



# STATEMENT OF PROPERTY DETAILS AND BUYERS

## AGENCY AGREEMENT

### USER GUIDE

1. This form has been designed to comply with the Property, Stock & Business Agents Act 2002 and Regulations 2003 which commenced 1 September 2003.
2. The Agent must fully understand the terms of the agency agreement. Failure to comply with the law and follow correct procedure may prevent the Agent from recovering their commission, fees and expenses and/or subject the Agent to penalties for breach of the Act and Regulations. The Agent should be able to explain the agency agreement to the Principal.
3. All parts of the form must be completed. An omission may bring about a defective agency agreement, enabling a Principal to avoid their financial responsibilities to the Agent.
4. A licensee may delegate their authority to a suitably qualified employee to both inspect the property and sign the statement of property details and the agency agreement.
5. At the time of entering into the agency agreement with the Principal, the Agent must prepare and give to the Principal a "statement of property details" and special instructions. These details can be varied by agreement.
6. The agency agreement must be signed by both the Agent and Principal, and the copy marked "Principal's Copy" should be served on the Principal within 48 hours. Failure to do so may result in loss of commission.
7. The licence number of the agent must appear on the agency agreement. If the Agent trades as a corporation the licence number is the corporation's licence number, if as a sole trader the Agent's licence number, if as a partnership it is one of the partner's licence numbers.
8. The agency agreement must specify the maximum price or price range that the Principal is prepared to pay for a property.
9. The Agent's remuneration for payment of commission, if calculated as a percentage of the purchase price, must state the amount of the remuneration calculated on the estimated purchase price.
10. GST
  - i GST is payable by the Agent to the ATO in respect of the performance of the Agent's services under this agency agreement. The agency agreement provides that the Agent is entitled to recover GST from the Principal.
  - ii In accordance with ACCC guidelines, all amounts referred to in this form, including fees, expenses and outgoings are expressed as inclusive of GST.
  - iii Where the Agent incurs an expense in the course of providing services such as advertising, these expenses are considered a taxable supply, even if the expense is GST free in the Agent's hand. When recovering disbursements Agents should subtract the input tax credit received on the original expenses and then add on GST when charging the Principal. Example: advertising of \$990.00, Agent can claim an input tax credit of \$90.00 The Agent charges the Principal \$900.00 plus \$90.00 GST being a total of \$990.00. The Agent remits the \$90.00 to the ATO.
  - iv Where expenses are paid by the Agent, as agent for the Principal, and the account is addressed directly to the Principal, the Agent should pass the account to the Principal without adding any further GST (e.g. owners corporation levy, accounts for repairs and maintenance).
  - v The Agent's Fee is calculated on the GST inclusive purchase price .
11. Ensure that all costs and expenses are included in the agency agreement.
12. The fees and expenses cannot be varied except as agreed by the Principal in writing.
13. Special conditions where space is insufficient (e.g. where the Agent is to perform additional services or where they are to advertise): write "See Annexure Hereto" and then attach to each copy of the agency agreement. The annexure must also be signed by both parties.
14. An Agent must not provide financial advice. Any person seeking the Agent's opinion should be advised to consult with their own independent financial and/or investment advisor.
15. A buyer's agent should ask the Principal what material facts are pertinent to the Principal in respect of the property the agent is retained to assist the Principal to acquire. The material fact clause will assist in that process, but may not of itself discharge the agent's obligations. The agent should also undertake reasonable research to identify the material facts pertaining to the property and disclose same to the Principal.
16. An Agent must disclose, on the agency agreement, any rebates, discounts or commissions that the Agent may receive in respect of expenses claimed by the Agent in relation to the real estate transaction. If this disclosure is not made, the Agent will not be entitled to those expenses.
17. Section 48 of the Property, Stock & Business Agents Act 2002 prohibits an Agent from acting as both a buyer and seller of a property at the same time.
18. It should be noted that there are other disclosure requirements under the Act and Regulations which are required to be given separately from the agency agreement under certain circumstances.
19. Ensure that a person signing on behalf of a Principal corporation identifies their status on the agency agreement, e.g. Director, Secretary.

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STATEMENT OF PROPERTY DETAILS

**PARTIES****Principal**

ABN / ACN

GST Registered  Y

Licensee's Licence No.\* (see note)

ABN / ACN

GST Registered  Yes  No

Trading as

Address

Postcode

Phone: Work

Mobile

Fax

Email

\* **Note:** If the Agent trades as a corporation the licensee's licence number is the corporation's licence number.

**Property**

Type of Property to be purchased

Location

General description of the Property to be purchased

  

**TERMS AND CONDITIONS OF PURCHASE**

Approximate price range in which the Principal wishes to acquire the Property

 \$ to  \$

Special instructions about the Property to be purchased

  

Vacant Possession:  Yes  No  Either

(These details can be changed by agreement between the Principal and the Agent)

**PRINCIPAL'S**  **SOLICITOR**  **CONVEYANCER**

Firm

Name of Solicitor/Conveyancer

Address 1. Business

2. Document Service

Phone: Work

Mobile

Fax

Email

**Signature of Agent**

**Date**
 /  /

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## Agency Period

1. In consideration of the Agent promising to use their best endeavours, the Principal hereby grants to the Agent the right to act on behalf of the Principal in accordance with this agreement commencing on  /  /  until such time as the Agent complies with clause 2 (below) or the expiration of  from the date hereof, whichever first occurs.

