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Part 5—Termination of appointment

Residential sales of 1 or 2 properties only	Open listing: You may terminate in writing at any time. Sole or exclusive: The client and agent can agree in writing to end the appointment early. For appointments of 60 days or more, either party can end the appointment by giving 30 days written notice, but the appointment must run for at least 60 days unless both parties agree to an earlier end date.
Open listing	You may terminate an open listing for either commercial or residential property sales at any time.
Other fixed term appointments (excluding residential property sales)	The parties may agree to a fixed term appointment of their choice. This term may be ended earlier by mutual agreement.
Continuing appointments (for example: letting, collection of rents etc)	You may terminate in writing with 30 days notice, or less if both parties agree.

Part 6—PROPERTY SALES: open listing, sole agency or exclusive agency

To the client

You may appoint an agent to sell a property or land on the basis of an open listing, or a sole agency, or exclusive agency.

The following information explains the circumstances under which you will, and won't, have to pay a commission to the agent if the property is sold during their term of appointment.

☐ OPEN LISTING

- You appoint the agent to sell the property but you retain a right to appoint other agents on similar terms, without penalty or extra commission.
- No end date required.
- Appointment can be ended by either you or the agent at any time by giving written notice.

When you must pay the agent

- The agent is entitled to the agreed commission if the agent is the effective cause of sale.

When you don't have to pay the agent

- If the client sells the property privately and the agent is not the effective cause of sale i.e.: purchaser did not contact the agent, did not attend open house inspections etc.

☐ SOLE AGENCY

When you must pay the agent

- If you appoint a new agent during an existing agent's sole agreement term and the property is sold during that term, you may have to pay:
 - A commission to each agent (two commissions)
 - Damages for breach of contract arising under the existing agent's appointment

When you don't have to pay the agent

- If the client sells the property privately and the agent is not the effective cause of sale i.e.: purchaser did not contact the agent, did not attend open house inspections etc.

☐ EXCLUSIVE AGENCY

When you must pay the agent

- The client will pay the appointed agent whether this agent, any other agent, or person (including the client themselves) sells the property during the term of the appointment.
- If the client sells the property, after the exclusive appointment expires and if the agent was the effective cause of sale (introduced the buyer to the property) the agent may be entitled to commission.

At the end of the sole or exclusive agency, the parties ☐ Agree ☐ Do not agree
that the appointment will continue as an open listing. (Please tick whichever is relevant)

Part 6—PROPERTY SALES: open listing, sole agency or exclusive agency continued

Acknowledgement for sole and exclusive agency

I/we acknowledge the appointed agent has provided me/us with information about sole and exclusive agency appointments.

Client

Date / /
D D M M Y Y Y Y

Agent

Date / /
D D M M Y Y Y Y

Part 7—Commission

To the client

The commission is negotiable. It must be written as a percentage or dollar amount.

Make sure you understand when commission is payable. If you choose 'Other' and the contract does not settle, the agent may still seek commission.

To the agent

You should ensure that commission is clearly expressed and the client fully understands the likely amount and when it is payable. Refer to section 104 and 105 of the *Property Occupations Act 2014*.

The client and the agent agree that the commission including GST payable for the service to be performed by the agent is:

13.2% including GST

.....
.....

When commission is payable

☐ For sales, including auctions, commission is payable if a contract is entered into and settlement of the contract occurs.

☒ Other upon receipt of money
(for specific other circumstances in which commission is payable see annexure).

For all other types of appointments:

.....
.....

This area has been intentionally left blank.

Part 8—Authorisation to incur fees, charges and expenses

The client authorises the agent to incur the following expenses in relation to the performance of the service/s. Annexures may be attached if required.

Section 1 Advertising/marketing

To the client

Your agent may either complete this section or attach annexures of marketing/advertising activities. In either case, the *authorised amount* must be written here.

see attached conditions

Authorised amount \$

When payable / /
D D / M M / Y Y Y Y

Section 2 Repairs and maintenance (if applicable) Property management

The maximum value of repairs and maintenance to be paid by the agent without prior approval by the client is \$ **500.00**

Section 3 Other

Description of fees and charges.

The agent may either complete this section or attach annexures.

Description

Amount

When payable

Section 4 Agent's rebate, discount, commission or benefit incurred in the provision of or performance of the service

Service

Source

Estimated amount

This form has been intentionally left blank

The Agent may accept bookings up to 12 months in advance of the proposed date of occupation. No increase in rentals will apply to customers holding confirmed bookings.

The Agent will not be responsible for the replacement of lost, stolen or damaged or worn furniture, equipment or accessory items, those things being the responsibility of the Client.

6. CLIENT'S RESPONSIBILITIES & ACKNOWLEDGEMENTS:

If the amount payable to the Agent is in excess of the rents collected by the Agent, the Client will pay such excess to the Agent within 14 days of such demand for it by the Agent.

The Client shall accept the risk and loss of non payment of rent and charges by customers, except in the event of proven negligence by the Agent. The Client may at the Client's cost instruct the Agent to take legal proceedings to recover unpaid rent, charges and property damage.

The Client acknowledges that the actual amount of any fees or charges in the Schedule or elsewhere may comprise, in addition to any actual outlay incurred by the Agent for the item or service, a component of profit to the Agent for arranging for the item or the service.

The Client acknowledges that the Agent may provide services to tenants or guests. The Client acknowledges that where tenants or guests make payment to the Agent's trust account of funds which include rent or room hire and payment for such services provided by the Agent, the Agent will profit from the provision of those services and is entitled to draw from the Agent's trust account any amounts so paid to the Agent for such services.

The Client acknowledges that the Agent may provide a key to the Property to a prospective customer for the purpose of inspection of the Property by the prospective customer.

The Client will cause the Property to be fully furnished for the purpose of holiday lettings to be arranged by the Agent to a standard commensurate with high quality apartment lettings and other units in the complex, in order to maintain the rating based on the published requirements and the periodic inspection system operated by AAA Tourism or similar tourism body.

7. CANCELLATION POLICY:

If the booking is cancelled and sufficient notice is given by the customer in accordance with the Agent's Cancellation Policy, an administration fee may be charged by the Agent but all other funds will be returned to the customer.

If insufficient notice is provided by the customer in accordance with the Cancellation Policy, the balance after the administration fee has been charged will be forwarded to the Client if the Property is not re-let for the same period.

8. USE OF PROPERTY BY CLIENT:

If the Client or the Client's relatives or friends use the Property, the Client will pay to the Agent for any services provided as listed in the Schedule of fees and charges (owner booking fees and cleaning fees), during any such period of occupation and for any services provided by the Agent as are necessary to prepare the Property for subsequent rental occupancy.

When the Client, Client's family or invited guests are staying in the Property in accordance with the arrangements as set out in Section 5 of this Appointment, they must register at reception before entering the Property.

Six months notice in writing is required for such bookings and twelve months is required for bookings during the heavily congested school holiday periods. Lesser notice is accepted if the property is available.

9. PROMOTIONS

The Client agrees to make the Property available free of charge for promotional purposes for 7 nights per year. Promotions will include working with tourism bodies, travel agents and travel journalists to encourage familiarisation visits. When used in this manner, the Agent agrees to meet all cleaning, linen and other charges.

10. ASSIGNMENT

The Agent may assign its interest in this Appointment to any person or entity which is, with the approval of the body corporate for the complex in which the Property is situated, the Letting Agent for the complex.

11. CHARGES

Charges (other than commission) referred to in this Appointment or any schedule, may be reasonably increased by the Agent by giving written notice of such increase to the Client and such increases will apply from that date which is 30 days after the notice is given unless the Client by notice in writing to the Agent within that period disputes such proposed increase.

12. COMMISSION

The commission agreed between the Client and the Restricted Letting Agent for the Service is 12% of the rent collected plus GST for holiday letting not more than 3 months and 9% of the rent collected plus GST for holiday letting more than 3 months.

[NOTE: A Management Fee, unrelated to commission, also applies]

13. OTHER CONDITIONS

The Client undertakes that in the event of the Property being sold or otherwise transferred, notice will be given of all advance bookings to the buyer or transferee and an undertaking shall be obtained from that buyer or transferee to accept the purchase or transfer subject to the conditions of such advance bookings and such undertaking shall be part of the contract for the purchase or transfer of the Property and the Client indemnifies the Agent against any claim due to non-compliance with this part and against any loss the Agent may suffer due to any such non-compliance.

Agent

Client (Owner)

Form 6

Privacy Statement and Consent Privacy Statement and Consent

Personal information collected by the Agent is treated as confidential and complies with the requirements of the Privacy Act 1988.

