
From: Poppy Haynes
Sent: 20 March 2018 12:01
To: Max Lin; Poppy Haynes
Subject: FW: Guide line to Code of conduct [UNCLASSIFIED]
Attachments: REAA_Code of Conduct 2012 WEB (1).pdf; REAA Residential Property Sale and Purchase Agreement Guide.pdf

Email from past for us to log this as a submission 😊

From: Poppy Haynes **On Behalf Of** code secretariat
Sent: Thursday, 15 March 2018 7:44 p.m.
To: Angus Dale-Jones
Subject: FW: Guide line to Code of conduct [UNCLASSIFIED]

Hi Angus,

FYI – didn't want to fill the others' inboxes more than necessary but might be good for the group to check this out at some stage? We can treat as a submission.

Cheers,

Poppy

From: Felicity **S 9 (2) (a)**
Sent: Thursday, 15 March 2018 2:42 p.m.
To: code secretariat
Subject: Guide line to Code of conduct

Hi,

I am a Real Estate salesperson and a Financial advisor.

I am unable to attend the seminar.

I am sure you have seen these booklets before however I thought I would send you a copy of each, as these could give you a good guide formatting the code of conduct, we have to give to every client in a buying and selling situation.

The Financial adviser version should be given to every client thinking of doing insurance with an advisor .

Just thought these were a good guide line for you.

Warm regards

Felicity Price

Forward Future Assurance

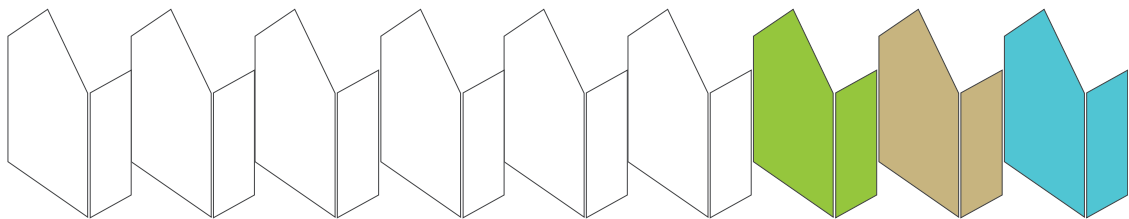
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FORWARD

FUTURE ASSURANCE



Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012



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Rules

These Rules make up the Real Estate Agents Authority code of professional conduct and client care. The Rules were made by the Authority¹ and notified in the New Zealand Gazette. The rules set minimum standards of conduct and client care that licensees are required to meet when carrying out real estate agency work and dealing with clients.

¹Pursuant to section 14 of the Real Estate Agents Act 2008, the Real Estate Agents Authority, with the approval of the Minister of Justice given in accordance with section 17 of that Act, and after consultation in accordance with section 16 of that Act, makes the following rules.

1 Title

These rules are the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

2 Commencement

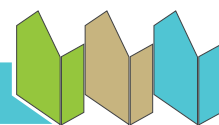
These rules come into force on 8 April 2013.

3 Scope and objectives

- 3.1** These practice rules setting out a code of professional conduct and client care have been prepared by the Real Estate Agents Authority (the **Authority**). They constitute the Professional Conduct and Client Care Rules required by section 14 of the Real Estate Agents Act 2008.
- 3.2** These practice rules set out the standard of conduct and client care that agents, branch managers, and salespersons (collectively referred to as **licensees**) are required to meet when carrying out real estate agency work and dealing with clients.
- 3.3** These practice rules are not an exhaustive statement of the conduct expected of **licensees**. They set minimum standards that **licensees** must observe and are a reference point for discipline. A charge of misconduct or unsatisfactory conduct may be brought and dealt with despite the charge not being based on a breach of any specific rule.
- 3.4** These practice rules must be read in conjunction with the Act and regulations, and do not repeat duties and obligations that are included in the Act or regulations.
-

4 Interpretation

- 4.1** In these rules,—
- **Act** means the Real Estate Agents Act 2008.
 - **customer** means a person who is a party or potential party to a transaction and excludes a prospective client and a client.
 - **prospective client** means a person who is considering or intending to enter into an agency agreement with an agent to carry out real estate agency work.
 - **regulations** means regulations made pursuant to the Act.



