

Standard Clauses for Rural Agency Agreements

Information Sheet

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

Background

The Real Estate Agents Authority (REAA) and the Real Estate Institute (REINZ) have developed a number of standard clauses for rural agency agreements.

These clauses are designed to create greater certainty around:

- ✓ the cancellation of agency agreements, and
- ✓ when an agent is entitled to a commission.

The rural standard clauses have been introduced in response to requests from agents working in the rural sector for a set of standard clauses similar to those that were introduced for the residential sector in late 2014.

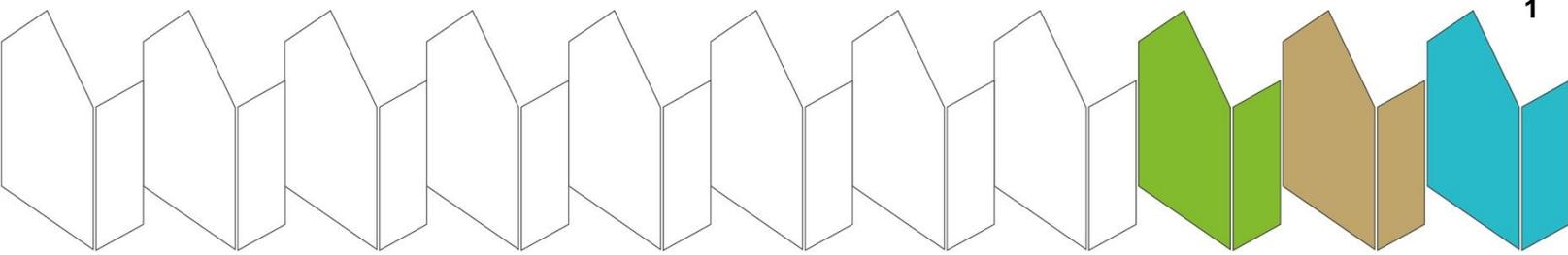
Use of these standard clauses in rural agency agreements is voluntary.

To promote the rural standard clauses, from early March 2015 we will publish a list of agencies that use these clauses on our website.

We are also advising vendors to only enter into agency agreements with agencies who use the rural standard clauses.

What are the rural agency agreement standard clauses?

See **Appendix A** below for a copy of the standard clauses. The clauses can be used free-of-charge.



What are the key features of the clauses?

The vendor¹ must choose either to contract with the agent under a sole or general agency. The agent deletes the option that is not applicable. The main elements of the standard clauses are:

Sole agency agreements

- ✓ For an agent to claim a commission a sale and purchase agreement must have been entered into during the term of the agency and that agreement must eventually become unconditional, even if this happens after the agency agreement ends.

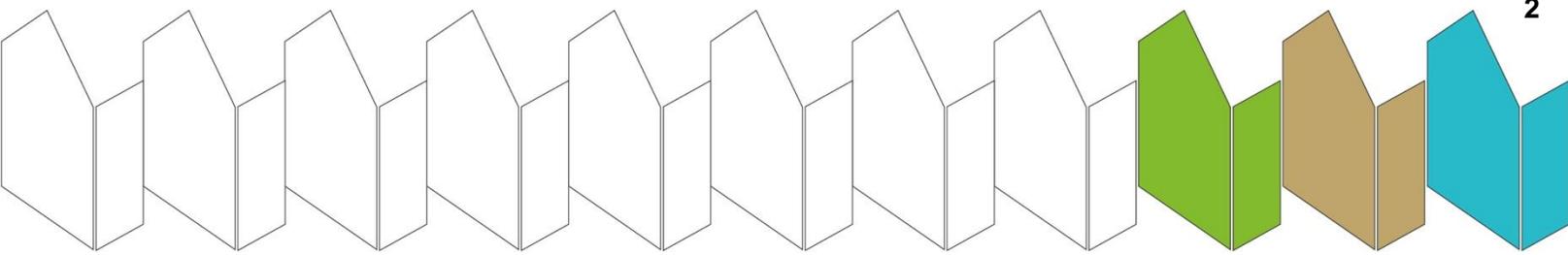
General agency agreements

- ✓ Can be cancelled by either party on 7 days' written notice.
- ✓ For an agent to claim a 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 12 months after the agency agreement has been cancelled.

¹ Referred to as the Client in the standard clauses



This differs from the residential standard clauses where this period is six months after the agency agreement ends.

Why have the standard clauses been introduced?

The 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.
- ✓ Save 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?

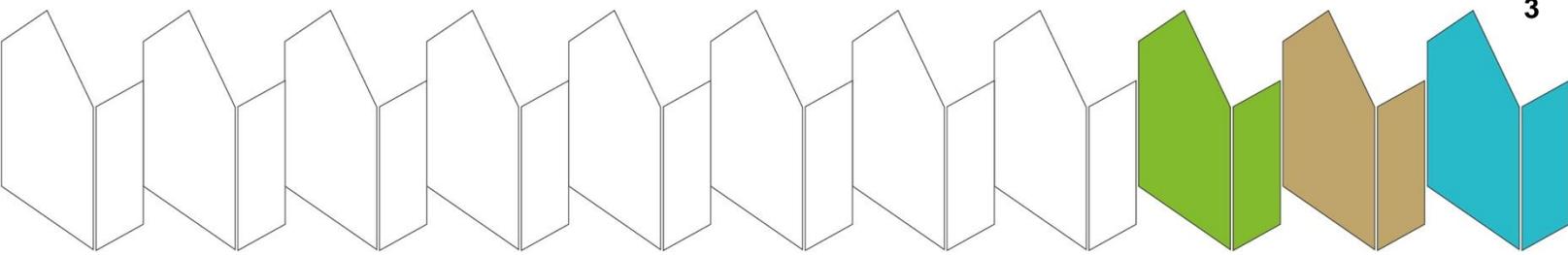
We are promoting the use of the standard clauses within rural agency agreements.

While 'rural property' is not defined in the Real Estate Agents Act, it includes properties principally used or intended to be used for rural purposes. Examples include farms, orchards, forestry plantations and vineyards. This does not include 'residential property' which is defined in section 4 of the Act as "*any property used, or intended to be used, exclusively or principally for residential purposes.*"

A tricky situation might be a 'lifestyle block' - is it residential or rural? The answer will be whether it meets the definition of 'residential property' in section 4 - as outlined above - '...any property used, or intended to be used, exclusively or principally for residential purposes'.

Are the standard clauses compulsory?

No. The standard clauses are voluntary. However, we recommend that all real estate agents selling rural property 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 early March 2015. We are encouraging vendors to only enter into rural agency agreements with agencies that use the standard clauses.

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

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

Can an agency alter the standard clauses?

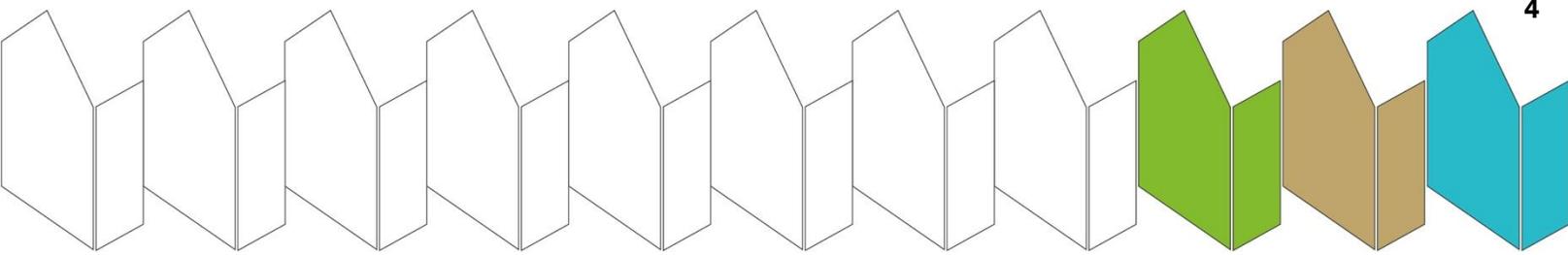
We will generally only publish the names of those agencies on our website who use the standard clauses unaltered. However, if an agency decides to set terms and conditions that are more favourable to the vendor than the standard clauses – for example by reducing the amount of time that the vendor is bound to pay a commission for a private sale to a purchaser previously introduced, we will still 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 only publish the names of those agencies that use the clauses without limiting their operation in any way.

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 does an agency get their name on REAA's website?

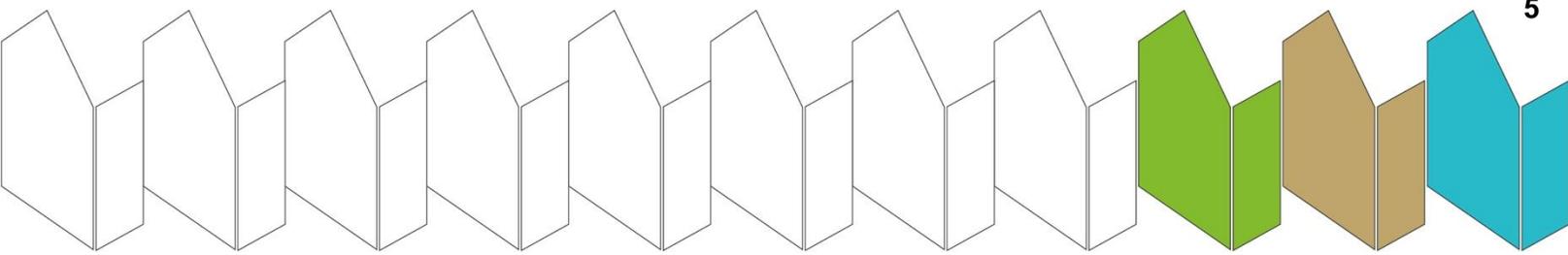
The principal agent of each real estate agency must provide us with a copy of their updated rural agency agreement that includes the standard clauses and complete the "Voluntary agreement to use standard clauses for rural agency agreements" form. This form can be found in the [For Licensees: Forms and Publications section](#) of our website.

The principal agent is asked to undertake that they:

- ✓ Will be using the standard clauses in all their rural agency agreements from the specified date.
- ✓ Have not included any other clauses in the agreement that limit or qualify the effect of the standard clauses.
- ✓ Are not including in their rural 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 rural standard clauses need to be a member of REINZ?

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



Is there a model rural agency agreement available that includes the new standard clauses?

At the moment agencies need to adapt their existing agency agreement for rural transactions to include the new standard clauses. We suggest you consult your lawyer over this matter.

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

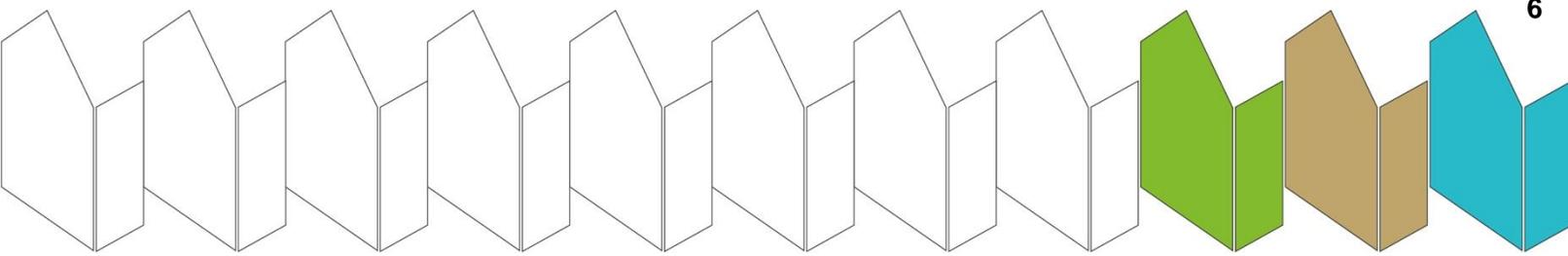
(Rules 9.10 and 9.11 require an agent to warn a prospective vendor of the risks of double commission and disclose to the prospective vendor the names of people introduced by them during the period of the agency agreement)

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 a commission under the standard clauses continues to apply for 12 months after the agency ends if the property is sold privately to someone previously introduced.

How are you monitoring the use of the rural standard clauses?

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

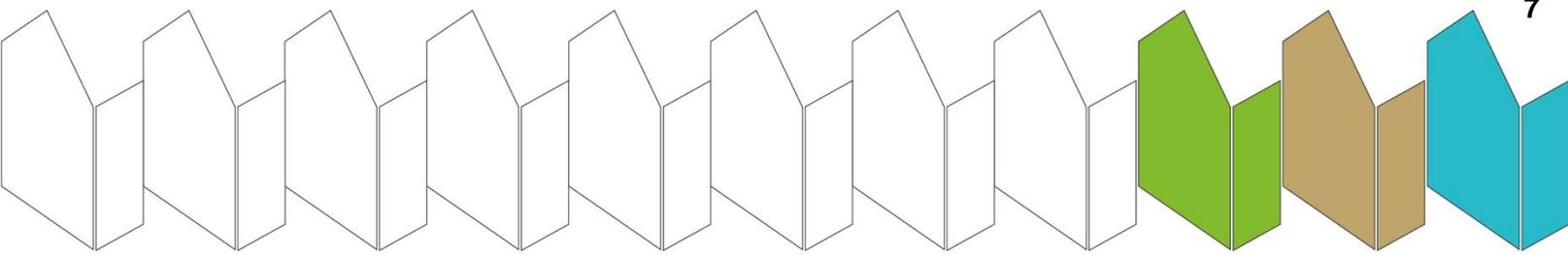


How will you know how effective the use of the standard clauses is?

We will monitor how the standard clauses are being used for a one year period from March 2015. 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: Standard clauses for rural agency agreements

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

Sole Agency:

The Client appoints the Agent as sole agent from until midnight on

NB: A 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.

OR

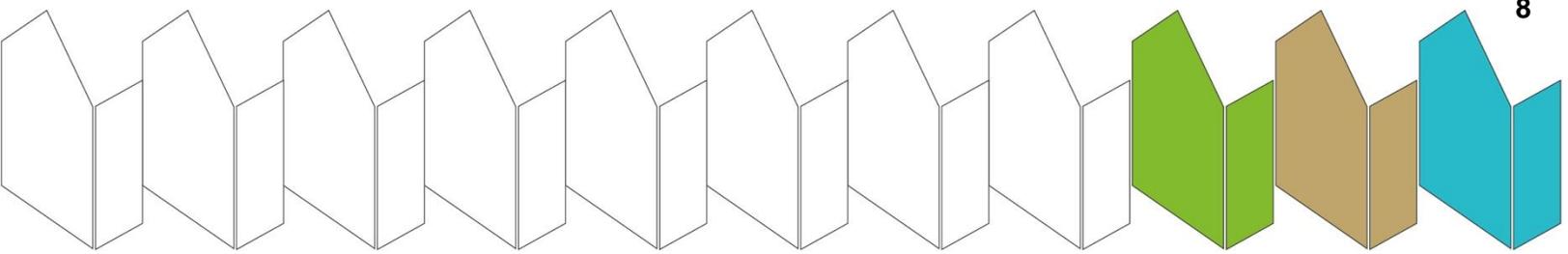
General Agency:

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.

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 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 12 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 12 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 [Version 1.0, 12 February 2015].