This agreement may be terminated by either party giving seven (7) days notice in writing but without prejudice to either parties' rights accrued or obligations incurred prior to the effective termination.

## Agent's Authority

2. i The Agent is authorised to identify and recommend potential properties to the Principal pursuant to the terms and conditions set out in the statement of property details above (or as amended)  Yes  No
- ii The Agent is authorised to negotiate on behalf of the Principal for the purchase of the Property pursuant to the terms and conditions set out in the statement of property details above (or as amended)  Yes  No
- iii The Agent is authorised to bid on behalf of the Principal at the auction of a prospective Property approved by the Principal in writing. This clause may be varied in writing.  Yes  No

## Agent's Remuneration

3. i A non-refundable retainer fee of \$  (GST incl.) applies. If the Agent receives a payment under Clause 3 ii, then the non-refundable retainer fee shall be deducted from the calculation of the buying fee as stated in 3 ii  Yes  No
- ii The Principal acknowledges that the Agent shall be entitled to a buying fee:
- calculated as a percentage of the total purchase price including GST, if any of  (GST incl.)
- (% amount) + (GST) = (GST incl.)
- OR**
- as a flat fee, including GST, if any of \$  (GST incl.)
- (\$ amount) + (GST) = (GST incl.)
- OR**
- as per attached schedule

The Agent's agreed buying fee in the event of a purchase at the Agent's estimate of the purchase price range for the Property would equate to

\$  to \$  (GST incl.)

and the Principal hereby agrees to pay the fee in accordance with this agreement in the event that the Agent introduces to the Principal a vendor of a property or the Property and the Principal:

- a enters into a contract for the purchase of the Property;
- b procures another person or entity to enter into a contract for the purchase of the Property (whether by novation or otherwise);
- c where the Property is owned by a company, enters into a contract for the purchase of any shares of that company;
- d where the Property is owned by a company, procures a further person to enter into a contract for the purchase of any of the shares of that company (whether by novation or otherwise);
- e by any other means whatsoever becomes the legal and beneficial owner or both of the Property; or
- f where the Property is owned by a company, by any means whatsoever becomes the legal and beneficial owner or both of any of the shares of that company.
- iii A termination fee of \$  (GST incl.) is due and payable by the Principal if the Principal terminates the agreement.
- iv The Agreed Fee in 3 ii is due and payable by the Principal on exchange of any of the contracts referred to in (a) to (f) above or on completion of the transfer of the legal or beneficial ownership or both referred to in (e) and (f) above or upon demand if any of the contracts referred to in (a) to (d) above or the transfer of the legal or beneficial ownership or both referred to in (e) and (f) above are not completed owing to the default of the Principal.
- v The parties also expressly agree that the Agent shall also be entitled to payment of the agreed buyers fee in 3 ii if the vendor of a Property or a Property is introduced to the Principal by the Agent at any time prior to the termination of this Agreement, and the Principal satisfies any of the requirements set out in 3 ii (a) to (f) within  month(s) after such termination.

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## Expenses

4. The Agent shall be entitled to the following expenses incurred. The Principal agrees to advance the funds for the following expenses upon request or reimburse the costs to the Agent upon receipt of an invoice.

Item	Amount	When due and payable
	\$	
	\$	
	\$	
	\$	
	\$	

## Variation of Fees and Expenses

5. 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.

## Financial Institution Taxes or Deductions

6. 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 and attributable to the affairs of the Principal.

## Contract For Sale

7. The Agent is not authorised to enter into or sign a contract for sale on behalf of the Principal.

## Conjunction

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

## Limit of Agent's Services

9. The Agent shall not perform any other services in connection with the purchase other than as specified in this agreement (or as amended).

## GST

10. 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.

## Agent's Indemnity and Liability

11. 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

12. 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.

## Material Fact

13. i The Principal warrants that the Principal has supplied the Agent in writing with all material facts in respect of the Principal's proposed property acquisition.  
 ii 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

14. The Agent uses personal information collected from or about the Principal to act as the Principal's Agent and to perform their obligations under this agreement.

The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients. The Agent may disclose information to other parties including advisors, media organisations, property data service providers, on the internet, to potential vendors, or to clients of the Agent both existing and potential, as well as to parties engaged to evaluate the Property, owners' corporations, valuers, government and statutory bodies and financial institutions.

The Agent will only disclose information to other parties as required to perform their duties under this agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.

If the Principal would like to access this information, they can do so by contacting the Agent at the address and contact numbers contained in this agreement.

The Principal can also correct this information if it is inaccurate, incomplete or out-of-date.

Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act on the Principal's behalf effectively or at all.

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## Disclosure of Rebates, Discounts or Commissions in Respect of Expenses

15. 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

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

## Acknowledgement

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

**Signature of Principal**

**Date**





**Signature of Agent**

**Date**