- 4.2** Unless the context otherwise requires, terms used in these rules have the same meaning as in the Act.
-

5 Standards of professional competence

- 5.1** A licensee must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work.
- 5.2** A licensee must have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.
-

6 Standards of professional conduct

- 6.1** A licensee must comply with fiduciary obligations to the licensee's client.
- 6.2** A licensee must act in good faith and deal fairly with all parties engaged in a transaction.
- 6.3** A licensee must not engage in any conduct likely to bring the industry into disrepute.
- 6.4** A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided to a customer or client.
-

7 Duty to report misconduct or unsatisfactory conduct

- 7.1** A licensee who has reasonable grounds to suspect that another licensee has been guilty of unsatisfactory conduct¹ may make a report to the Authority.
- 7.2** A licensee who has reasonable grounds to suspect that another licensee has been guilty of misconduct² must make a report to the Authority.
- 7.3** A licensee must not use, or threaten to use, the complaints or disciplinary process for an improper purpose.

¹ Unsatisfactory conduct is defined in the Act: see section 72.

² Misconduct is defined in the Act: see section 73.

- 7.4** If a licensee learns that a person is committing an offence by undertaking real estate agency work without a licence, the licensee must immediately report the matter to the Authority.
-

8 Duties and obligations of agents

Promoting awareness of rules

- 8.1** An agent who is operating as a business must display these rules prominently in the public area of each office or branch, and provide access to them on every website maintained by the agent for the purposes of the business.
- 8.2** A licensee must make these rules available to any person on request.

Supervision and management of salespersons

- 8.3** An agent who is operating as a business must ensure that all salespersons employed or engaged by the agent are properly supervised and managed.³

Ensuring knowledge of regulatory framework and promoting continuing education

- 8.4** An agent who is operating as a business must ensure that all licensees employed or engaged by the agent have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.
- 8.5** An agent who is operating as a business must ensure that licensees employed or engaged by the agent are aware of and have the opportunity to undertake any continuing education required by the Authority.
-

9 Client and customer care

General

- 9.1** A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.
- 9.2** A licensee must not engage in any conduct that would put a prospective client, client, or customer under undue or unfair pressure.

³The Act defines what is meant by a salesperson being properly supervised and managed by an agent or a branch manager for the purposes of section 50 of the Act: see section 50(2).



- 9.3** A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client.
- 9.4** A licensee must not mislead customers as to the price expectations of the client.
- 9.5** A licensee must take due care to—
- (a) ensure the security of land and every business in respect of which the licensee is carrying out real estate agency work; and
 - (b) avoid risks of damage that may arise from customers, or clients that are not the owner of the land or business, accessing the land or business.
- 9.6** Unless authorised by a client, through an agency agreement, a licensee must not offer or market any land or business, including by putting details on any website or by placing a sign on the property.

Agency agreements and contractual documents

- 9.7** Before a prospective client, client, or customer signs an agency agreement, a sale and purchase agreement, or other contractual document, a licensee must—
- (a) recommend that the person seek legal advice; and
 - (b) ensure that the person is aware that he or she can, and may need to, seek technical or other advice and information; and
 - (c) allow that person a reasonable opportunity to obtain the advice referred to in paragraphs (a) and (b).
- 9.8** A licensee must not take advantage of a prospective client's, client's, or customer's inability to understand relevant documents where such inability is reasonably apparent.
- 9.9** A licensee must not submit an agency agreement or a sale and purchase agreement or other contractual document to any person for signature unless all material particulars have been inserted into or attached to the document.
- 9.10** A licensee must explain to a prospective client that if he or she enters into or has already entered into other agency agreements, he or she could be liable to pay full commission to more than 1 agent in the event that a transaction is concluded.

- 9.11** On notice of cancellation of an agency agreement being given or received by the agent under the agreement, the agent must advise the client, in writing, of the name of each customer (if any) in respect of whom the agent would claim a commission, were the customer to conclude a transaction with the client.
- 9.12** An agent must not impose conditions on a client through an agency agreement that are not reasonably necessary to protect the interests of the agent.
- 9.13** When authorised by a client to incur expenses, a licensee must seek to obtain the best value for the client.

