

SALES INSPECTION REPORT AND EXCLUSIVE AGENCY AGREEMENT AND CONTINUING AGENCY

The Property, Stock & Business Agents Act 2002 and Regulations requires all Agent's instructions to be in the form of a written agreement.

SALES INSPECTION REPORT

PARTIES

Principal

ABN / ACN _____ GST Registered Yes No
 Address _____
 _____ Postcode _____
 Phone: Work _____ Mobile _____
 Phone: Home _____ Fax _____
 Email _____

Agent

Ballard Property Group Pty Ltd
 Licensee's Licence No. *(see note) 131 9334
 ABN / ACN 61 313 503 962 GST Registered Yes No
 Trading as Ballard Property Group Pty Ltd
 Address 46 Queen Street
 Woollahra, NSW _____ Postcode 2025
 Phone: Work 9327 7404 _____ Mobile _____
 Fax 9327 7403 _____ Email info@ballardproperty.com.au
 * Note: If the Agent trades as a corporation the licensee's licence number is the corporation's licence number.

PROPERTY

Address of Property for Sale

Property Address _____
 _____ Postcode Postcode _____

Together with inclusions as specified in the Contract for Sale

Covenants / easements / defects / notices / orders as specified in the Contract for Sale, if known

Offered: with vacant possession subject to existing tenancies

Special Conditions (if any) as specified in the Contract for Sale

Refer to Clauses 4 & 5 regarding special instructions about the inspection of and promotional activities for the Property.

PRICE

Price at which the Property is to be offered (including GST, if any) _____

Recommended method of sale _____

Agent's opinion as to current estimated selling price (or price range) \$ _____
 (this opinion is not to be construed as a valuation)

PRINCIPAL'S SOLICITOR CONVEYANCER

Firm _____
 Name of Solicitor / Conveyancer _____
 Address 1. Business _____
 2. Document Service _____
 Phone: Work _____ Mobile _____
 Fax _____ Email _____

Signature of Agent _____ Date of report / / _____

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EXCLUSIVE AGENCY AGREEMENT

Agency Period

1. In consideration of the Agent promising to use their best endeavours to sell the subject Property, the Principal hereby grants to the Agent exclusive selling rights of the Property for a period from / / to / / inclusive now called the "Exclusive Agency Period".
2. i In addition to the exclusive selling rights granted to the Agent under Clause 1, the Principal also grants to the Agent non-exclusive selling rights of the Property commencing on the expiry of the Exclusive Agency Period specified in Clause 1 and until such time as either the Property is sold or this agreement is terminated by either party giving notice in writing, but without prejudice to either party's rights accrued or obligations incurred prior to the effective termination, now called the "Continuing Agency Period".
 - ii If the Exclusive Agency Period is for a fixed term exceeding 90 days, then the Principal can terminate this agreement without penalty at any time after the end of the first 90 days by giving 30 days notice in writing (this clause does not apply where the Contract for Sale provides for the construction by the Principal of a dwelling on the Property).

Agent's Remuneration

3. i The Exclusive Agent shall be entitled to a fee of (GST incl.) if during the Exclusive Agency Period the Property is sold either:
 - (a) by the Agent; (b) by any other agent; or (c) by the Principal.
- ii The Agent shall be entitled to a fee at the agreed amount if at any time following the expiration of the Exclusive Agency Period the Principal enters into a Contract for the Sale of the Property with a purchaser effectively introduced to the Principal or the Property during the Exclusive Agency Period by the Agent, by any other agent or by the Principal.
- iii The Agent shall be entitled to a fee at the agreed amount if during the Continuing Agency Period the Agent effectively introduces to the Principal or the Property a purchaser who subsequently enters into a binding contract.
- iv The Agent's fee is calculated on the selling price. If the sale is subject to GST then the Agent's fee is calculated on the GST inclusive selling price.
- v The Agent's remuneration in the event of a sale at the Agent's estimate of selling price would equate to \$ (GST incl.)
- vi The fee to which the Agent is entitled shall be due and payable upon demand:
 - (a) on completion of the sale; or
 - (b) if the sale is not completed owing to the default of the Principal after the parties have entered into a binding contract; or
 - (c) if after the making of the contract the Principal and the purchaser mutually agree not to proceed with the contract; or
 - (d) upon the termination of the contract by the Principal if the sale is not completed owing to the default of the Purchaser and the fee is the same or less than the amount of the deposit which is forfeited to the Principal.

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sell the property or introduce a buyer who later buys the property.

WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

Inspection

4. Unless otherwise instructed by the Principal, any prospective purchaser is entitled to inspect the Property in the following circumstances:

Promotional Activities

5. The sale of the Property is to be advertised and/or otherwise promoted
 as per the attached schedule **OR** not advertised

OR as follows:

For Sale Sign: Permission is hereby granted for the Agent to erect "For Sale" signage Yes No

It is acknowledged that the Agent is not responsible for any liability, damages or injuries incurred as a result of the erection of the signage.

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Expenses

6. The Agent shall be entitled to reimbursement for the following expenses incurred by them:

Item	Amount	When due and payable
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
TOTAL amount of expenses or charges the Agent expects to incur and for which the Agent is entitled under this agreement to be reimbursed (incl GST where applicable).	\$	

Variation of Fees and Expenses

7. The services to be provided by the Agent and any fees or expenses payable by the Principal to the Agent pursuant to this agreement cannot be varied except as agreed by the Principal in writing.

Deposit

8. It is irrevocably agreed that all monies paid by the purchaser as deposit monies shall be held by the Agent in trust as stakeholder pending completion.

Authority to Deduct

9. If any money is received by the Agent on behalf of the Principal, then the Principal authorises the Agent to deduct all of the Agent's above mentioned fees, expenses and charges before accounting to the Principal or the Principal's solicitor / conveyancer.

Payment to Principal

10. If money held by the Agent becomes due to the Principal, then the Principal directs the Agent to pay that money by:

Cheque Yes No Electronic Funds Transfer (EFT) Yes No

If by EFT:

/

Financial Institution Taxes or Deductions

11. The Agent shall be entitled to be reimbursed for any taxes or deductions debited by banks or other financial institutions against the Agent's account that are attributable to the affairs of the Principal.

Contract For Sale

12. Where the Property is residential property (as defined in Division 8 of Part 4 of the Conveyancing Act 1919), the Agent cannot act on behalf of the Principal in respect of the sale of the Property unless the Agent has a copy of the proposed Contract for Sale in respect of the Property available for inspection.

13. The Agent is not authorised to enter into or sign a Contract for Sale on behalf of the Principal.

Conjunction

14. Unless otherwise instructed, the Agent may allow other agents to act in conjunction with them in order to effect a sale but only one fee will be payable.

Limit of Agent's Services

15. The Agent does not undertake to perform any other services in connection with the sale.

GST

16. i Any amounts referred to in this agreement which are payable by the Principal to the Agent in respect of services provided by the Agent under this agreement, including reimbursement of expenses, are expressed inclusive of the Goods and Services Tax ("GST"), at the rate of 10% (the current rate). If the current rate is increased or decreased, the parties agree that any amounts referred to in this agreement will be varied accordingly.

ii The parties agree that the time of supply for GST purposes shall be the completion date of the sale.

Agent's Indemnity and Liability

17. The Principal will hold and keep indemnified the Agent against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Agent in the course of or arising out of the proper performance or exercise of any of the powers, duties or authorities of the Agent under this agreement.

Financial and Investment Advice

18. The Principal acknowledges that any financial or investment advice provided by the Agent to the Principal is of a general nature only whose preparation does not take into account the individual circumstances, objectives, financial situation or needs of the Principal. The Principal is advised to consult with their own independent financial and/or investment advisor.

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Material Fact

19. i The Principal warrants that the Principal has supplied the Agent in writing with all the relevant details and information pertaining to all the material facts in respect of the Property.
- ii The Principal acknowledges that the Property, Stock and Business Agents Act 2002 requires the Agent to disclose all material facts to prospective and actual purchasers.
- iii The Principal directs the Agent to disclose all of the material facts provided in writing by the Principal to the Agent to all prospective and actual purchasers of the Property.
- iv In this clause "material fact" has the same meaning as it has in Section 52 of the Property, Stock and Business Agents Act 2002.

Privacy Policy

20. The *Privacy Act* 1988 (Cth) (the **Act**) allows personal information to be collected, used and disclosed for the purposes which it was collected, and otherwise in accordance with the Act. This Privacy Policy does not form part of this agreement and only applies to the extent the Agent collects, uses and discloses personal information. The Agent may amend, or amend and restate, this Privacy Policy from time to time and may subsequently notify the Principal of any changes to this Privacy Policy by updating it on the Agent's website or by other written notification to the Principal. Any changes to this Privacy Policy take effect upon the earlier of the update to the website or other notification to the Principal.

