

AGENCY AGREEMENTS

A contract between the principal (seller) and the agent to sell the subject property subject to the terms and conditions of the agreement and statutory law. Two examples are shown below:

EXAMPLE - SALES AGENCY AGREEMENT - SOUTH AUSTRALIA

"The Vendor" (Name, Occupation and Address)

.....
.....
.....
..... Postcode

"The Agent" (Name, Address):

.....
..... Postcode

"The Property" situated at

.....
.....

Postcode described in Certificate(s) of Title(s)

.....

"The gross asking price": \$.....

TYPE OF AGENCY (in addition to General Agency) (See Clause 2)

The Agency created by this Agreement is a General Agency for the sale of the Property, which continues until terminated pursuant to Clause 11 hereof or is suspended during any period of a further Agency.
In addition, the Vendor hereby grants to the Agent the further agency specified hereunder:

- Sole Agency
- Public Auction Agency
- Multiple listing agency

VENDOR'S ELECTION RE PRIVATE SALE OF THE PROPERTY: (Clause 16(8))

Right to sell privately retained: YES/NO *
(Automatic right to private sale exists with General Agency only.)

SOLE AGENCY (Clause 16)

"The period of Sole Agency" shall be from the date of execution by the Vendor of this Agreement until • the day of 19 (inclusive)

- the conclusion of days after the date of the auction (for auction contracts only).

PUBLIC AUCTION (Clause 17):

(a) Reserve Price: The auction shall be subject

- to a reserve price of \$.....
- such reserve price as the Vendor nominates in writing before or at the auction.

(b) Proposed date of auction at A.M./P.M.

(c) Proposed location of auction

PROFESSIONAL FEES: (Clause 9(I)).

Professional Fees shall be

- at the rate recommended by the Real Estate Institute of (state name here) Inc, as at the date of the contract of sale

- fixed at \$
- calculated as follows:

.....

Provided always that such Professional Fees shall not exceed the maximum scale (if any) recommended (as at the date of the contract of sale) by the Real Estate Institute of (enter state name here) Inc.

EXPENSES (Clause 9(2)): Expenses specifically authorised are as follows:

Advertising costs and expenses \$

Signboard costs \$

Telephone, travelling & sundries \$

Auction fees and expenses (including Auctioneer's fees) \$

Prescribed search costs under the (enter relevant agent's act here)

Other (specify)

.....

(Clause 9(3)). Amount to be paid by Vendor in advance on account of the Agent's expenses incurred pursuant to the Agreement: \$.....

PREVIOUS OR CURRENT OFFERINGS OF PROPERTY OR LISTINGS FOR SALE.

The Vendor advises that the Property has been offered for sale previously by:

Agent:

Approximate date of expiry of Agency:.....

Type of Agency:

ITEMS INCLUDED & EXCLUDED FROM SALE.

(a) items included in Sale:

(1) Items other than subject to Consumer Credit Agreement

.....
(2) Consumer Credit Items (i.e. items under consumer contract or contract for the sale of goods by instalment or subject to a bill of sale)
.....

(b) Items excluded from Sale:
.....

FURTHER TERMS AND CONDITIONS OF THIS AGREEMENT (Clause 19):
(Reference to be made to any applicable Clause(s))
.....

PROPERTY:

Approx. year built:

Telephone No (Pvte.)

(Bus.)

RATES & TAXES:

Council Rates and/or property taxes:

Water Rates:

Land Tax:

Assessment No/s

STRATA TITLE INFORMATION:

Body Corporate levy:

Administration fee:

Details of Strata Corporation:

Secretary/Manager.....

SERVICES:

• **Water Mains Supply Yes/No/Avail**

* **Electricity Yes/No/Avail**

• **Septic System Yes/No/Avail**

* **Gas Yes/No/Avail**

• **Common Effluent Yes/No/Avail**

- **Bottled Yes/No/Avail**

• **Sewer Yes/No/Avail**

FACILITIES

Hot Water Service Yes/No Details:.....

