

**Part 5—Termination of appointment**

<b>Residential sales of 1 or 2 properties only</b>	<p><b>Open listing:</b> You may terminate in writing at any time.</p> <p><b>Sole or exclusive:</b> 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.</p>
<b>Open listing</b>	You may terminate an open listing for either commercial or residential property sales at any time.
<b>Other fixed term appointments</b> (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.
<b>Continuing appointments</b> (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)



Section 1  
Advertising/marketing

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

NO ADVERTISING COST

Authorized amount \$.....

When payable      /      /  
DD   MM   YYYY

**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 \$.....

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



## Appointment of Real Estate Agent (Residential Sales)

### ITEMS SCHEDULE

#### A PRIOR APPOINTMENT

Pursuant to Section 21 of the *Property Occupations Regulation 2014* (Qld), prior to accepting this Appointment of Property Agent, the Agent must take reasonable steps to find out whether the Client has already appointed another property agent to perform the service(s) listed in this Appointment of Property Agent.

- ☒ The Client acknowledges that the Agent has taken reasonable steps to find out whether the Client has already appointed another property agent to perform the service(s) listed in this Appointment of Property Agent.
- ☒ The Client further warrants that another property agent has not been appointed to perform the service(s) listed in this Appointment of Property Agent.
- ☐ If the Client is not able to warrant that another property agent has **not** been appointed to perform the service(s) listed in this Appointment of Property Agent, the Client acknowledges that a statement in accordance with Section 21 (4) of the *Property Occupations Regulation 2014* (Qld) has been provided by the Agent.

**Note: A copy of the statement provided to the Client must be annexed to this Appointment of Property Agent.**

#### B ADVICE AS TO MARKET PRICE

Has the Client requested information regarding the price at which the Property is to be offered for sale?

(Select applicable Box)

☐ Yes ☒ No

- If Yes, ☐ The Client acknowledges receipt of the Comparative Market Analysis; OR
- ☐ The Client acknowledges receipt of the written explanation showing how the Agent decided the market value of the Property.

#### C COMPARATIVE MARKET ANALYSIS

Compares the Property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the Property and are within 5km of that Property.

- ☐ Listed below; OR
- ☐ Listed in the attached Comparative Market Analysis (attach analysis)

ADDRESS OF PROPERTY:

SALE PRICE:

DISTANCE FROM  
PROPERTY:

	\$	
	\$	
	\$	
	\$	
	\$	

Comments:

INITIALS (Note: initials not required if signed with Electronic Signature)

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**H VERIFICATION OF IDENTITY / AUTHORITY TO DEAL**

**Note: Under s19 of the *Property Occupations Regulation 2014*, a real estate agent must, before listing a property for sale, take reasonable steps to find out or verify ownership of the property they are selling.**

**Identification:**

Has the Agent sighted the client/s original photo identification (for example, drivers licence, passport, proof of age card)?

☐ Yes ☒ No

If no, has the Agent requested the client/s to provide photo identification at a later date?

☒ Yes ☐ No

**Authority:**

Has the client/s provided the Agent with proof of their identity to verify ownership or authority to deal with the property?

☒ Yes ☐ No

**If the client is:**

- a company or trust
- acting pursuant to a power of attorney
- a personal representative of a deceased estate

**the Agent should request verification that the person is an authorised representative and entitled to deal with the property on behalf of the property owner.**

**I FACTS MATERIAL TO THE SALE OF THE PROPERTY**

The client/s acknowledge that any material matters that must be disclosed under s20 of the *Property Occupations Regulation 2014* has/have been disclosed in the Property Details and Disclosure Annexure to this PO Form 6 Schedule.

