our findings to the Ministry of Justice.

### **Is it likely that the standard clauses will become compulsory?**

The Real Estate Agents Act 2008 allows for agency agreements to be regulated. This could mean in the future that all agency agreements would have to include certain clauses. Any decision to make regulations on this would be made by the Minister of Justice.



## Appendix A

### **Agency (Choose either Sole Agency or General Agency – delete one)**

#### 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**

#### General Agency:

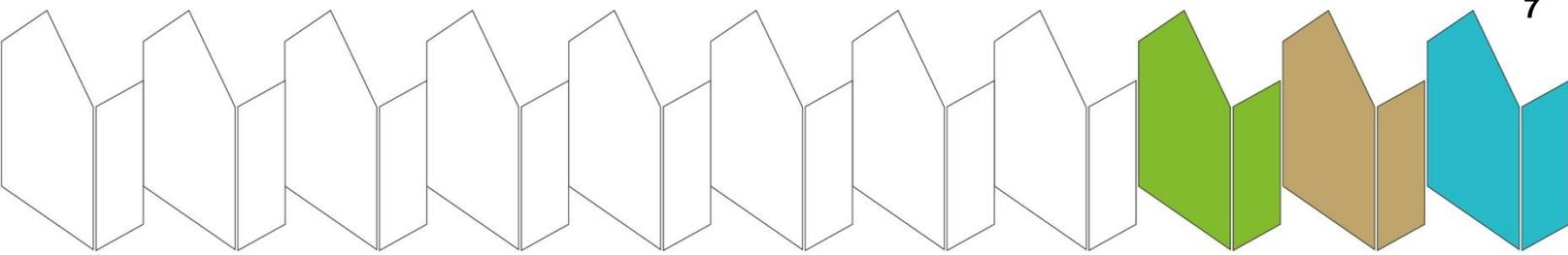
The Client appoints the Agent as general agent. The agency commences on ..... and continues until midnight on ..... unless cancelled prior by either party giving seven (7) days' written notice to the other party; or, if no end date is provided, until cancelled by either party by giving seven (7) days' written notice to the other party.

### **Commission and Expenses**

#### Payment of Commission:

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

- 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

- 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
- 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.

## 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](http://www.reaa.govt.nz) [Version 1.0, 4 August 2014].