Conflicts of interest

- 9.14** A licensee must not act in a capacity that would attract more than 1 commission in the same transaction.
- 9.15** A licensee must not engage in business or professional activity other than real estate agency work where the business or activity would, or could reasonably be expected to, compromise the discharge of the licensee's obligations.

Confidentiality

- 9.16** A licensee must not use information that is confidential to a client for the benefit of any other person or of the licensee.
- 9.17** A licensee must not disclose confidential personal information relating to a client unless—
- (a) the client consents in writing; or
 - (b) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the licensee by the client; or
 - (c) the licensee is required by law to disclose the information; or
 - (d) the disclosure is consistent with the information privacy principles in section 6 of the Privacy Act 1993.
- 9.18** Where a licensee discloses information under rule 9.17(b), (c) or (d), it may be only to the appropriate person or entity and only to the extent necessary for the permitted purpose.



10 Client and customer care for sellers' agents

10.1 This rule applies to an agent (and any licensee employed or engaged by the agent) who is entering, or has entered, into an agency agreement with a client for the grant, sale, or other disposal of land or a business.

Appraisals and pricing

- 10.2** An appraisal of land or a business must—
- (a) be provided in writing to a client by a licensee; and
 - (b) realistically reflect current market conditions; and
 - (c) be supported by comparable information on sales of similar land in similar locations or businesses.
- 10.3** Where no directly comparable or semi-comparable sales data exists, a licensee must explain this, in writing, to a client.
- 10.4** An advertised price must clearly reflect the pricing expectations agreed with the client.

Relationship between prospective client's choices about how to sell and licensee's benefits

10.5 Before a prospective client signs an agency agreement, the licensee must explain to the prospective client how choices that the prospective client may make about how to sell or otherwise dispose of his or her land or business could impact on the individual benefits that the licensee may receive.

Agency agreements

10.6 Before a prospective client signs an agency agreement, a licensee must explain to the prospective client and set out in writing—

- (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the appraisal provided under rule 10.2;
- (b) when the agency agreement ends;
- (c) how the land or business will be marketed and advertised, including any additional expenses that such advertising and marketing will incur;
- (d) that the client is not obliged to agree to the additional expenses referred to in rule 10.6(c);
- (e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.

Disclosure of defects

- 10.7** A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Where it would appear likely to a reasonably competent licensee that land may be subject to hidden or underlying defects⁴, a licensee must either—
- (a) obtain confirmation from the client, supported by evidence or expert advice, that the land in question is not subject to defect; or
 - (b) ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.
- 10.8** A licensee must not continue to act for a client who directs that information of the type referred to in rule 10.7 be withheld.

Advertising and marketing

- 10.9** A licensee must not advertise any land or business on terms that are different from those authorised by the client.

Contractual documentation and record keeping

- 10.10** A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.
- 10.11** If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.
- 10.12** An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

⁴ For example, houses built within a particular period of time, and of particular materials, are or may be at risk of weathertightness problems. A licensee could reasonably be expected to know of this risk (whether or not a seller directly discloses any weathertightness problems). While a customer is expected to inquire into risks regarding a property and to undertake the necessary inspections and seek advice, the licensee must not simply rely on caveat emptor. This example is provided by way of guidance only and does not limit the range of issues to be taken into account under rule 10.7.



11 Client and customer care for buyers' agents

- 11.1** This rule applies where an agency agreement authorising an agent to undertake real estate agency work for a client in respect of the purchase or other acquisition of land or a business on the client's behalf (a **buyer's agency agreement**) is being entered into, or has been entered into.
- 11.2** Before a prospective client signs a buyer's agency agreement, a licensee must explain to the prospective client and set out in writing—
- (a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual \$ amount) of commission payable by the client, based on the average of the estimated price range of the land or business that the client is seeking to purchase:
 - (b) when the agency agreement ends:
 - (c) any additional services that the licensee will provide, or arrange for the provision of, on the client's behalf and the expenses relating to those services payable by the client:
 - (d) that the client is not obliged to agree to the additional expenses referred to in rule 11.2(c):
 - (e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.
- 11.3** A licensee must not undertake real estate agency work with customers, or other licensees, on terms that are different from those that are authorised by the client on whose behalf the licensee is carrying out real estate agency work.
- 11.4** A licensee must submit all offers that the licensee is instructed by the client to make concerning the purchase or acquisition of any land or business, provided that such offers are in writing.
- 11.5** If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.
- 11.6** An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

12 Information about complaints

- 12.1** An agent must develop and maintain written in-house procedures for dealing with complaints and dispute resolution. A copy of these procedures must be available to clients and consumers.
- 12.2** A licensee must ensure that prospective clients and customers are aware of these procedures before they enter into any contractual agreements.
- 12.3** A licensee must also ensure that prospective clients, clients, and customers are aware that they may access the Authority's complaints process without first using the in-house procedures; and that any use of the in-house procedures does not preclude their making a complaint to the Authority.
- 12.4** A licensee employed or engaged by an agent must advise the agent within 10 working days of becoming aware of—
- (a) any complaint made to the Authority against them, the decision of the Complaints Assessment Committee made in respect of that complaint, and any order made by the Committee in respect of that complaint; and
 - (b) if the matter proceeds to the Tribunal, the decision of the Tribunal in respect of the matter, and any order made by the Tribunal in respect of the matter.
- 12.5** If a licensee was employed or engaged by a different agent at the time of the conduct relevant to the complaint referred to in rule 12.4, the licensee must also provide the information referred to in rule 12.4(a) and (b) to that agent within 10 working days of becoming aware of the complaint.

13 Revocation

The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (SR 2009/304) are revoked.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in Gazette: 13 December 2012

These rules are administered by the Real Estate Agents Authority.

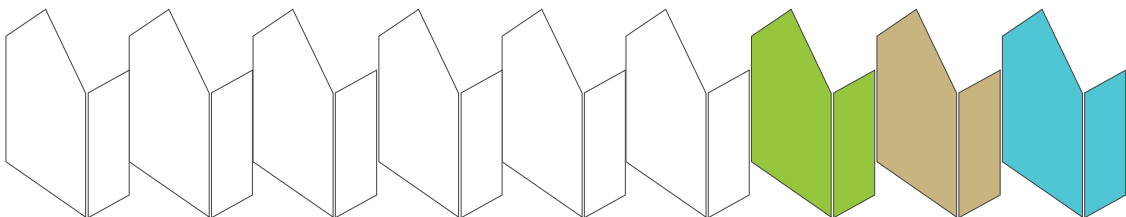


Real Estate Agents Authority

The logo consists of a stylized 'V' shape formed by a grid of colored squares. The top-left portion is light blue, the top-right is light green, and the bottom portion is light brown.

PO Box 25371, Panama Street, Wellington 6146
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Website: www.reaa.govt.nz

To the best of the Real Estate Agents Authority's 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, 13 December 2012].



New Zealand Residential Property Sale and Purchase Agreement Guide

This guide has been prepared and approved by the Real Estate Agents Authority



Important things to know:

1. A sale and purchase agreement is a **legally binding** contract.

2. The real estate agent is **working for the seller** of the property, but must treat the buyer fairly.

3. You need to understand the difference between a **conditional** and an **unconditional** agreement.

4. You can **negotiate** the conditions you require in a sale and purchase agreement.

5. Make sure you **read** and **understand** the sale and purchase agreement before signing it.

6. It is recommended that you get your **lawyer to check** the sale and purchase agreement before you sign it.



Introduction

Buying or selling a home is one of the biggest financial commitments you will ever make. There are several relatively complicated stages to negotiate and there are a number of things to look out for.

When you are buying or selling residential property you should always have a written sale and purchase agreement. This is the legal document that forms the contract between the buyer and the seller.

This guide provides information about sale and purchase agreements, tells you where you can get more information, what to expect from a real estate agent¹ and what to do if there is a problem.

This guide only relates to the sale of residential property.

This guide is just that – guidance. You should not rely on it for legal advice. It's been prepared by the Real Estate Agents Authority (REAA), a Crown entity established by the Real Estate Agents Act 2008.

This is a guide to the sale and purchase agreement that you will be asked to sign if you wish to buy or sell residential property.



¹ Real estate agent or agent are general terms that refer to an agent, branch manager or salesperson.

Whether you are a buyer or a seller, the agent must provide you with a copy of this guide before you sign a sale and purchase agreement, and ask you for written acknowledgement that you have received it. If you require more information, you can consult your lawyer. Information is also available on the REAA's website:
www.reaa.govt.nz



Why do I need a sale and purchase agreement?

A sale and purchase agreement provides certainty to both the buyer and the seller as it sets out in writing all the agreed terms and conditions. It is a legally binding contract.

Can I negotiate?

The seller and buyer can negotiate, through the agent, on price and conditions until they both reach agreement.

Important things to know:

- ✓ You should have a written sale and purchase agreement.
- ✓ Always read the sale and purchase agreement before signing it.
- ✓ Have your lawyer check the sale and purchase agreement before you sign it.
- ✓ Both the buyer and seller can negotiate changes to the price and conditions.
- ✓ A sale and purchase agreement is a legally binding contract.



The sale and purchase agreement

Your agent will probably use the Auckland District Law Society and Real Estate Institute of New Zealand form (the ADLS form).

Your sale and purchase agreement should include the following:

- ✓ The name(s) of the seller(s) and buyer(s).
- ✓ The address of the property.
- ✓ The type of title (freehold, leasehold etc.).
- ✓ The chattels that are to be sold with the property (e.g. whiteware, drapes, television aerial etc.).
- ✓ The price.
- ✓ The rate of interest that the buyer must pay on any overdue payments.
- ✓ Any deposit that the buyer must pay.
- ✓ Any conditions the buyer wants fulfilled before the contract is agreed.
- ✓ The date on which the agreement will become unconditional if there are conditions.
- ✓ The settlement date (the date the buyer pays the remainder of the amount for the property, usually the day when the buyer can move into the property).

Conditions in the document

The buyer will usually want to have some or all of the following conditions fulfilled before the contract is agreed:

- ✓ **Title search** – this is done by the buyer's lawyer to check who the legal owner of the property is and to see if anyone else has any claim over the property.
- ✓ **Finance** – this refers to the buyer arranging payment, normally a loan, by a specified date.
- ✓ **Valuation report** – normally required by a lender, this report is an estimate of the property's worth on the current market.
- ✓ **Land Information Memorandum (LIM) report** – provided by the local council, this report provides information on things such as rates, building permits and consents, drainage and planning.
- ✓ **Building inspection report** – these help determine how sound the building is and what might need to be repaired.
- ✓ **Engineer's report** – similar to the above but more focused on the section and structure of the property.
- ✓ **Sale of another home** – the buyer may need to sell their home in order to buy another.

General or standard clauses

A sale and purchase agreement also includes clauses that set out general obligations and conditions. It helps to understand what these mean as you will need to comply with them. Examples may include:

- **Access rights** – what access the buyer can have to inspect the property before settlement.
- **Default by buyer** – the buyer may have to compensate the seller e.g. interest payments.
- **Default by the seller** – the seller may have to compensate the buyer e.g. accommodation costs.
- **Insurance** – makes sure the property remains insured until the settlement date and outlining what will happen if any damage does occur.

Your lawyer will explain these clauses.

When does the buyer pay the deposit and the full amount?

When the seller and buyer have agreed on all aspects of the sale and purchase agreement, any deposit is usually paid to the real estate agent by the buyer. This money is initially held in the agent's trust account.

The agent usually takes their commission from the deposit when the contract becomes unconditional. This is agreed between the seller and the agent as set out in the agency agreement². The seller should make sure that the deposit is large enough to cover the agent's commission.

The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer. The settlement day is usually the date when the buyer can move into the property.

Before the sale and purchase agreement becomes unconditional and if the sale doesn't go ahead because some of the conditions haven't been met, the buyer may be entitled to have the deposit refunded in full.

However, once the offer becomes unconditional you won't be able to get your deposit back if you change your mind for any reason.

What is the difference between a conditional and an unconditional agreement?

- ✓ **Conditional** refers to the sale and purchase agreement having a set of conditions that are to be met, such as the buyer's current house being sold, a building inspection being carried out, or finance being secured.
- ✓ **Unconditional** refers to when all conditions in the sale and purchase agreement have been met and the transaction is ready to proceed to a change of ownership.

² Refer to the Real Estate Agents Authority's *New Zealand Residential Property Agency Agreement Guide*.

Can I cancel the agreement if I change my mind?

You cannot cancel a sale and purchase agreement just because you have had second thoughts about buying or selling the property concerned.

In general, once you have signed a sale and purchase agreement and the conditions set out in it have been met, you will have to go ahead with the sale/purchase of the property.

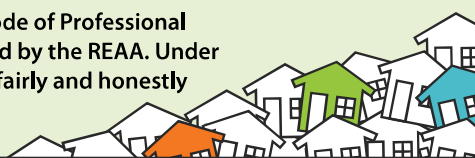
What can I expect from an agent?

The agent works for and is paid by the seller. The agent must therefore carry out the seller's instructions (as set out in the agency agreement) and act in the interests of the seller.

Agents also have clear responsibilities to buyers even though they are representing the seller.

When you are buying a property, ask the agent questions. Be specific about what you want to know.

All agents are bound by the Code of Professional Conduct and Client Care, issued by the REAA. Under the Code, agents have to deal fairly and honestly with all parties.





A copy of the Code of Professional Conduct and Client Care is available from www.reaa.govt.nz or by calling **0800 for REAA** (0800 367 7322).

What if my agent or someone related to them wants to buy the property?

If your agent, or anyone related to them, wants to buy your property, they must get your written consent to do this.



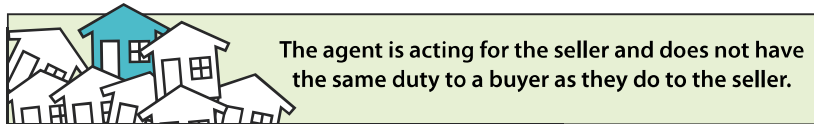
More information on this situation can be found in the Conflict of Interest Information Sheet, available from www.reaa.govt.nz or by calling **0800 for REAA** (0800 367 7322).



It is important to consult your lawyer throughout the buying and selling process.

Who pays the agent?

Real estate agents in New Zealand work on behalf of sellers and it is the sellers who pay the agents. An agent who is marketing a property on behalf of a seller cannot ask a buyer to pay for their services.



What is a buyers' agent?

Buyers' agents are common in some other countries. They are agents who are employed by buyers to locate properties and sometimes to negotiate purchases on the buyer's behalf. If you employ a buyers' agent you should still have a written agency agreement and will have to pay for their services.



What if there's a problem?

If you are concerned about the behaviour of an agent, you should discuss any concerns you have with the agent or their manager. Agents are required to have in-house complaints resolution procedures.

If this does not work or if you do not wish to go through this process, you can contact the REAA.

The REAA has a number of ways it can help with your concerns. This includes sending the agent a compliance advice letter, arranging alternative dispute resolution or processing the matter as a complaint. When you contact the REAA they will help you identify the best way of dealing with your concern.



More information on how the REAA can help you can be found at www.reaa.govt.nz or by calling **0800 for REAA** (0800 367 7322).

You can get more information from...

There are several places you can go for help and advice including:

- ✓ The Real Estate Agents Authority (REAA) at www.reaa.govt.nz or call **0800 for REAA** (0800 367 7322).

The REAA can provide information and assistance on a wide range of issues and is responsible for dealing with concerns about real estate agents.

- ✓ Your lawyer.
- ✓ Community Law Centres www.communitylaw.org.nz.
- ✓ Citizens Advice Bureau www.cab.org.nz.
- ✓ Ministry of Consumer Affairs www.consumeraffairs.govt.nz.
- ✓ NZ Law Society Property Section www.propertylawyers.org.nz.
- ✓ Consumer Build www.consumerbuild.org.nz.

Real Estate Agents Authority

The Real Estate Agents Authority (REAA) was established by the New Zealand government to ensure high professional standards in the real estate industry and to promote increased protection for people who are buying or selling property.



www.reaa.govt.nz info@reaa.govt.nz [@reaanz](https://twitter.com/reaanz)

☎ 0800 for REAA (0800 367 7322) or (04) 471 8930



Scan to find out more about buying
and selling property.

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