☒ Yes ☐ No

**J PROPERTY FEATURES**

**Property type** (select one)

☒ House ☐ Apartment ☐ Acreage ☐ Unit ☐ Farm ☐ Mobile Home ☐ Duplex ☐ Townhouse ☐ Vacant Land

**Construction** (select as applies)

- ☐ Brick  
☐ Timber  
☐ Concrete  
☐ Hardiplank  
☐ Fibro  
☐ Rendered  
☐ Cladding  
☐ Brick Veneer  
☐ Block

**Appliances** (select as applies)

- ☐ Gas stove  
☐ Electric stove  
☐ Oven  
☐ Hot Plate  
☐ Rangehood  
☐ Microwave  
☐ Refrigerator  
☐ Dishwasher  
☐ Disposal Unit  
☐ Washing machine  
☐ Dryer  
☐ Ducted vacuum

**Style** (select one)

- ☐ Colonial  
☐ Contemporary  
☐ Brick and tile  
☐ Federation  
☐ Mediterranean  
☐ Pole home  
☐ Queenslander  
☐ Post War

**Type** (select one)

- ☐ Highset  
☐ Lowset  
☐ Split-level  
☐ Double storey  
☐ Multilevel

**Roof** (select one)

- ☐ Tiles  
☐ Fibro  
☐ Iron  
☐ Colorbond

**Pool Compliance & QBCC Notification**

Is there a non-shared pool on the land? ☐ yes ☒ no

If yes:

Is there a Pool Compliance Certificate?

☐ yes - a copy must be provided to the buyer/s prior to settlement

☐ no - a Form 36 Notice of No Pool Safety Certificate must be provided to the prospective buyer **before they enter the contract**

**Does the Client authorise the Agent to prepare the Form 36 and provide a copy of the signed Form 36 to QBCC prior to settlement?:**

☐ yes - clause 8.6 applies ☒ no - clause 8.6 does not apply

## ESSENTIAL TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 **"Act"** means the *Property Occupations Act 2014* (Qld).
- 1.2 **"Agent"** means the party described in Part 2 of the **Appointment of Property Agent**.
- 1.3 **"Appointment of Property Agent"** means the Queensland Government Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer. These terms and conditions and the Schedule are annexed to the Appointment of Property Agent.
- 1.4 **"Client"** means the party described in Part 1 of the Appointment of Property Agent.
- 1.5 **"Commission"** means the commission stated in Part 7 of the Appointment of Property Agent.
- 1.6 **"Conjunction Sale"** means a sale conducted in conjunction with other property agents.
- 1.7 **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign;
- 1.8 **"Property"** means the property described in Part 3 of the Appointment of Property Agent.
- 1.9 **"Property Description Details"** means the particulars listed in the Property Description Details annexed to the Schedule.
- 1.10 **"REIQ"** means The Real Estate Institute of Queensland.
- 1.11 **"Schedule"** means the Residential Sales Schedule forming part of this Agreement.
- 1.12 **"Term"** means the term specified in Part 4, Section 2 of the Appointment of Property Agent.

### 2. WHAT MAKES UP THIS AGREEMENT

This Agreement comprises the following parts:

- 2.1 Appointment of Property Agent;
- 2.2 Schedule;
- 2.3 Essential Terms and Conditions;
- 2.4 Any additional annexures.

### 3. CLIENT APPOINTS AGENT

- 3.1 For the Commission and other fees payable by the Client, the Agent agrees to sell the Property for the Client in accordance with this Agreement.

### 4. PRICE

- 4.1 The Client instructs the Agent that the Price at which the Agent must offer to sell the Property will be the Price stated in Part 4, Section 3 of the Appointment of Property Agent, or any variation to the Price stated in Part 4, Section 3 of the Appointment of Property Agent as instructed in writing at a later date by the Client.

### 5. ENTITLEMENT TO COMMISSION

- 5.1 The Client agrees to pay the Agent Commission as specified in Part 7 of the Appointment of Property Agent if a Contract of Sale of the Property is entered into with a Buyer, whether within the Term or after the Term, where the Relevant Person is the effective cause of the sale within the Term, provided that:
  - 5.1.1 the Contract of Sale of the Property is completed; or
  - 5.1.2 the Client defaults under the Contract of Sale and that Contract is terminated by reason of or following that default; or
  - 5.1.3 the Contract of Sale is not completed and the whole or part of the deposit paid is liable to be forfeited; or
  - 5.1.4 the Contract of Sale is terminated by mutual agreement of the Client and the Buyer.

- 5.2 For the purposes of Clause 5.1 a Relevant Person is, where the Appointment of Property Agent is for:
  - 5.2.1 an Exclusive Agency, any person (including the Client); or
  - 5.2.2 a Sole Agency, any person other than the Client; or
  - 5.2.3 an Open Listing, the Agent only.