When you provide the Agent with your contact details or other personal information:

- the Agent will record your e-mail address and other contact details
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- it will not be added to an external mailing list
- the Agent may provide your personal information to any person or entity which is a the holder or transferee of a Letting Appointment for the lot you own.
- the Agent will not use your contact details for any other purpose
- the Agent will not disclose it without your consent except where it may be required by law to disclose certain information.

You can contact the Agent at the address set out in item 2 of the Form 6 to which this addendum is attached.



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Part 6—PROPERTY SALES: open listing, sole agency or exclusive agency continued

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Date / /
D D M M Y Y Y Y

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To the client

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Advertising/marketing

To the client

Your agent may either complete this section or attach annexures of marketing/advertising activities. In either case, the *authorised amount* must be written here.

see attached conditions

Authorised amount \$.....

When payable / /

Section 2

Repairs and maintenance

(if applicable)

Property management

The maximum value of repairs and maintenance to be paid by the agent without prior approval by the client is \$ 500.00

Section 3

Other

Description of fees and charges.

The agent may either complete this section or attach annexures.

Description

Amount

When payable

Section 4

Agent's rebate, discount, commission or benefit incurred in the provision of or performance of the service

Service

Source

Estimated amount



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12. COMMISSION

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13. OTHER CONDITIONS

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Agent

Client (Owner)

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Part 6—PROPERTY SALES: open listing, sole agency or exclusive agency continued

Acknowledgement for sole and exclusive agency

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Client

Date / /

Agent

Date / /

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Description	Amount	When payable

Section 4 Agent's rebate, discount, commission or benefit incurred in the provision of or performance of the service

Service	Source	Estimated amount

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If you are not the intended addressee and this message has been sent to you by mistake, please notify the sender immediately, destroy any hard copies of the email and delete it from your computer system network. Any legal privilege or confidentiality is not waived or destroyed by the mistake.

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Minister: Attorney-General and Minister for Justice
Agency: Department of Justice and Attorney-General

Property Occupations Act 2014

Reprint current from 1 July 2015 to date (accessed 24 October 2019 at 10:25)

[Part 3](#) > [Division 1](#) > [Subdivision 2](#) > Section 89

89 Restriction on recovery of reward or expense—no proper authorisation etc.

- (1) A person is not entitled to sue for, recover or keep a reward or expense for the performance of an activity as a property agent or resident letting agent unless, at the time the activity was performed, the person—
 - (a) either—
 - (i) if the person performed an activity as a property agent—held a property agent licence; or
 - (ii) if the person performed an activity as a resident letting agent—held a resident letting agent licence; and
 - (b) was authorised under the person's licence to perform the activity; and
 - (c) was properly appointed under part 4 by the person to be charged with the reward or expense.
- (2) A person who sues for, recovers or keeps a reward or expense for the performance of an activity as a property agent or resident letting agent other than as provided by subsection (1) commits an offence.
Maximum penalty for subsection (2)—200 penalty units.



Minister: Attorney-General and Minister for Justice
Agency: Department of Justice and Attorney-General

Property Occupations Act 2014

Reprint current from 1 July 2015 to date (accessed 24 October 2019 at 10:25)

Part 4

Part 4 Appointment of property agent or resident letting agent

Division 1 Requirement to appoint property agent or resident letting agent

102 Appointment

- (1) A property agent must not act as a property agent for a person (a *client*) to perform an activity (a *service*) for the client unless—
- (a) the client first appoints the property agent under subsection (2); or
 - (b) an appointment that is in force is assigned to the property agent under the terms of that appointment or under section 113.

Maximum penalty—200 penalty units.

- (2) The appointment of a property agent must—
- (a) comply with division 2 and section 109 (1); and
 - (b) include any other information prescribed under a regulation, in the way (if any) prescribed under a regulation.

Example of a way for paragraph (b)—

- as an addition to the approved form under section 104
- the expression of commission for a service in a dollar amount, or as a percentage, or both

- (3) A resident letting agent must not act as a resident letting agent for a person (also a *client*) to perform an activity (also a *service*) for the client unless—
- (a) the client first appoints the resident letting agent under subsection (4); or
 - (b) an appointment that is in force is assigned to the resident letting agent under the terms of that appointment or under section 113.

Maximum penalty—200 penalty units.

- (4) The appointment of a resident letting agent must—
- (a) comply with division 2, subdivision 1 and section 109 (1); and



- (b) include any other information prescribed under a regulation, in the way (if any) prescribed under a regulation.
- (5) An appointment under subsection (1) or (3) may be for the performance of—
 - (a) a particular service or services (a *single appointment*); or
 - (b) a particular service or services over a period (a *continuing appointment*).
- (6) Subsections (1), (2) and (5) do not apply to a sale of property by a real estate agent who acts in conjunction with a real estate agent appointed for this section to sell the property.

103 Particular requirements for appointing property agent for sole or exclusive agency

- (1) This section applies to an appointment of a property agent for a sole or exclusive agency.
- (2) Before the appointment is signed, the property agent must—
 - (a) give the client a notice, in the approved form, that provides information about sole and exclusive agency appointments; and
 - (b) discuss with the client—
 - (i) whether the appointment is to be for a sole agency or an exclusive agency; and
 - (ii) the proposed term of the appointment; and
 - (iii) for an appointment for the sale of residential property other than a commercial scale appointment, the client's entitlement to negotiate the term of the appointment up to a maximum term of 90 days; and
 - (iv) the consequences for the client if the property is sold by someone other than the agent during the term of the appointment.

Note—

The commission of an offence against this subsection also renders an appointment for the sale of a place of residence or land or an interest in a place of residence or land ineffective under [section 112](#) (3).

Maximum penalty—200 penalty units.

Division 2 Content of appointment

Subdivision 1 Property agents and resident letting agents

104 General content of appointment

- (1) An appointment of a property agent or resident letting agent must include the following in the approved form—
 - (a) a prominent statement that the client should seek independent legal advice before signing the appointment;

- (b) a statement about whether it is a single appointment or a continuing appointment;
 - (c) for each service, provision for the inclusion of a statement about the following—
 - (i) the service to be performed by the property agent or resident letting agent;
 - (ii) the fees, charges and any commission payable for the service;
 - (iii) when the fees, charges and any commission for the service become payable;
 - (iv) the expenses, including advertising and marketing expenses, the agent is authorised to incur in connection with the performance of each service or category of service;
 - (v) the source and the estimated amount or value of any rebate, discount, commission or benefit that the agent may receive for any expenses that the agent may incur in connection with the performance of the service;
 - (vi) any condition, limitation or restriction on the performance of the service.
- (2) In this section—
- continuing appointment* see section 102 (5) (b).
- single appointment* see section 102 (5) (a).

105 Other requirements—commission

- (1) This section applies to an appointment of a property agent or resident letting agent for a service that is the sale or letting of property or the collecting of rents if commission is payable for the service and is expressed as a percentage of an estimated sale price or amount of rent to be paid or collected.
- (2) The appointment must state, in writing, that the commission for the service is worked out only on—
 - (a) for the sale of property—the actual sale price; or
 - (b) for the letting of property—the actual rental for the property; or
 - (c) for the collecting of rents—the actual amount of rent collected.

106 Other requirements—statement that appointment may be revoked by notice

- (1) This section applies to an appointment of—
 - (a) a property agent, other than an appointment for an open listing or a sole or exclusive agency; or
 - (b) a resident letting agent.
- (2) The appointment must state, in writing, that the appointment may be revoked by either party giving the other party at least 30 days written notice of the revocation, unless the parties agree, in writing, to an earlier day for the appointment to end.



Subdivision 2 Property agents

107 Other requirements—auction

- (1) This section applies to an appointment of a property agent that is in relation to an auction.
- (2) The appointment must state, in writing, the day set for the auction.

108 Other requirements—sole or exclusive agency

- (1) This section applies to an appointment of a real estate agent for a sole or exclusive agency.
- (2) The appointment must state in writing—
 - (a) whether the appointment is for a sole or exclusive agency; and
 - (b) the day the appointment ends.
- (3) The appointment may provide that at the end of the term of the sole or exclusive agency, it continues under the terms of an open listing that may be ended at any time by the client or agent.

Division 3 Other provisions

109 Giving signed appointment to client

- (1) An appointment of a property agent or resident letting agent under section 102 (1) or (3) must be signed and dated by—
 - (a) the client; and
 - (b) the property agent or resident letting agent or someone authorised or apparently authorised to sign for the property agent or resident letting agent.
- (2) The property agent or resident letting agent must give a copy of the signed appointment to the client.
Maximum penalty for subsection (2)—200 penalty units.

110 Limitation on term of reappointment of property agent for sale of residential property

- (1) A property agent may be reappointed for a sole or exclusive agency for the sale of residential property for 1 or more terms of not more than 90 days.
- (2) The limitation on the term of reappointment under subsection (1) does not apply if the reappointment is a commercial scale appointment.
- (3) A property agent appointed for the sale of residential property under a sole or exclusive agency commits an offence if the agent is reappointed for the sale earlier than 14 days before the term of the sole or exclusive agency ends.

Note—

The commission of an offence against this subsection relating to the reappointment also renders the reappointment ineffective under section 112 (4).

Maximum penalty for subsection (3)—200 penalty units.

111 Form of reappointment

- (1) The reappointment of a property agent under section 110 must—
 - (a) be in the approved form; and
 - (b) include any other information required under a regulation.
- (2) A reappointment that does not comply with subsection (1) is ineffective from the time it is made.

112 Other ineffective appointments and reappointments

- (1) The appointment of a property agent for the sale of residential property under a sole or exclusive agency is ineffective from the time it is made if the term of the appointment is more than 90 days.
- (2) Subsection (1) does not apply to a commercial scale appointment.
- (3) The appointment of a property agent for a sole or exclusive agency for the sale of a place of residence or land or an interest in a place of residence or land is ineffective from the time it is made if the property agent commits an offence against section 103.
- (4) The appointment of a property agent or resident letting agent is ineffective from the time it is made if the appointment does not comply with section 104.
- (5) The reappointment of a property agent for a further term of sole or exclusive agency for the sale of residential property is ineffective from the time it is made if the property agent commits an offence against section 110 (3) relating to the reappointment.

113 Assignment of appointment

- (1) This section applies if—
 - (a) a property agent who holds an appointment, under section 102, from a client to perform a service or services for the client assigns the appointment to another property agent (*assignee*); or
 - (b) a resident letting agent who holds appointments, under section 102, from clients to perform a service or services for the clients for a building complex assigns the appointments to another person who becomes the resident letting agent for the complex (also an *assignee*).
- (2) The assignee must give each client written notice of the assignment within 14 days after the assignment.
Maximum penalty—100 penalty units.
- (3) The notice must state the following—
 - (a) the assignee's name and contact details;
 - (b) the address of the assignee's registered office;
 - (c) the appointment has been assigned without changing the terms of the appointment;
 - (d) the appointment may be revoked by the client by giving at least 30 days written notice of the revocation to the assignee, unless the client



and the assignee agree, in writing, to an earlier day for the appointment to end.

- (4) The appointment is taken, for section 102, to be an appointment by the client of the proposed assignee and to continue to have effect according to its terms.
- (5) To remove any doubt, it is declared that the assignment of an appointment under this section does not authorise the assignee to vary the terms of the appointment without the client's agreement.

114 Revocation of appointment

- (1) An appointment of a property agent, other than an appointment for an open listing or a sole or exclusive agency that has not been assigned, or resident letting agent may be revoked by either party giving the other party at least 30 days written notice of the revocation, unless the parties agree, in writing, to an earlier day for the appointment to end.

Note—

For when an appointment of a property agent for the sale of residential property under an open listing may be revoked, see section 20 (c).

- (2) Despite any agreement to the contrary by the parties to an appointment of a property agent or resident letting agent, a party is only required to give the other party to the appointment at least 30 days written notice of the revocation, unless both parties agree, in writing, to an earlier day for the appointment to end.
- (3) A provision of an agreement is void if it requires a party to an appointment of a property agent or resident letting agent to give a notice of revocation of the appointment to the other party to the appointment other than in accordance with subsection (2).
- (4) Subsections (5) and (6) apply to an appointment, that has not been assigned, of a property agent for a sole or exclusive agency for the sale of residential property for a term of at least 60 days, other than a commercial scale appointment.
- (5) The appointment may be revoked by either party giving at least 30 days written notice of the revocation, unless both parties agree in writing to an earlier day for the appointment to end.
- (6) However, the appointment must be for at least 60 days, unless both parties agree, in writing, to an earlier day for the appointment to end.
- (7) The revocation of an appointment of a property agent or resident letting agent does not affect existing contracts entered into by the property agent or resident letting agent on behalf of the client.

s 114 amd 2014 No. 62 s 139D