Insulation Yes/No Details:

Water Softener Yes/No Details:

Built-in Heating Yes/No Details:

Built-in Cooling Yes/No Details:

TV Antenna Yes/No Details:

Other Details:

..... Details:

STANDARD TERMS AND CONDITIONS OF AGENCY

In relation to the Property and subject to the Schedule hereto, the Vendor and the Agent AGREE as follows:-

Interpretation 1.

(a) In this Agreement, the following terms are to be interpreted in accordance with the Schedule hereto:-

"the Vendor"; "the Agent"; "the Property"; "the gross asking price", "Professional Fees"; "Expenses"; "the period of Sole Agency"; "Reserve Price"; "the location of auction ", and "the date of auction".

(b) Headings are for ease of reference only and shall not affect the interpretation of this Agreement.

(c) In this Agreement unless the context otherwise requires words importing one gender includes the other gender; the singular includes the plural and vice versa; and a reference to a person includes a reference to a corporation.

Appointment

2. The Vendor appoints the Agent to act as the Vendor's Agent in and about the sale of the Property.

The Agency hereby created shall be a General Agency unless suspended during any period of a further Agency and Clauses I to 15 of this Agreement shall apply.

In addition, the Vendor hereby confers upon the Agent the type of Agency specified in the Schedule hereto (if any).

In the event of the Schedule specifying:-

(a) a Sole Agency, then Clauses I to 16 of this Agreement apply but Clauses 17 and 18 shall not apply.

(b) a Public Auction Agency, then Clauses I to 17 of this Agreement apply but Clause 18 shall not apply.

(c) a Multiple foisting Agency, then Clauses I to 16 and 18 of this Agreement shall apply but Clause 17 shall not apply.

(d) Further Terms and Conditions of this Agreement, then Clause 19 shall apply.

3. The Agent accepts this appointment as Agent and undertakes to use the Agent's best endeavours to effect a sale of the Property.

4. The Vendor warrants that the Vendor has the authority and legal capacity to sell the Property and that the Vendor has not offered it for sale previously except as set out in the Schedule.

Advertising

5. The Vendor authorizes and consents to the Agent advertising the Property for sale in such manner and upon such terms as the Agent considers appropriate including the placing, of a sign or signs on the Property.

Deposit etc. to Agent

6. The Vendor authorises the Agent to accept a deposit and any other moneys receivable by the to Vendor prior to settlement in respect of any sale or proposed sale of the Property and the Agent shall pay all such moneys into the Agent's trust account.

7. The Agent shall not sign any contract of sale or any note or memorandum of sale of the Property unless:

- (a) the sale is effected at a public auction by the Agent, an authorised employee of the Agent or an Auctioneer engaged by the Agent on behalf of the Vendor, or**
- (b) the Vendor hereafter distinctly and expressly confers such authority on the Agent.**

Trust statements

8. The Agent shall, at the written request of the Vendor provide the Vendor with a Statement setting out details of dealings by the Agent with all moneys received by the Agent as Agent hereunder.

Professional fees

9. (1) If the Agent effects a sale of the Property the Vendor shall pay to the Agent (in addition to any Fees other moneys which may be payable pursuant to this Agreement) Professional Fees specified in or calculated in accordance with the Schedule hereto provided always that such fees shall not exceed the maximum scale (if any) recommended (as at the date of the contract of sale) by the Real Estate Institute of (enter state name here) Incorporated.

Expenses

(2) The Vendor hereby authorises the Agent to incur expenses in connection with this Agreement in respect of the items specified in the Schedule hereto provided that the Vendor shall not be liable to reimburse the Agent in respect of any expenses incurred by the Agent in excess of the amount agreed between the Vendor and the Agent and specified in the Schedule hereto. The Vendor shall reimburse the Agent the amount of the authorised expenses incurred by the Agent in connection with this Agreement, subject to any limitation agreed between the Vendor and the Agent as specified in the Schedule hereto, and the Vendor shall be liable to make such reimbursement whether or not the Agent shall have effected a sale of the Property.

(3) The Vendor shall pay to the Agent the amount specified in the Schedule hereto on account of expenses to be incurred by the Agent pursuant to this Agreement, within seven days of the date hereof, and the said amount shall be paid into the trust account of the Agent to the credit of the Vendor, but the Agent shall be at liberty to draw upon the same to meet such expenses or any of them or to reimburse any authorised expenses already incurred.

(4) If the full amount of the authorised expenses shall not have been paid by the Vendor to the Agent in advance, then such expenses or the balance thereof remaining unpaid shall become due and payable forthwith upon the Agent rendering an account for the same to the Vendor.

(5) The Vendor acknowledges that the Agent may receive a rebate on the total advertising expenses incurred by the Agent in the conduct of his agency practice as a result of large volume advertising by the Agent and the Vendor consents to the Agent receiving any such advertising rebate without further notice being given to the Vendor.

SALE OF THE PROPERTY

10.

(1) The Agent effects a sale of the Property:-

(a) if during the continuance of the Agency, the Agent introduces or otherwise procures for the Vendor a Purchaser; and

(b) the Vendor enters into a contract (conditional or unconditional) for the sale of the Property to that Purchaser within six (6) calendar months of the introduction or procurement of that Purchaser by the Agent; and

(2) the Vendor completes the sale of the Property to that Purchaser (or the Purchaser's Assignee or Nominee) as substantially the transaction contemplated by the contract referred to in paragraph (b) hereof

provided always that, notwithstanding the foregoing, no sale shall be effected or deemed to have been effected where this agreement has been properly terminated and the contract referred to in paragraph (b) above is obtained by another Licensed Agent subsequently engaged by the Vendor to sell the Property.

ENTITLEMENT TO PROFESSIONAL FEES

(2) The Agent becomes entitled to payment by the Vendor of Professional Fees upon completion of the sale of the Property, whenever effected and whether the Agency is then still continuing or not. The Vendor authorises the Agent to deduct any moneys due and payable by the Vendor to the Agent pursuant to this Agreement from any moneys received by the Agent for and on behalf of the Vendor and the Agent shall account to the Vendor for the balance.

(3) The Vendor undertakes with the Agent that the Vendor will observe and perform and carry out (up to and including completion) any contract of sale effected by the Agent after such contract has been accepted by the Vendor and, if any such contract of sale is terminated or lapses by reason of the Vendor's breach or default or is cancelled by mutual consent of the parties, the Vendor will in addition to any other moneys due pursuant to this Agreement, pay to the Agent as liquidated damages for breach of this undertaking an amount equal to the Professional Fees payable if the sale had been duly completed.

EXCHANGE OF PROPERTIES

(4) In the event of an exchange of properties, and if the Professional Fees payable by the Vendor to the Agent pursuant to the Agreement are calculated by reference to the price paid by the Purchaser of the Property, then the Professional Fees payable by the Vendor to the Agent shall be calculated by reference to the value allotted to the Property in the exchange or, if no such value be allotted, on the price at which the same was originally listed for sale by the Vendor. Nothing herein shall prejudice any right of the Agent to Professional Fees from the other owner in respect of the other exchanged Property.

TERMINATION OF GENERAL AGENCY

11. Either the Vendor or the Agent may, without prejudice to the prior rights of the Agent under Clause 10 above, terminate the Agency hereunder by written notice to the other at any time, except that no such notice can be given by either party during the period of Sole Agency provided always that if Clause 16(8) forms part of this Agreement then the Vendor shall have the rights specified therein.

12. The Vendor declares that the information as to the Property contained in the Schedule hereto is true and correct and instructs and authorises the Agent to offer the Property for sale in accordance with such information.

13. TERMS AND CONDITIONS of sale:-

(1) The terms and conditions upon which the Property shall be offered for sale are--

(a) In the case of sale by Public Auction those contained in the standard form of Terms and Conditions for the Conduct of the Auction, coupled with the Sale and Purchase Contract Note arising from Public Auction of Real Property as issued from time to time by the Real Estate Institute of South Australia Incorporated; except as varied in the manner set out in the Schedule hereto.

(b) In the case of a sale other than by Public Auction, those contained in the standard form of Contract for the Sale and Purchase of Land issued from time to time by the Real Estate Institute of South Australia Incorporated except as varied in the manner set out in the Schedule hereto.

(2) The Vendor may vary the terms and conditions of sale at any time upon consultation with the Agent.