The personal information the Principal provides the Agent in connection with this agreement or collected from other sources is necessary for the Agent to: (a) identify and verify the Principal and the Property; (b) act on behalf of the Principal in accordance with this agreement; (c) where applicable, advertise, promote and, otherwise, market the Property for sale; (d) negotiate any prospective sale of the Property; (e) liaise and exchange information with the Principal, the ultimate purchaser, prospective purchasers and each of their legal and other advisors in relation to or in connection with any sale of the Property (including with respect to the Contract for Sale of Land); (f) comply with this agreement, any applicable law and any dispute resolution process; and (g) manage any sale of the Property (including assisting with the exchange of the Contract for Sale of Land and the preparation of any required statements of account).

If the personal information is not provided by the Principal, the Agent may not be able to act on behalf of the Principal effectively or at all.

Personal information collected about the Principal may be disclosed by the Agent for the purpose for which it was collected to other parties including actual or prospective purchasers, the legal and other advisors of the Agent, Principal, purchaser and/or prospective purchasers, and any Agent (if applicable), clients of the Agent both existing and potential, advertising and media organisations, property data service providers, valuers, parties engaged to evaluate the Property, owners' corporations, government and statutory bodies, financial institutions, as required by law and as otherwise instructed by the Principal.

The Agent may also use the Principal's information including personal information for marketing and research purposes to inform the Principal of products and services provided by the Agent, which the Agent considers may be of value or interest to the Principal, unless the Principal tells the Agent (see opt out option below) or has previously told the Agent not to. If the Principal **does not** wish to receive any information about such products and services then please tick this box: or otherwise notify the Agent using the Agent's contact details set out earlier in this agreement.

The Principal has the right to request access to any personal information held by the Agent which relates to it, unless the Agent is permitted by law (including the Act) to withhold that information. Any requests for access to the Principal's personal information should be made in writing to the Agent at the contact details included in this agreement. The Agent may charge a reasonable fee where access to personal information is provided (no fee may be charged for making an application to access personal information). The Principal has the right to request the correction of any personal information which relates to the Principal that is inaccurate, incomplete or out-of-date.

The Agent will take reasonable precautions to protect the personal information it holds in relation to the Principal from misuse, loss, and unauthorised access, modification or disclosure.

By signing this agreement, the Principal acknowledges that it has read, understands and accepts the terms of this Privacy Policy and the permissions to collect, use and disclose personal information, and the Principal authorises the Agent to collect, use and disclose, in accordance with the Act, their personal information for the purposes specified in this Privacy Policy.

Disclosure of Rebates, Discounts or Commissions in Respect of Expenses

21. In respect of any expenses to be incurred by the Principal or the Agent on behalf of the Principal pursuant to this agreement, the Agent discloses that the Agent may receive the following rebates, discounts or commissions from third parties.

Name of Third Party

Estimated Amount of Rebate, Discount or Commission

\$	
\$	

If no benefit, write in "nil".

Principal's Authority

22. The Principal warrants that the Principal has authority to enter into this agreement.

Acknowledgements

23. The Principal acknowledges being served with a copy of this agreement.

24. The Principal acknowledges that by signing this agreement the Principal is denied the right to sell the Property without paying a fee.

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Occupational Health and Safety

25. The Principal acknowledges that

- i at all material times the Principal has sole control of the Property listed for sale.
- ii the Agent acts under the direction of the Principal to facilitate the transfer of the Property between Principal and purchaser.

26. The Principal acknowledges that the Principal has thoroughly inspected the Property prior to sale and that the Property is

- i free from harm Yes No

OR

- ii subject to the defects and risks outlined in the Contract for Sale Yes No

Consumers Guide

27. The Principal acknowledges that they have been given a copy of the consumers guide "Agency Agreements for the Sale of Residential Property" prior to signing this agreement Yes No Date / /

Cooling-Off Period:

You (the Principal) have a Cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5pm on the next business day or Saturday.

Have you waived the Cooling-off period in writing? Yes No

Signature of Principal

Date

 / /

 / /

Signature of Agent

Date

 / /

Agency agreements

for the sale of residential property

Selling a home is something many people do only once or twice in a lifetime, so it pays to do some homework before signing up with an agent to sell your property for you.

When you sign up with an agent, you enter into a legally binding contract. This fact sheet explains what your rights and responsibilities are under that contract.

You have a cooling-off period of 1 day starting from when you sign the agreement. You can cancel the agreement in this time if you are not happy with it (more information over the page).