### 6. AUTHORITY TO PAY COMMISSION

- 6.1 The Client:
  - 6.1.1 authorises the Agent, and
  - 6.1.2 authorises and directs the deposit holder or any other person to whom any deposit is paid under a Contract of Sale, to pay to the Agent any Commission to which the Agent is entitled immediately upon:
    - (a) the entitlement to Commission arising; and
    - (b) production of the Agreement or a copy of the Agreement;
- 6.2 The Client agrees that the Agent's receipt for the payment of Commission under Clause 6.1 completely discharges the deposit holder from any duty to account to the Client for the Commission paid to the Agent.

### 7. COMMUNICATION OF EXPRESSIONS OF INTEREST

- 7.1 Unless otherwise agreed in writing between the Client and the Agent, the Client:
  - 7.1.1 only requires the Agent to communicate to the Client:
    - (a) all written offers about the sale; and
    - (b) only those expressions of interest which the Agent determines in its discretion are to be communicated to the Client.

### 8. DISCLOSURE OF RELEVANT FACTS

- 8.1 The Client states that:
  - 8.1.1 the Property is the Client's own property;
  - 8.1.2 the Agent is entitled to sell the Property on behalf of the Client; and
  - 8.1.3 the particulars about the Property contained in the Property Description Details are correct;
- 8.2 The Client authorises the Agent at the Client's cost to:
  - 8.2.1 take reasonable steps to find out or verify:
    - (a) the ownership of the Property; and
    - (b) the description of the Property;
  - 8.2.2 take such other reasonable steps to find out or verify the facts material to the sale, exchange or lease that a prudent property agent would find out or verify in order to avoid error, omission, exaggeration or misrepresentation. These steps may be taken before listing the Property and afterwards as the occasion arises;
- 8.3 The Client will produce to the Agent, at the Agent's request, such information as required by the Agent to satisfy the Agent of the matters referred to in this Clause 8;
- 8.4 This Clause 8 does not oblige the Agent to undertake searches with public authorities;
- 8.5 The Client warrants that the Property is safe and free from any defects for the purposes of a property inspection.
- 8.6 If a Form 36 Notice of No Pool Safety Certificate is required to be provided to a prospective buyer and QBCC under the *Building Act 1975*, the Client authorises the Agent to do so at the relevant notification time/s.

INITIALS (Note: initials not required if signed with Electronic Signature)

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**9. NOTIFICATION OF SALE TO TENANT**

- 9.1 If the Property is tenanted, the Client states that the managing agent for the Property is as stated in the Property Details and Disclosure Annexure to the Schedule;
- 9.2 The Client acknowledges that where the Agent accepts an appointment to sell a property that is tenanted:
- 9.2.1 The Agent must immediately give written notice of the appointment to any managing agent of the Property; and
- 9.2.2 The managing agent must immediately give the tenant notice of the appointment of the Agent to sell the Property.

**10. ELECTRONIC SIGNING, COMMUNICATION AND NOTICES**

- 10.1 All written communications under this Agreement must be given to the parties' postal address, facsimile number, email address or mobile telephone number specified in Parts 1 and/or 2 of the Appointment of Property Agent;
- 10.2 The parties consent to the use of electronic communication in accordance with the provisions set out in Chapter 2 of the *Electronic Transactions (Queensland) Act 2001 (Qld)* and the *Electronic Transactions Act 1999 (Cth)*;
- 10.3 If this Agreement is signed by any party using an Electronic Signature, the Client and the Agent:
- (a) agree to enter into this Agreement in electronic form; and
- (b) consent to either or both parties signing the Agreement using an Electronic Signature.
- 10.4 The Client authorises the Agent to give on behalf of the Client any statement or other notice that may be required to be given by the Client in accordance with any law;
- 10.5 Nothing in this Clause 10 requires the Agent to give a statement or other notice on behalf of the Client. The Agent may require the Client to sign the statement or other notice on the Client's own behalf.

**11. AUCTION**

- 11.1 The Reserve Price shall be the amount specified in Part 4, Section 3 of the Appointment of Property Agent or as instructed by the Client in writing prior to the time of Auction;
- 11.2 The date, place and time for the Auction shall be as specified in Part 4, Section 1 of the Appointment of Property Agent and Item E of the Schedule or as otherwise agreed with the Client in writing from time to time;
- 11.3 The general conditions of sale shall be those set out in:
- 11.3.1 the Conditions of Sale by Public Auction Real Property adopted by the REIQ; and
- 11.3.2 the copyright form of Contract and the Terms of Contract/Standard Conditions of Sale adopted by the REIQ and approved by the Queensland Law Society as at the date of the Appointment of Property Agent;
- 11.4 The Agent may, in the Agent's sole discretion, subcontract the performance of the Agent's services in relation to holding the Public Auction by engaging a person licensed as an Auctioneer under the Act to conduct the Public Auction on behalf of the Agent. If the Agent employs an Auctioneer then the Client shall pay the amount as specified in Item E(4) of the Schedule as a fee for the Auctioneer's services.

**12. AGENT'S ENTITLEMENT TO TERMINATION PENALTY**

- 12.1 In this Clause 12:
- 12.1.1 **Relevant Contract** means a relevant contract as defined in the Act; and
- 12.1.2 **Termination Penalty** means the amount of 0.25% of the Purchase Price under the Contract of Sale as defined in the Act.
- 12.2 If:
- 12.2.1 the Contract of Sale is a Relevant Contract; and
- 12.2.2 the Buyer validly terminates the contract at any time before the cooling-off period ends in accordance with the Act; and
- 12.2.3 the Client is entitled to retain from the deposit the Termination Penalty,
- the Client agrees that the Termination Penalty will be divided equally between the Client and the Agent.
- 12.3 The Client:
- 12.3.1 authorises the Agent; and
- 12.3.2 authorises and directs the deposit holder or any other person to whom any deposit is paid under a Contract of Sale,
- to pay to the Agent, the Agent's share of the Termination Penalty to which the Agent is entitled in accordance with the Clause 12.2 immediately upon production of the Agreement or a copy of the Agreement.
- 12.4 The Client agrees that the Agent's receipt for the payment of one half of the Termination Penalty under Clause 12.2 completely discharges the deposit holder from any duty to account to the Client for the Agent's share of the Termination Penalty paid to the Agent.

**13. INDEMNITY**

- 13.1 The Client shall be liable for and shall indemnify and defend the Agent, its directors, officers, employees, and agents from and against any and all losses, claims, demands, actions, suits (including costs and legal fees on an indemnity basis), and damages, including, but not limited to:
- 13.1.1 injury, bodily or otherwise, to or death of any person;
- 13.1.2 loss, damage to or destruction of property, whether real or personal, belonging to the Client, the Agent or others; and
- arising from or in connection with any act or omission or negligence of the Client or any other person (other than the Agent) or arising out of or in connection with the Property or this Appointment of Property Agent.

**14. CLIENT AND AGENT'S ACKNOWLEDGEMENTS**

The Client and the Agent acknowledge that:

- 14.1 they have received a copy of the Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer, the Schedule, these Essential Terms and Conditions and any additional annexures;
- 14.2 they have read and fully understood the Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer, the Schedule, these Essential Terms and Conditions and any additional annexures, including the warranties and indemnities contained therein and agree to be fully bound by them.

**15. ENTIRE AGREEMENT**

- 15.1 This document constitutes the entire agreement of the parties with respect to the subject matter of this document and supersedes all prior negotiations or expressions of intent or understandings with respect to the appointment of the Agent to the Property.



## REIQ Fact Sheet

### Sales - General



# New tax rules for properties \$750,000 and above

From 1 July 2017, new tax rules will apply on any property transaction where the market value of the property is \$750,000 and above.

Although the new laws are aimed at foreign residents, real estate agents must be aware that these new laws also impact Australian residents selling properties above this value.

## Summary

The new laws require a purchaser to withhold 12.5 per cent of the purchase price of real property valued at \$750,000 or more and to pay that amount to the Australian Taxation Office (ATO) on settlement unless the seller obtains a clearance certificate.

The new laws will start on 1 July 2017 and are aimed at vendors who are 'foreign persons'. However, it will impact all property transactions valued \$750,000 and over, irrespective of whether the vendor is a foreign person or not.

For any sale contract entered into on or after 1 July 2017 where the purchase price is \$750,000 or greater, the purchaser has a statutory obligation to withhold 12.5 per cent of the purchase price at settlement from the vendor and pay that amount to the ATO. Following settlement, the vendor applies for a tax credit in relation to the amount withheld by the ATO for the capital gains liability arising from the transaction.

**This means that Australian resident vendors who are selling property with a market value of \$750,000 or above will need to apply for a clearance certificate from the ATO to ensure that their sale proceeds are not withheld.**

## How can your clients obtain a clearance certificate?

The ATO will only issue a clearance certificate to a vendor that is not a 'foreign person' for taxation purposes.

Any vendor that is not a foreign person can apply online for a clearance certificate from the ATO, and that certificate will remain valid for 12 months from the date of issue. The certificate may be used for multiple property sales within the 12-month period.

If a valid clearance certificate is provided to the purchaser prior to settlement, the purchaser is not entitled to withhold 12.5 per cent of the purchase price at settlement and the full sale proceeds are to be released to the vendor.

## How do Australian residents obtain a clearance certificate?

A vendor who is an Australian resident can obtain a clearance certificate by making an application on [ato.gov.au/FRCGW](http://ato.gov.au/FRCGW) (hyper link).

If the vendor is automatically assessed as an Australian resident, a clearance certificate will be issued within days of the application however, the process may take longer for more complex applications.

## When does the clearance certificate have to be given?

Australian resident vendors must give the clearance certificate to the purchaser on or before settlement occurs to avoid the purchaser withholding 12.5 per cent of the purchase price.

1 July 2017

### **What if my client is a foreign person?**

Where the vendor is a 'foreign person', the purchaser must retain 12.5 per cent of the purchase price and pay that to the ATO at settlement, unless the vendor provides a valid 'Variation Notice' in which case the purchaser must remit the amount stated in the notice.

### **When will the new laws apply?**

The new laws will apply to sale contracts (for \$750,000 and above) entered into on or after 1 July 2017.

### **What types of properties do these rules apply to?**

All property including, vacant land, residential property, commercial property, strata title and community titles schemes.

### **What does this mean for agents?**

#### **Australian resident vendor/s**

- If you are appointed to sell a property and you consider its market value to be \$750,000 or more then you should advise your vendor to apply for a clearance certificate from the ATO as soon as practicable to avoid 12.5 per cent of the purchase price being withheld at settlement.
- If you are unsure about the ultimate purchase price but there is some prospect that it may sell for \$750,000 or above (for example, it is being sold at auction and the purchase price is unknown or it is being sold by expression of interest) you should advise your vendor to apply for a clearance certificate from the ATO as soon as practicable to avoid 12.5 per cent of the purchase price being withheld at settlement.

#### **Foreign resident vendors**

- If the purchase price is \$750,000 or above and the vendor is a foreign resident, you should advise them that 12.5 per cent of the purchase price will be withheld at settlement by the purchaser and provided to the ATO.

### **Will the REIQ amend its contracts?**

Yes, all REIQ property sale contracts (residential and commercial) will be amended to include provisions which reflect the above new tax rules.

### **Where can I find more information?**

You can find more information on the ATO fact sheet for real estate agents.

**DISCLAIMER:** The information contained in this fact sheet is provided for general information purposes only. The information should not be used or relied on as a substitute for legal advice. If you require legal advice concerning a specific fact or situation, you should seek independent legal advice. REIQ accepts no liability or responsibility for any loss occurring as a result of anyone acting or refraining from acting on the basis of the information contained herein. Whilst REIQ has taken all reasonable measures to ensure that the information contained in this fact sheet is correct, REIQ gives no warranty and accepts no responsibility for the accuracy or the completeness of the information.



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**When you must pay the agent**

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**When you don't have to pay the agent**

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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)





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Authorised amount \$.....

When payable      /      /  
DD   MM   YYYY

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**Repairs and maintenance**  
(if applicable)  
**Property management**

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Other

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Amount

When payable

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**Note: A copy of the statement provided to the Client must be annexed to this Appointment of Property Agent.**

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- ☐ The Client acknowledges receipt of the written explanation showing how the Agent decided the market value of the Property.

#### C COMPARATIVE MARKET ANALYSIS

Compares the Property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the Property and are within 5km of that Property.

- ☐ Listed below; OR
- ