

Get smart before buying and selling property



About the Real Estate Agents Authority (REAA)



We're independent and we're here to help buyers and sellers

The Real Estate Agents Authority (REAA) is an independent government agency established to ensure a high standard of service and professionalism in the New Zealand real estate industry and to promote increased protection for people who are buying or selling property.

Contact us if you have a problem with an agent

We are responsible for dealing with complaints about the behaviour of agents. We run an independent, fair and open complaints process.

There is a Code of Professional Conduct and Client Care that sets out the standards agents must follow.

Find more information on our website

We publish information about working with agents and the sale and purchase process. The two approved guides (to agency agreements and sale and purchase agreements) are available in a number of languages from **www.reaa.govt.nz**.

Find out about your agent

We have an online public register of licensed real estate agents that includes information on any complaints upheld against them. The public register is available from **www.reaa.govt.nz**.



www.reaa.govt.nz



info@reaa.govt.nz



0800 367 7322 or (04) 471 8930

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What you need to know (in 5 minutes)

For sellers

For buyers

Methods of buying and selling

Glossary



What you need to know

(in five minutes)



Buying or selling a property?

Get independent legal advice

The value of a property transaction is significant and so is the potential cost if it goes wrong so it is important to get your own independent advice. Remember agency agreements and sale and purchase agreements are legally binding contracts.

✓ **See page 11 for more information.**

Read and understand agreements before you sign them

Agency agreements and sale and purchase agreements are legally binding so you need to read and understand them. And don't forget you can negotiate their terms and conditions.

We publish guides to these important legally binding agreements. Agents must give you a copy of the relevant guide before you sign an agency agreement or a sale and purchase agreement. We also recommend reading the guides before meeting with agents. The guides are available from **www.reaa.govt.nz**.

✓ **See page 11 & 21 for more information.**

Find out about your agent

We have an online public register of licensed real estate agents that includes information on any complaints upheld against them.

The public register is available from **www.reaa.govt.nz**.



Scan to search the public register

Contact us if you have a problem with an agent

We are responsible for addressing complaints about agents and run an independent, fair and open complaint process.



And if you're buying a property...

Remember the agent works for the seller, not you

While the agent works for the seller they must still treat you fairly.

Do your own research about the property

You can ask the agent anything you want to know about the property and they can't withhold anything they know. However, you shouldn't rely only on their information and you should do your own research. Consider getting a property inspection report, Land Information Memorandum (LIM), and a title search.

✓ ***See page 17 for more information.***

What you can expect from your agent

Agents must act in the best interests of the seller and treat the buyer fairly

An agent must follow the seller's instructions – unless doing so would be against the law.

Agents can't exert undue or unfair pressure

Agents must not engage in any conduct that will put a buyer or seller under undue or unfair pressure. They must not take advantage of any party's inability to understand relevant documents and they must keep the seller regularly updated on any relevant matters.

Agents can't withhold or give inaccurate information about a property

The agent is in contract with the seller and will always work on their behalf. However, they have an obligation to treat any buyer fairly. They must not withhold information from the buyer about the property or give inaccurate information. Also the agent can't make statements about a property they can't back up with evidence.

Agents can't mislead buyers and sellers over pricing expectations

The advertised price for the property must be in line with the pricing expectations the agent has agreed with the seller. The agent must not mislead any buyer about the seller's pricing expectations.

Agents can't breach confidentiality

The agent must not disclose any confidential personal information about the seller unless the seller consents in writing, or if the agent is required by law to disclose it.

An agent must not use any confidential information for their own benefit or that of any other person.

Agents must disclose to the seller if they will receive any rebates, discounts or commission on advertising. They must disclose this in writing to the seller as part of the agency agreement.

See also:

- > For sellers (information for people selling a property): **page 6**
- > For buyers (information for people buying a property): **page 14**
- > Methods of buying and selling: **page 19**
- > Glossary: **page 32**

For sellers



Who's who in real estate?



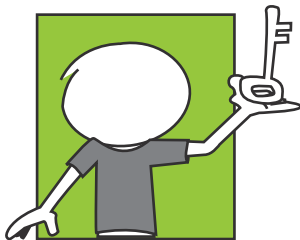
Your real estate agent

You engage a licensed real estate agent to act on your behalf to help sell your property. Real estate agents must be licensed. Before you decide on your agent check that they are licensed using our public register at **www.reaa.govt.nz**. The public register has the agent's contact details and will show if they have had any complaints upheld against them.



Your lawyer

We recommend you get independent legal advice and get a lawyer to help you through the selling process. Agency agreements and sale and purchase agreements are legally binding documents and you should consult your lawyer before signing them.



The buyer

Most of the time you'll be communicating indirectly with the buyer, or potential buyers, through your real estate agent. The buyer should have their own lawyer.



REAA

The Real Estate Agents Authority (REAA) is an independent government agency regulating real estate agents and helping protect buyers and sellers. We are responsible for dealing with complaints about agents and run an independent, fair and open complaints process. If you have a problem with an agent you should let us know by calling **0800 367 7322** or emailing **info@reaa.govt.nz**.

Be prepared!

Buying or selling a property is a complex legal process and is probably the biggest financial transaction you will ever be involved in, so it is essential you find out as much about the buying and selling process as possible – before you begin.

Find a lawyer

Choose the lawyer you want to use before you set out to sell your property. Selling can be a fast-moving process and you will need independent legal advice. You should not sign any legally binding document such as an agency agreement or sale and purchase agreement without first having it checked by your lawyer.



Scan to go to the Law Society's website

You can find a lawyer, including those specialising in residential property law, through the “find a lawyer” section of the New Zealand Law Society website at **www.lawsociety.org.nz**.

Selecting an agent

Most sellers choose to engage an agent to market their property, and most buyers will negotiate through an agent.

All agents must be licensed under the Real Estate Agents Act 2008 and abide by the Code of Professional Conduct and Client Care. You can read the Code of Conduct at **www.reaa.govt.nz**.



Scan to read the Code of Conduct

Contact as many agents as you like before deciding who to list with

You can contact as many agents as you like for an appraisal of your property before you decide who to list with. If there is a specific agent you would like to use then you can contact them directly.

Find out about your agent

Check that any agent you are dealing with is licensed, even if it is someone you know or who has been recommended by a friend.

It is illegal to carry out real estate agency work without a licence. If you deal with an unlicensed person we will not be able to do anything about it if things go wrong.

All licensed agents' contact details are available from the public register at **www.reaa.govt.nz**.

The public register also shows if an agent has had any complaints upheld against them.



Scan to search the public register

Types of agency agreement

You can list your property with one agency, which is known as a sole agency agreement, or with two or more agencies, which is known as a general agency agreement.

Sole agency agreement

This gives one agent or agency the exclusive right to market and arrange the sale of your property.

Once you have signed a sole agency agreement you should not sign another agency agreement with any other agent. If you do you may have to pay all the agencies a commission regardless of which agency arranged the sale.

General agency agreement

This is when you give more than one agency the right to market your property. You will be asked to sign agency agreements with each different agency. Your lawyer can advise you on this.

Recommended standard clauses for agency agreements

Real estate agents can choose to use voluntary standard clauses in their residential and rural agency agreements. The standard clauses help protect you by providing certainty about:

- ✓ when an agency agreement ends, and
- ✓ when a commission needs to be paid.

We recommend that you only use agents who use these standard clauses so make sure you ask about them before signing an agency agreement. You can find out more about these clauses and get a list of agencies using them from our **website**.

Negotiating the agency agreement

You can contact as many agents and agencies as you like to discuss listing your property for sale. Once you have selected which agent or agents you want to use you will be asked to sign an agency agreement. We publish a guide to agency agreements and agents must give you a copy of this guide before you sign an agency agreement. It is a good idea to read this guide before you sign. This guide is available from **www.reaa.govt.nz**.



Scan to read the
guide to agency
agreements

Negotiating terms of the agency agreement

You do not have to accept an agent's proposals and you can negotiate with them on the terms of the proposed agency agreement including method of sale, the timeframe it covers, the amount of commission to be paid and the payment of any expenses.

Get your lawyer to check the agreement

An agency agreement is a legally binding contract. Read it and make sure you understand it before signing. If you don't agree with anything in the agreement then raise it with the agent. Get your lawyer to check the agreement before you sign it.

Check how long the agreement lasts

Before signing the agreement make sure you are aware of the term of the agreement and the date on which you or the agent can cancel it – this is negotiable and your agent must discuss this with you. Also check what the cancellation terms are as these can vary from agency to agency. Be aware that you may have to pay the agent a commission even if you sell the property privately later on.

The cooling off period for cancelling a sole agency agreement

If you change your mind after signing a sole agency agreement you can cancel it by 5pm on the first working day after you have been given a copy of the agreement. The cancellation must be in writing, i.e. by letter, fax or email.

When an agreement is cancelled but the property still sells

It's important to know that, even once an agreement has been cancelled, you may have to pay the agent commission if the agent has already carried out work which results in the sale of the property. Get advice from your lawyer.

Before signing an agency agreement

Before you sign an agency agreement the agent must:

✓ **Give a written price appraisal**
They must give you a written appraisal of their estimate of the sale price for your property. This must realistically reflect market conditions and be supported by comparable information on sales of similar properties.

✓ **Discuss the different options for selling your property**
They must discuss the different options for selling your property – for instance by tender, auction, negotiation or at an advertised price. They must also tell you how the different options for selling your property can affect their commission.

✓ **Give you a written estimate of their commission**
The agent must also provide you with a clear written explanation of how their commission will be calculated, the conditions under which it must be paid and the estimated total sum that you will pay based on the estimated sale price of the property.



Scan to read more about commissions

Further information about commission is available from www.reaa.govt.nz.

✓ **Give you a copy of the New Zealand Residential Property Agency Agreement Guide**

Before you sign the agency agreement the agent must give you a copy of the New Zealand Residential Property Agency Agreement Guide and ask you to confirm in writing that you have received it. This guide is available from www.reaa.govt.nz.



Scan to read our guide to agency agreements

✓ **Explain marketing and advertising costs**
The agent must explain how your property will be marketed and advertised and make it clear what advertising they provide as part of their service to you, and what you will need to pay extra for (if you want to).

Your agent will generally ask for advertising costs to be paid up front. Unlike commission, advertising costs must be paid even if your property does not sell.



Scan to read more about advertising

The agent may suggest placing ads in property publications and on websites. If you choose to do this, insist on a written proposal and an itemised breakdown of the costs involved before giving permission.

Further information about advertising is available from www.reaa.govt.nz.

The agent must disclose if they receive any rebates, discounts or commissions on the advertising that you are being asked to pay for. Make sure you ask about this.



Scan to read more about what agents must disclose

An information sheet on disclosure is available from www.reaa.govt.nz.



Explain the risk of paying two commissions

The agent must explain that you may be at risk of paying more than one commission if you enter into (or have entered into) more than one agency agreement.

Agents with a conflict of interest

If an agent or someone connected to them wants to buy the property

If an agent working for you under an agency agreement – or someone connected to them professionally or personally – offers to buy your property, there are certain things that they must do. These things are designed to protect you the seller. You should also get independent legal advice from your lawyer.

We also recommend that the agent no longer acts for you and another agent from the real estate agency represents you¹. It is important that you have someone independent working for you to sell your property – this is the service you are paying for.



¹If 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).

If there is a conflict of interest, the agent must do the following before asking you to sign the sale and purchase agreement:

- ✓ Ask you to sign a consent form that shows you consent to your agent (or someone connected to them) buying your property.
- ✓ Give you a valuation of the property from an independent registered valuer. This valuation is to be provided at the agent's expense and is different from the market appraisal they have already given you.

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

- ✓ Give you a provisional valuation.
- ✓ Give you the independent valuation 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 (the sale and purchase agreement) without any penalty.

An information sheet on conflicts of interest is available from www.reaa.govt.nz.



Scan to read more
about conflict of
interest

See also:

- > What you need to know
(in 5 minutes): **page 2**
- > Methods of buying and selling:
page 19
- > Glossary: **page 32**

For buyers



Who's who in real estate?



The seller's real estate agent

The real estate agent works for the seller to help sell their property. The agent must treat you fairly. Real estate agents must be licensed and you can search our public register at www.reaa.govt.nz to find out more about any agent including if there have been any complaints upheld against them.



The seller

Most of the time you'll be communicating indirectly with the seller through their real estate agent who is acting on their behalf. The seller should have their own lawyer.



Your lawyer

We recommend you get independent legal advice and engage a lawyer to help you through the buying process. Sale and purchase agreements are legally binding documents and you should consult your lawyer before signing them.



Specialist advisors

You can ask the real estate agent anything you like about the property but you shouldn't rely solely on information they provide. You should do your own research and hire specialist advisors such as property inspectors, valuers or even engineers to help you decide whether you want to buy the property and how much you'd be willing to pay for it.



Government agencies

Land Information New Zealand and the local council hold a lot of information about the property you are wanting to buy. Land Information New Zealand holds the title to the property showing who owns it and if anyone else has any claim over it. The local council will also have important historical information about the property which it can give you in a Land Information Memorandum (LIM). Your lawyer will help you with these.



REAA

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Be prepared!

Buying a property is a complex legal process and is the biggest financial transaction you will probably ever be involved in, so it is essential you find out as much about the buying and selling process as possible – before you begin.

Find a lawyer

Choose the lawyer you want to use before you set out to buy a property. Buying can be a fast-moving process and you will need independent legal advice. You should not sign the legally binding sale and purchase agreement without first having it checked by your lawyer.



Scan to go to the
Law Society's website

You can find a lawyer, including those specialising in residential property law, through the “find a lawyer” section of the New Zealand Law Society website at **www.lawsociety.org.nz**.

Get independent advice

Remember, the agent always works for the seller

The agent – whether they are the agent the property is listed with or another agent from the same agency – works for the seller and is paid by the seller when the property sells.

As a buyer you can choose which agent to deal with from the agency

You do not have to deal with the agent a property is listed with. You can approach another agent with the agency that is marketing the property and ask to work with them.

Find out about the agent

Check that any agent you are dealing with is licensed, even if it is someone you know or who has been recommended by a friend.



Scan to search the
public register

It is illegal to carry out real estate agency work without a licence. If you deal with an unlicensed person we will not be able to do anything about it if things go wrong.

All licensed agents' contact details are available from the public register at **www.reaa.govt.nz**. The public register also shows if an agent has had any complaints upheld against them.

Ask the agent about the property

You should ask the agent specific questions about anything you want to know about the property. Licensed agents are bound by the Code of Professional

Conduct and Client Care and have to deal fairly and honestly with all parties. They are not allowed to withhold any information they know about a property and they must tell you if they think there might be something wrong with the property that you should check out. Also, the agent can't make statements about the property they can't back up with evidence.



Scan to read the
Code of Conduct

You can read the Code of Conduct at www.reaa.govt.nz.

Don't rely only on the agent for advice or assistance

However friendly and helpful the agent is, it is the seller they are representing. The agent must not mislead the buyer but you should not rely **only** on the agent for advice or assistance.

Title search and LIM

It is important to find out as much as you can about the property and the land before you commit to buying it. This should include a title search (checking who legally owns the property and if anyone else has any claim over it) and a Land Information Memorandum (LIM). The LIM contains all the important current and historical information the local council knows about the land and property. Your lawyer will help you with these or you can get them yourself.



Scan to read more
about LIM's and
title searches

Further information about LIM's and title searches is available from www.reaa.govt.nz.

Builders report or property inspection report

You should also find out as much as you can about the condition of the property by getting a qualified property inspector to inspect the property.

This should be done before the purchase becomes unconditional and is a thorough non-invasive assessment of the condition of the property. You need to pay for this.

Property inspectors are listed in the Yellow Pages and online. We recommend that you make sure the property inspector you select:

- ✓ Has professional indemnity insurance
- ✓ Carries out their work in accordance with the NZ Property Inspection Standards (NZS 4306:2005 Residential Property Inspection). This means they adhere to the Standards New Zealand requirements for residential property inspections.

Inspectors who conform to this standard can be found on the **Building Officials Institute of New Zealand** website and on the **New Zealand Institute of Building Surveyors** website, although there will be other inspectors who are not listed on those websites who still conform to the New Zealand Standard.

Depending on the property you may also want to hire other specialist advisors such as a structural engineer to help you decide whether you want to buy the property and how much you would be willing to pay for it.

Selecting the property inspector and/or engineer you want to use at an early stage means you will be well prepared to arrange the inspection when you find a property you want to buy.

Valuation report

Your lender may also ask you to provide a valuation report for the property. Registered valuers are listed in the Yellow Pages and online e.g www.property.org.nz.

Using a buyer's agent

Occasionally a buyer – for instance, someone living overseas – will use a buyer's agent to source properties and oversee the purchase process. Buyer's agents must also be licensed.



Scan to read more about buyer's agents

A buyer's agent is engaged and paid by the buyer and does not maintain property listings. If you decide to use a buyer's agent you should seek very clear information in advance about costs, what services are provided as part of this cost and what if any additional expenses will be charged.

Further information about buyer's agents is available from www.reaa.govt.nz.

Agents with a conflict of interest

If the agent has a financial interest in the property

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.

Further information about conflicts of interest is available from www.reaa.govt.nz.

See also:

- > What you need to know (in 5 minutes): **page 2**
- > Methods of buying and selling: **page 19**
- > Making an offer: **page 21**
- > Glossary: **page 32**

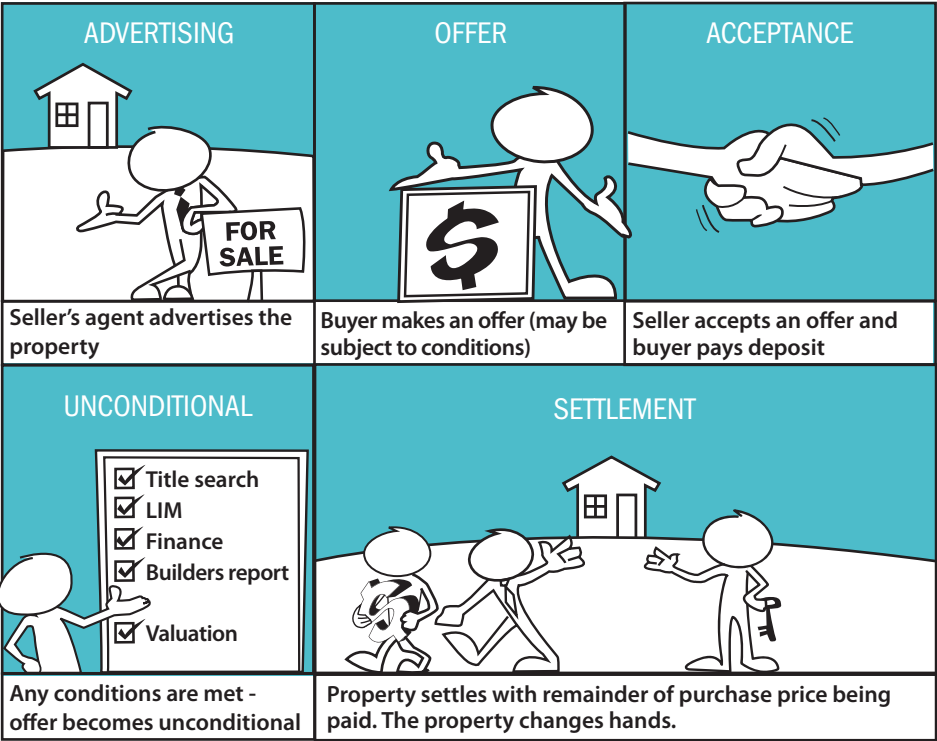


Scan to read more about conflicts of interest

Methods of buying and selling



Sale and purchase process



Practices can vary from agent to agent and from sale to sale. It is important that you understand the sale and purchase process for the house you are buying or selling. Make sure that you confirm the details with the agent.



Consult your lawyer

Making and accepting an offer on a property involves signing a sale and purchase agreement. This is a legally binding contract and both buyer and seller should consult their own lawyer before signing.

Making an offer

The agent will draw up the sale and purchase agreement and ask the buyer to sign it. Before doing so the agent must give the buyer a copy of the New Zealand Residential Property Sale and Purchase Agreement Guide. The buyer will be asked to provide confirmation in writing that they have received it.



Scan to read the guide to sale and purchase agreements

It is a good idea to read this guide before you sign the agreement.

This guide is available from **www.reaa.govt.nz**.

Presenting an offer to the seller

The agent will then present the offer to the seller who can consider the offer and take into account the amount offered and any conditions attached. The decision whether to accept or not is entirely up to the seller and the property remains available for sale and open to other offers during this process. The agent must also give the seller a copy of the New Zealand Residential Property Sale and Purchase Agreement Guide before they sign the sale and purchase agreement. The seller will be asked to provide confirmation in writing that they have received it.

Conditional offers

It is common for a conditional offer to be made. This means the offer is subject to a number of conditions being met. Common examples include:

- ✓ Subject to the buyer selling their own property
- ✓ Subject to a builder's and/or engineer's inspection report
- ✓ Subject to a lender's valuation of the property or a Land Information Memorandum (LIM) report
- ✓ Subject to finance

The seller may also attach conditions. Your lawyer can advise on this.

Both buyer and seller can negotiate the terms in a sale and purchase agreement

If the offer or conditions are not agreeable to either buyer or seller the agent can negotiate between them on price and/or conditions with the aim of reaching a mutual agreement.

Amending the sale and purchase agreement

The price and conditions in the sale and purchase agreement may be amended a number of times during the negotiation process. The agent will ask the buyer and seller to initial any amendments (to show that they agree with the changes). Read any changes first and make sure you understand and agree with them before initialling. Your lawyer can advise you during this process and should check the agreement before you sign it.

If the offer is accepted

The buyer and seller are in contract once an acceptable price and conditions have been agreed in writing by both parties i.e. both parties have signed the sale and purchase agreement. The process of working through any conditions towards settlement now begins.

What is included in the sale and purchase agreement?

The sale and purchase agreement sets out in writing all the agreed terms and conditions. These include:

Conditions and chattels

The agreement will include a wide range of details including:

- ✓ The agreed price
- ✓ Chattels – such as fixed floor coverings, TV aerials, whiteware or curtains – that are to be included in the sale
- ✓ The type of title (for instance, freehold or leasehold)
- ✓ Any conditions the buyer or seller wants fulfilled before the contract is agreed
- ✓ The date the agreement will become unconditional
- ✓ The settlement date
- ✓ Any deposit the buyer must pay

Clauses included in the agreement

The agreement will also include clauses that set out obligations and conditions that the buyer and/or seller must abide by. These may include what access the buyer can have to inspect the property before settlement and ensuring the property remains insured until the settlement date.

Default by buyer or seller

Clauses are also likely to cover what happens if the buyer or seller defaults. This covers compensation costs that must be paid by the buyer or seller if either defaults on the terms of the agreement, for example by delaying settlement. Your lawyer can explain these clauses to you.

You cannot change your mind once you have signed the agreement

You cannot change your mind once you have signed a sale and purchase agreement. In general, once you have signed and the conditions set out in the agreement have been met, you will have to go ahead with the sale or purchase of the property.

Buyer's deposit and the agent's commission

When the buyer and seller have signed the sale and purchase agreement then the offer is accepted. The buyer will be required to pay a deposit - usually 5 -10 % of the purchase price. The deposit should be enough to pay the agent's commission and will be held in a trust account by the real estate agency until the agreement becomes unconditional. The agent will usually take their commission from this deposit when the offer becomes unconditional.

The buyer can negotiate when the deposit is paid i.e. when the (conditional) offer is accepted or when the agreement goes unconditional.









Settlement date

The settlement date will be set out in the sale and purchase agreement. This is the date when the buyer pays the rest of the amount agreed for the property, usually through their lawyer. It is usually also the possession date when the buyer takes possession of the property and can move in.

See also:

- > What you need to know (in 5 minutes): **page 2**
- > For sellers (information for people selling a property): **page 6**
- > For buyers (information for people buying a property): **page 14**
- > Buying and selling by tender: **page 24**
- > Buying and selling at an advertised price or by negotiation: **page 27**
- > Buying and selling by auction: **page 29**

Buying and selling by tender

<p>ADVERTISING</p> 		<p>OFFER</p> 
<p>Seller's agent advertises the property</p>	<p>Buyer researches property</p>	<p>Buyer makes an offer (may be subject to conditions) before tender deadline</p>
<p>TENDER DEADLINE</p> 		<p>ACCEPTANCE</p> 
<p>Buyers submit offers to real estate agent</p>	<p>Seller chooses between offers</p>	<p>Seller accepts an offer (subject to conditions)</p>
<p>UNCONDITIONAL</p> 	<p>SETTLEMENT</p> 	
<p>Any conditions are met and offer becomes unconditional.</p>	<p>Property settles with remainder of purchase price being paid and the property changes hands</p>	

When a property is being sold by tender prospective buyers submit confidential written offers for a property to the agent before a deadline. There is no reserve price (the lowest price that the seller is willing to accept for the property) and prospective buyers prepare their best offer and submit it for the seller to consider.

There will be a closing date and time for all tenders to be submitted, usually to the real estate agency offices.

A prospective buyer will not know what other people are offering in advance of the tender.

Price guides for tenders

Usually there is no reserve price but a property may be marketed with a buyer budget over (BBO) or buyer enquiry over (BEO) or a pricing guide. Prospective buyers can offer below this guide price if they wish, but sellers aren't obligated to accept any of the offers.

Buying or selling a property before the tender date

A property may also be advertised as 'for sale by tender (unless sold prior)' which means it can be sold before the tender date. The marketing material and tender documents must make it clear that this is the case.

This gives you the option of making an offer before the tender date or registering your interest with the agent and asking them to inform you if someone else makes an offer prior to the tender date.

Submitting a tender

If you want to submit a tender you need to request a copy of the tender documents from the agent. Be sure to read them carefully.

Legally binding agreement

You will be asked to fill in and sign a sale and purchase agreement. This is a legally binding contract and you cannot change your mind after it has been signed. Get your lawyer to check it before you sign.

The agreement will include your tendered price, deposit amount, settlement dates and any conditions you are attaching to the offer. The seller may also have added conditions and/or deleted standard clauses in the sale and purchase document.

A guide to property sale and purchase agreements is available from **www.reaa.govt.nz**.



Scan to read the guide
to sale and purchase
agreements

Deposit

Buyers (known as a "tenderer") will be asked to provide a cheque for the deposit. This is usually 5 -10% of the purchase price but can be negotiated. This will be returned if their tender is not successful.

Weighing up the options after the tender deadline

Following the tender deadline the agent will provide all the tender offers to the seller. Offers may be accompanied by conditions and the seller will consider them and decide which, if any, they wish to accept.

Finding out the outcome of a tender

Sellers have five working days to accept a tender however you may find out earlier whether your tender has been successful.

When a tender is accepted

If a tender is accepted then the buyer is now in contract with the seller and the process of working through any conditions towards settlement begins.

When a tender is rejected

If none of the tenders reflect the price the seller is willing to accept or conditions are unacceptable to them, then they can reject all tenders and deposit cheques will be returned.





No legal obligation

Once the tender has been rejected the tenderer is under no legal obligation and free to pursue other purchase options. Make sure you ask for your tender offer and deposit cheque to be returned to you.

Negotiating with unsuccessful tenderers

The seller may seek, through the agent, to negotiate further with any unsuccessful tenderer with the aim of reaching agreement. It is up to the tenderer whether they wish to do this.

Buying and selling at an advertised price or by negotiation

<p>ADVERTISING</p>  <p>Seller's agent advertises property</p>	<p> <input type="checkbox"/> Open homes <input type="checkbox"/> Lawyer <input type="checkbox"/> Title search <input type="checkbox"/> LIM <input type="checkbox"/> Finance <input type="checkbox"/> Builders report <input type="checkbox"/> Valuation </p> <p>Buyer researches property</p>	<p>OFFER</p>  <p>Buyer makes an offer (may be subject to conditions)</p>
<p>ACCEPTANCE</p>  <p>Seller accepts an offer (subject to conditions) and deposit is paid</p>	<p>UNCONDITIONAL</p> <p> <input checked="" type="checkbox"/> Title search <input checked="" type="checkbox"/> LIM <input checked="" type="checkbox"/> Finance <input checked="" type="checkbox"/> Builders report <input checked="" type="checkbox"/> Valuation </p> <p>Any conditions are met and offer becomes unconditional</p>	<p>SETTLEMENT</p>  <p>Property settles with remainder of purchase price being paid and the property changes hands.</p>

Selling at an advertised price means that your property will be marketed with an asking price – the amount the seller wants to be paid for it. This amount is decided by the seller in discussion with the agent, taking into account the seller’s views and the agent’s appraisal of the property’s value. The seller will also agree on a marketing plan with their agent.

If more than one person makes an offer

Each prospective buyer will be asked to make a signed written offer. They should have this checked by their lawyer.

The agent will then present all offers to the seller who will weigh up which offer, if any, they want to accept. The seller may also choose to instruct the agent to negotiate further on conditions or price.

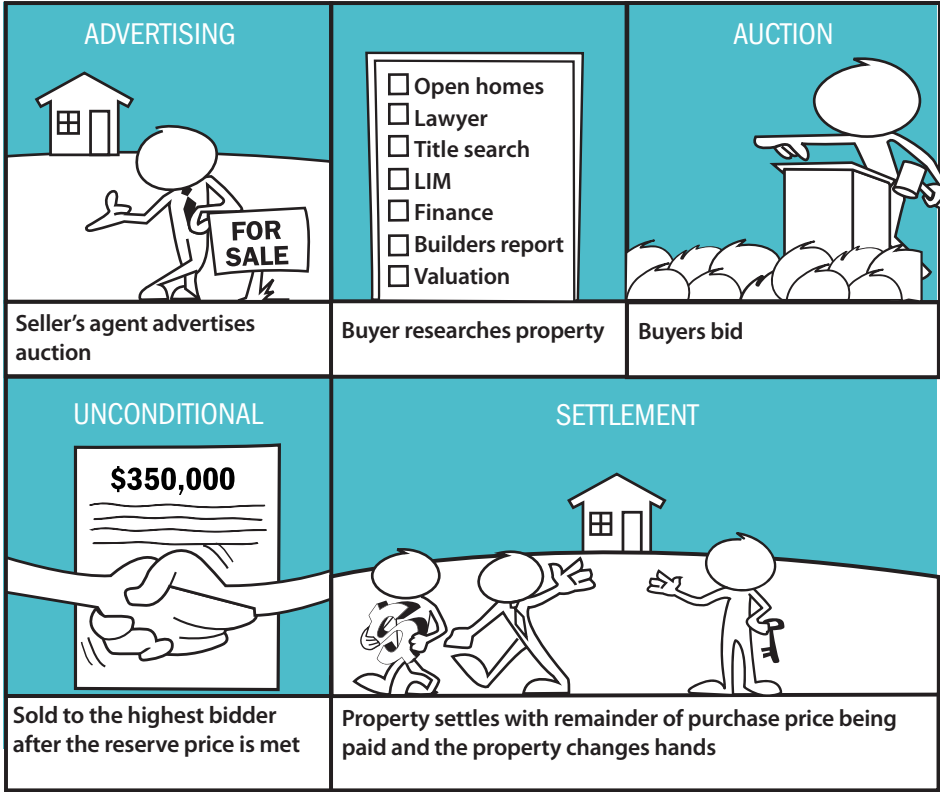
Selling by buyer enquiry over (BEO) or buyer budget over (BBO) or pricing guide

There are several different ways of selling a property by negotiation. One way is marketing it as buyer enquiry over (BEO) or buyer budget over (BBO) a certain amount (such as "BEO \$350,000") or by giving a pricing guide. These give an indication of the lowest price the seller hopes to get for the property. The seller will then negotiate with prospective buyers, through the agent. Prospective buyers can still make an offer below the BEO or BBO or pricing guide price advertised.

Selling by negotiation without a guide price

Selling by negotiation with no price guide is a marketing approach an agent may suggest when it is hard to estimate the price a property is likely to sell for. Prospective buyers make offers based on their perception of the market value of the property and the seller will negotiate with them on price through the agent.

Buying and selling by auction



An auction is an open process where buyers bid against one another to purchase a property. A seller choosing to sell by auction will need to have a sole agency agreement with an agent and agree on a marketing plan.

Reserve price

The seller will need to establish a reserve price, the lowest price they are willing to accept for the property, with the agent in advance of the auction. The reserve price is confidential to the seller.



Scan to read more
about auctions

Further information about auctions is available from **www.reaa.govt.nz**.

Selling in advance of auction

The property can be sold prior to the advertised auction as long as the auction terms and conditions allow it. Also, we recommend that the seller's agent's marketing material makes it clear that offers will be considered before the auction. Potential buyers can register an interest with the agent and ask to be informed if an offer is made so they can make an offer if they want to.

Auction sales and purchases are unconditional

A buyer cannot attach conditions to an auction purchase. Once the bid has been accepted and the auctioneer's hammer has fallen the sale will be unconditional.

What the buyer needs to do before bidding

If you are considering buying by auction you should get a title search, builders report and Land Information Memorandum (LIM) report before the auction. These will be at your expense. You will need to arrange any finance in advance. You should also consult your lawyer for advice.

If you haven't attended an auction before

Auctions are often fast-moving events. A buyer will need to register to take part in the auction and know what to expect on the day. Ask the agent who is marketing the property to explain the auction process to you.

The auction

The auctioneer works for the seller to get the highest bid possible. Bidding usually starts below the reserve price. If bids reach or exceed the reserve then the highest bidder will win the auction and be immediately legally committed to buying the property.

Vendor bidding

Sometimes the terms and conditions of the auction will state that vendor bidding may take place at the auction. Vendor bidding is when the vendor or their representative (usually the auctioneer) bids on the property. This can be used to start the bidding and to raise the bidding to get the bids closer to the reserve price. You must be told if vendor bidding is allowed at the auction. Vendor bids are only allowed where:

- ✓ The property has a reserve price
- ✓ The reserve price has not been reached, and
- ✓ The bid is clearly identified by the auctioneer as a vendor bid

The auctioneer must clearly state that a vendor bid is about to be made and must not use confusing terms like “the bid is with me”.

If bidding does not reach the reserve

If bidding does not reach the reserve price the auctioneer may pause the auction and ask the seller for further instructions.

Auction jargon: “on the market” or “passed in”

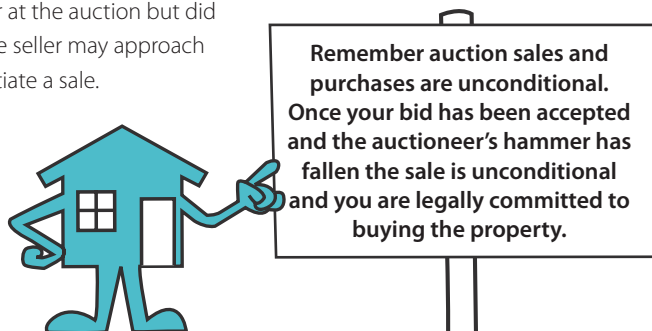
If the bidding has stopped close to the reserve price, and the seller agrees to accept the last bid, the auctioneer may say the property is now “on the market”. This means the reserve price no longer applies.

The last bidder before the auction was paused will be held to their bid and the auctioneer will continue from that point. The auctioneer will accept the highest bid that is made when the auction resumes, even if the reserve price is not reached. That bidder will then be committed to purchasing the property.

Alternatively, the auctioneer may say the property is being “passed in” which means the auction is being concluded without the property being sold as the reserve price has not been reached.

Negotiating after the auction

If you were the highest bidder at the auction but did not purchase the property, the seller may approach you after the auction to negotiate a sale.



Glossary



Advertised price	Selling at an advertised price means that a property is marketed with an asking price – the amount the seller wants to be paid for it. This amount is decided by the seller in discussion with the agent, taking into account the seller's views and the agent's appraisal of the property's value.
Agency agreement	A legally binding contract between the seller and the agent. It sets out the terms and conditions on which an agent is appointed, what the agent will do and what they will be paid. If you want an agent to sell your property then you have to have an agency agreement as this gives them the right to market your property for sale.
Agent or Real Estate Agent	A general term that refers to an agent, branch manager or salesperson (these are different types of real estate licences).
Auction	An auction is a sale method in which buyers publicly bid until the highest price is reached.
BBO (Buyer Budget Over)	An indicative minimum price that the seller will sell the property for.
BEO (Buyer Enquiry Over)	An indicative minimum price that the seller will sell the property for.
Builders report or property inspection	An inspection by a qualified property inspector who can check the property for hidden defects and maintenance issues.
Code of Professional Conduct and Client Care	The Real Estate Agents Authority maintains this Code of Conduct which sets out the minimum standards of professional competence and conduct agents must follow.
Commission	Real estate agents are usually paid a commission by the seller when a property sells. This is their fee for selling the property. Commissions must be detailed in the agency agreement the seller signs with the agent.
Conditional offer	An offer to buy a property subject to stated conditions being met.
Conditional sale	Where a buyer and seller have agreed to buy and sell a property subject to stated conditions being met.
Freehold (or fee simple)	Freehold title gives the owner full ownership of the land.

GV (Government Valuation)	The official estimation of a property's worth on the market at the time it was valued, under the Rating Valuations Act 1998. Now called a "Rateable Value".
LIM (Land Information Memorandum)	This provides prospective buyers with all important current and historical information the local council knows about the property and land.
Leasehold	Leasehold title does not give the owner full ownership of the land. It is only leased and the owner will only own what is on the land.
On the market	At an auction, a property is "on the market" if the highest bid will now be successful and any reserve no longer applies.
Passed in	At an auction, a property is "passed in" if the auction is closed without the property being sold.
Reserve	At an auction, a "reserve" is the lowest price the seller is willing to sell the property for.
RV (Rateable Value)	The official estimation of a property's worth on the market at the time it was valued, under the Rating Valuations Act 1998. Formerly called a "Government Valuation".
Sale and purchase agreement	A legally binding contract between the seller and buyer for the sale and purchase of a property. A sale and purchase agreement provides certainty to both the buyer and seller and it sets out in writing all the agreed terms and conditions.
Settlement	When the sale and purchase of a property is completed with exchange of property and payment.
Tender	A tender is a sale method where prospective buyers submit confidential written offers by a certain deadline.
Title search	A lawyer can check who is the legal owner of the property and to check no one else has any claim over it.
Unconditional agreement	Where a buyer and seller have agreed to buy and sell a property without any conditions. A conditional sale becomes unconditional once all conditions are met.
Unconditional offer	Where the buyer offers to buy a property without any conditions.
Valuation report	An estimate of the property's worth on the current market. A buyer's bank or lender may request this.

Other sources of information:



Your lawyer – if you don't have a lawyer you can find one through the 'find a lawyer' section of the New Zealand Law Society website at
www.lawsociety.org.nz



Community Law Centres
www.communitylaw.org.nz



Citizens Advice Bureau
www.cab.org.nz



Law Society Property Section
www.propertylawyers.org.nz



Consumer Build
www.consumerbuild.org.nz



Home Owner and Buyers Association of New Zealand
www.hobanz.org.nz



Property Institute
www.property.org.nz

DISCLAIMER

This booklet is an introductory guide only. Buying or selling a property is a complex and sometimes fast moving legal process. Every transaction is different and we recommend getting your own independent legal advice.

Real Estate Agents Authority

The logo graphic consists of a stylized 'V' shape formed by two overlapping grids of squares. The left grid is light blue and the right grid is light orange.

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.



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