Choosing a real estate agent

To sell a home in New South Wales, an agent must have a real estate agent's licence issued by NSW Fair Trading. You should check the licence details of all agents you are thinking of using before signing up with your preferred choice. You can do a licence check online through the Fair Trading website or by calling 13 32 20.

To find the right agent for your needs, you should shop around. If possible, get the names of one or two agents from other home owners in your area who have recently sold. We suggest you talk to at least three agents and:

- make sure they have a valid licence
- get a list of all their fees
- find out if they have a good knowledge of your area
- ask if they adhere to a code of ethics.

Signing up with an agent

Before the agent can market your property, they must sign a contract with you, called an 'agency agreement'. An agency agreement is a legally binding contract and it is important that you read and understand it.

If you are not sure about the agreement terms you should get legal advice.

Signing an agency agreement means that you authorise an agent to do certain things for you in relation to the

sale of your property, such as arranging advertising and inspections and receiving deposits from buyers. The agreement must specify what the agent is authorised to do for you and must state all commissions and any other costs you may be liable to pay.

What is in the agency agreement

The agency agreement must state:

- the services the agent will provide for you
- the amounts of any fees or commission you agree to pay for those services
- the circumstances in which the agent is entitled to payment – for example, commission is usually payable only when the property is sold
- how and when payment is to be made – for example, whether the agent can deduct their commission from the deposit money paid by the buyer
- warnings about circumstances in which you might have to pay commission to more than one agent (see information on page 2 about the different types of agency agreement)
- the extent of the agent's authority to act for you – for example, whether the agent is permitted to exchange a sale contract on your behalf or make changes to the sale contract
- the agent's estimated selling price or price range for the property.

You have the right to negotiate with the agent about the terms and conditions of the agreement and to ask for any legally permitted changes to be made. Alterations made to the agreement need to be signed by all parties.

Commission, fees and expenses

The amounts charged by agents are not set by law. You can negotiate with the agent about the amounts of any commissions, fees or other expenses that you may be required to pay. Before signing an agreement, it is a good idea to talk to a few agents and compare their prices. Ask

each agent for a printed list of their fees and commission rates and the expenses they charge.

Disclosure of rebates and discounts

The agency agreement may require you to pay the agent for certain expenses in relation to the sale of your home, such as advertising, auctioneer's fee, or any other services the agent may arrange for you, such as cleaning, decorating or landscaping.

Sometimes the amount the agent has to pay for the service is less than what you are being asked to pay. This can occur if the agent receives a commission or discount from the provider of the service for being a regular customer – for example, some newspapers pay a commission to the agency at the end of the year based on how much advertising was placed.

The agency agreement must state the amounts or estimated amounts of any such commissions or discounts and from whom they are received. You can negotiate with the agent about whether you should pay the full amount.

Ending the agreement

The agency agreement usually has a specified period (a 'fixed term') during which the agreement cannot be ended unless you and the agent both agree. If the agreement is open ended (that is, it does not have a fixed term) it must state how the agreement can be ended.

The length of any fixed term is negotiated between you and the agent, there is no minimum or maximum set term. The fixed term will depend on how long you and the agent think it will take to sell the property.

If the fixed term is longer than 90 days, you can give the agent 30 days written notice to end the agreement after 90 days. Of course, if the fixed term has less than 30 days left to run, you can just give notice to end the agreement at the end of the fixed term – check your agreement to see how much notice you need to give. If you are not sure how to end the agreement, you should seek legal advice.

If you are not happy with an agent's services, it is important to properly end your agreement with them before signing up with another agent. Otherwise both agents may charge you commission when the property is sold.

Types of agency agreements

There are several different kinds of agency agreements for the sale of residential property. It is important to be aware of the kind of agreement you sign, because it affects your rights and the amount of commission you may have to pay. You should discuss the agreement with a legal adviser if you are not sure about your rights. The following is an overview of the different types of agreements.

Exclusive agency agreements

Exclusive agency agreements are commonly used for the sale of residential property. In this kind of agreement, you give exclusive rights to one agent to sell your property. This may entitle the agent to be paid commission if the property is sold during the fixed term of the agreement, even if the property is sold by you or by another agent. The agent may also be entitled to commission if the property later sells to a person who started negotiating for the property with the original agent.

Sole agency agreements

This is similar to an exclusive agency agreement. You give rights to one agent to sell the property but you may find a buyer yourself. If you find a buyer who has not been introduced by the agent, then no commission is payable to the agent.

General listing / Open agency agreement

This lets you list your property with a number of agents. You pay a commission to the agent who finds the buyer.

Multiple listing

This occurs when you deal with an agent who is part of a network of agents working together to sell your home. It covers both auction and private treaty. You pay a commission to the agent you signed up with.

Auction agency agreement

This is effectively an exclusive agency agreement where the property is listed for auction.

Cooling-off period

The agency agreement becomes binding when the principal (that is, you as the owner/s of the property, or someone who is legally acting for you) and the agent have signed it. There is then a cooling-off period of 1 business day during which you can cancel (or 'rescind') the agreement. Saturday is included for the purposes of the cooling-off period, but public holidays are not.

The cooling-off period starts when you sign the agreement and ends at 5pm on the next business day or Saturday. For example, if you sign the agreement on a Friday, the cooling-off period ends at 5pm on Saturday. If you sign up on Saturday, the cooling-off period would usually end at 5pm on Monday, unless that is a public holiday, in which case it will end at 5pm on Tuesday.

The cooling-off period gives you time to read the agreement, consider the terms you have agreed to, including the agent's fees, and get independent advice if you have concerns about any aspect of the agreement. Talk to the agent – they may be willing to change things in the agreement that you are not happy about.

Cancelling the agreement during the cooling-off period

If you decide to cancel (or 'rescind') the agreement during the cooling-off period, you need to deliver a 'notice of rescission' to the agent.

This simply means giving the agent a written notice or letter which:

- is addressed to the agent (use their name as given in the agency agreement),
- states that you are rescinding the agreement, and
- is signed by you (and any other person named on the agreement as a principal) or by your solicitor/s.

You can hand the notice to the agent in person, deliver it to or leave it at the agent's office or the agent's address

as given in the agency agreement, or fax it to the agent. Make sure to keep a copy for your records.

The agent cannot charge you any fees or costs in relation to an agreement that has been rescinded correctly. Any money you have already paid to the agent must be refunded to you.

Waiving your cooling-off rights

If you are sure that you wish to go ahead with the agency agreement, you can waive, or forego, your right to a cooling-off period by signing a separate waiver form when you sign the agreement.

The cooling-off period can be waived only if the agent gave you the following documents at least 1 business day before you signed the agency agreement:

- a copy of the proposed (unsigned) agency agreement, and
- a copy of this fact sheet.

For example, on Thursday morning the agent gives you a copy of the unsigned agreement and this fact sheet, which you read and consider carefully. On Friday afternoon you sign the agency agreement and the waiver form. The agency agreement immediately becomes binding and the agent can get to work on selling your home.

The Contract of Sale

A residential property cannot be advertised for sale until a Contract of Sale has been prepared. The contract must contain a copy of the title documents, drainage diagram and the Zoning Certificate (s 149) issued by the local council. Property exclusions must also be included and a statement of the buyer's cooling-off rights must be attached. The draft contract must be available for inspection at the agent's office. It is important that you consult your solicitor or conveyancer about preparing the contract to make sure that everything is in order.

Exchange of contracts

The contract exchange is a critical point in the sale process:

- The buyer or seller is not legally bound until signed copies of the contract are exchanged.
- Buyers of residential property usually have a cooling-off period of 5 working days following the exchange of contracts during which they can withdraw from the sale.
- If the agent arranges exchange of contracts, the agent must give copies of the signed contract to each party or their solicitor or conveyancer within 2 business days.
- The cooling-off period can be waived, reduced or extended by negotiation.
- There is no cooling-off period for sellers. Once contracts have been exchanged, sellers are generally bound to complete the agreement.
- There is no cooling-off period when purchasing at auction.

If you encounter problems

If an issue arises during the sale process that you are unhappy with, check your copy of the selling agency agreement to clarify your rights and obligations.

Try to sort out the problem by talking to the agent.

Make certain that any instructions you give the agent are in writing, and keep a copy. If you think the agent has charged a fee to which they are not entitled, or believe the fee charged is excessive, you can apply to the NSW Civil and Administrative Tribunal (NCAT) to settle the matter.

Other tips

If you need further assistance to resolve a problem, consider the following:

- If your agent is a member of a professional association, contact that association. They can be helpful in resolving disputes.

- You can also seek legal advice from a solicitor or the Chamber Magistrate at your nearest Local Court.
- If your complaint concerns your solicitor, you can lodge a complaint with the Office of the Legal Services Commissioner.
- If your complaint concerns your conveyancer, you can lodge a complaint with NSW Fair Trading.

More information

NSW Fair Trading can give you more information about the laws applying to property sales and agents. Contact Fair Trading on 13 32 20 or visit the Fair Trading website.