14.LIMITATION OF AGENTS LIABILITY:

The Vendor agrees that the Agent shall not be liable in any way whatsoever for any loss or damage to the Property or to any chattels therein arising from the act or omission of third parties during any private or open inspection of the Property.

15.GENERAL AGENCY:

The Agent shall offer the Property for sale by Private Treaty at the gross asking price specified in the Schedule hereto or such other price as the Vendor from time to time may nominate in consultation with the Agent.

PERIOD OF SOLE AGENCY AND COMMENCEMENT

16.SOLE AGENCY:

(1) The Agent shall offer the Property for sale at the gross asking price specified in the Schedule hereto or such other price as the Vendor from time to time may nominate in consultation with the Agent.

(2) Subject to Clause 16(8) hereof (if such Clause forms part of this Agreement) the Agent shall be the Vendor's Sole Agent for the sale of the Property for the period of Sole Agency specified in the Schedule and the Vendor will not sell or endeavour to sell the Property during such period except as is expressly provided herein.

(3) The Vendor forthwith shall revoke in writing any authority given to any other Agent to act in or about sale of the Property.

(4) Subject to Clause 16(8) hereof (if such Clause forms part of this Agreement) any sale of the Property, including a sale effected by another Agent or (where Clause 16(8) does not form part of the Agreement) by the Vendor, under a contract entered into during the period of Sole Agency shall be deemed to have been effected by the Agent, who shall be entitled to Professional Fees in respect of such sale of the Property pursuant to the terms of Clause 10.

(5) The Agent's rights as Sole Agent cannot be revoked by the Vendor, but shall lapse upon expiry of the period of Sole Agency referred to in Clause 16(2) hereof.

(6) After the expiry of the period of Sole Agency referred to in Clause 16(2) hereof and the Schedule hereto, the Agent's appointment by the Vendor as the Vendor's Agent pursuant to Clause 2 hereof shall continue and the Agent shall be authorised to offer the Property for sale by Private Treaty at the gross asking price or such other price as the Vendor from time to time may nominate until the Agent's appointment shall be terminated by notice pursuant to Clause 11.

(7) If at any time during the period of the Sole Agency referred to in Clause 16(2) hereof the Vendor shall withdraw the Property from sale for any reason without prejudice to any other rights or remedies which the Agent may have the Vendor shall pay to the Agent an amount equal to the sum of the expenses incurred by the Agent pursuant to this Agreement (subject to any limitation on the quantum of such expenses as referred to in Clause 9(2) hereof) to the date when written notice of such withdrawal shall be received by the Agent. The Vendor shall pay to the Agent the said amount within seven (7) days of service on the Vendor of an account in respect of such expenses.

(8) If the Vendor elects to do so (such election to be nominated in the Schedule hereto) then the Vendor retains the right to sell personally as Principal the Property to a Purchaser other than a person introduced to the Vendor or otherwise procured by the Agent, without payment of Professional Fees to the Agent. If the Vendor effects a sale of the Property pursuant to this sub-clause, the Property shall be deemed to have been withdrawn from sale on the date when written notice of the sale shall have been received by the Agent, and the Agent shall be entitled to be reimbursed any expenses incurred by the Agent as referred to in Clause 16(7) hereof.

17. SALE BY PUBLIC AUCTION NB Clause 16 (Sole Agency) applies:

(1) The Agent shall offer the Property for sale by Public Auction, unless sold beforehand, on the date and at the location of auction set out in the Schedule or on such other date or at such other location as may be agreed mutually.

RESERVE PRICE

(2) The auction shall be subject to such reserve price (if any) as may be specified in the Schedule.

(3) The Agent, an authorised employee of the Agent acting as an auctioneer, or an auctioneer employed by the Agent on behalf of the Vendor, has authority to sign a contract of sale on behalf of the Vendor upon the sale of the Property by public auction.

(4) Subject to Clause 16(8) hereof (if such Clause forms part of this Agreement) the Agent is the Vendor's Sole Agent for the sale of the property during the period of Sole Agency specified in the Schedule.

18. SALE BY MULTILIST. NB. Clause 16 (Sole Agency) applies:

(1) The Vendor authorises and requests the Agent to list the Property for sale with the Multiple Listing Bureau of (enter state or territory here) ("the Bureau") at the gross asking price specified in the Schedule hereto or such other price as the Vendor from time to time may nominate in consultation with the Agent during the period of Sole Agency as specified in the Schedule and the Vendor authorises and consents to the Bureau advertising the Property for sale during this period.

(2) The Agent warrants that the Agent is a member of the Bureau and has agreed to abide by the Rules and by-laws of the Bureau.

(3) The Vendor and the Agent agree and acknowledge that the Property is deemed to be listed for sale with the Bureau immediately upon execution of this Agreement. (Note that it is a practice of the Bureau to advise Vendors of the acceptance of listings.)

(4) This Agreement is subject to the Rules and by-laws of the Multiple Listing Bureau of the Real Estate Institute of South Australia Incorporated.

(5) Clause 16(8) shall apply (if the Vendor shall have retained the right referred to therein).

19. The Agreement is subject to such further terms and conditions (if any) as are set out in the Schedule.

SIGNED by/for the Agent.....

SIGNED by the Vendor/s.....

On the..... day of..... 20... and the Vendor hereby acknowledges receipt of a copy of this Agreement.

NOTES

This section hereunder does not form part of the Sales Agency Agreement.

SUGGESTED CONDITIONS OF SALE (if any) required by Vendor:

.....
.....

Vendor(s) Initials

EXAMPLE - THE NSW AGENCY AGREEMENT

The NSW agency agreement is subject to s42AA of the Act:

Agency agreements to be in writing

42AA. (1) A licensee shall not be entitled to:

(a) any remuneration by way of commission, fee, gain or reward for services performed by the licensee in his or her capacity as licensee; or

(b) any sum or reimbursement for expenses or charges incurred in connection with services performed by the licensee in his or her capacity as licensee, from the person for whom or on whose behalf those services were performed unless:

(c) the agreement pursuant to which those services were performed is in writing and signed by or on behalf of:

(i) the licensee; and

(ii) that person;

(d) the agreement contains such terms (if any) as may be prescribed; and

(e) a copy of the agreement was served by the licensee on that person within 48 hours of the agreement being signed by or on behalf of that person.

(2) Subsection (1) does not apply to a prescribed agreement, transaction, circumstance or person or an agreement, transaction, circumstance or person of a prescribed class or description.

(3) Any provision in, or applying to, an agreement referred to in subsection (1) and purporting to exclude or restrict the operation of the terms (if any) required to be contained in that agreement has no force or effect.

(4) Where a licensee has recovered or retained from a person any remuneration or sum to which the licensee is not entitled by virtue of subsection (1), the person who would be entitled to the remuneration or sum so recovered or retained by the licensee had that remuneration or sum not been so recovered or retained may bring proceedings in any court of competent jurisdiction for the recovery of that remuneration or sum, or both, as a debt.

(5) A licensee who recovers or retains any remuneration or sum to which the licensee is not entitled by virtue of subsection (1) is guilty of an offence against this Act..

**PROPERTY, STOCK AND BUSINESS AGENTS (GENERAL) REGULATION 1993 -
SECT 9**

AGENCY AGREEMENTS PRESCRIBED TERMS

9. (1) For the purposes of section 42AA (1) (d) of the Act, the following terms are prescribed for agreements specified in subclauses (2) (6), as well as the relevant additional terms set out in those subclauses:

- (a) a term specifying the period of the duration of the agreement or, if there is no such period, specifying the manner in which the agreement may be terminated by a party to the agreement;**
- (b) a term specifying: the circumstances in which the licensee is entitled to remuneration for services performed under the agreement; and the amount of the remuneration or the way in which it is to be calculated; and when the remuneration is due and payable;**
- (c) if the agreement is for a service other than:
 - a service relating to arbitration; or**
 - a service relating to commercial land, being land used or intended to be used solely or principally for commercial, business or industrial purposes, but not including land used or intended to be used solely or principally for agricultural or pastoral purposes; or a service relating to the sale of residential property under an agreement entered into before 1 March 1994, the following term:****

THIS FEE HAS BEEN NEGOTIATED BETWEEN THE PARTIES TO THE AGREEMENT

This term must appear in the agreement immediately after the term fixing the remuneration of the agent;

- (d) if the licensee is to be entitled to any sum or reimbursement for expenses or charges incurred by the licensee, a term specifying that the licensee is so entitled, the circumstances in which the licensee is so entitled and when the sum or reimbursement is due and payable;**
- (e) a term containing a warranty by the principal that the principal has authority to enter into the agreement with the licensee.**

(2) The additional terms for an agreement in respect of the sale of land are:

- (a) a term specifying that a prospective purchaser is entitled to inspect the land and the circumstances in which such an inspection is to be made, unless the principal has instructed otherwise; and**
- (b) a term specifying whether or not the licensee is authorised to sell the land on behalf of the principal and, if so authorised, the limitations on that authority (including any minimum or reserve price for the land at which the licensee is authorised to sell); and**
- (c) if the agreement is made after 1 March 1994 and the sale is to be by auction (but the minimum or reserve price is not so specified), a term specifying that the principal is to advise the licensee in writing of that price before the start of bidding for the land at the auction.**

(3) In addition to the other terms prescribed by subclauses (1) and (2), the prescribed terms in relation to an agreement in respect of the sale of residential property are:

(a) a term specifying that the licensee cannot act on behalf of the principal in respect of the sale of residential property unless the licensee has a copy of the proposed contract of sale in respect of the property available for inspection; and

(b) a term specifying both the way in which the licensee's remuneration is to be calculated (together with the dollar amount of that remuneration in relation to the licensee's estimate of the selling price of the land) and an estimate of the amount of expenses or charges the licensee expects to incur and for which he or she is entitled under the agreement to be reimbursed.

(4) The additional terms for an agreement in respect of the leasing of an interest in land are:

(a) a term specifying that a prospective lessee of the interest in land is entitled to inspect the land and the circumstances in which such an inspection is to be made, unless the principal has instructed otherwise; and

(b) a term specifying whether or not the licensee is authorised to lease the interest in the land on behalf of the principal and, if so authorised, the limitations on that authority; and

(c) if the licensee is to be required to seek references from a prospective lessee of the interest, a term specifying that the licensee is so required; and

(d) if the licensee is to be required to receive or dispose of rental bonds in relation to the leasing, a term specifying that the licensee is so required and the procedure to be adopted for the receipt or disposal.

(5) The additional terms for an agreement in respect of the management of property are:

**(a) a term containing particulars of the extent of the authority of the licensee to act as agent on behalf of the principal in the management of the property, including whether or not there is any limitation on the authority of the licensee:
to enter and sign a lease agreement in respect of the property on behalf of the principal; or
to effect repairs to, or maintain, the property or engage the services of a person appropriately qualified in a trade for the purpose of doing so; or
to pay disbursements or expenses in connection with services performed by the agent on behalf of the principal; and**

(b) if a prospective tenant is to be entitled to inspect the property, a term specifying that a prospective tenant is so entitled and the circumstances in which such an inspection is to be made; and

(c) if the letting and re-letting of the property is to be advertised or otherwise promoted, a term specifying that the letting and re-letting of the property is to be advertised or otherwise promoted and the manner in which it is to be advertised or otherwise promoted; and

(d) if the licensee is to be required to seek references from a prospective tenant of the property, a term specifying that the licensee is so required; and

(e) if the licensee is to be required to receive or dispose of rental bonds in relation to the leasing of the property, a term specifying that the licensee is so required and

the procedure to be adopted for the receipt or disposal; and

(f) a term specifying the manner in which and the frequency at which the licensee is required to account to the principal in relation to money received on behalf of the principal; and

(g) if the licensee has undertaken to perform any other services in connection with the management of the property, a term specifying that the licensee has so undertaken and providing particulars of those services.

(6) The additional term for an agreement in respect of the sale of a business is a term specifying that a prospective purchaser of the business is entitled to inspect the business premises (if any) and the records, documents and books of account relating to the business and the circumstances in which such an inspection is to be made, unless the principal has instructed otherwise.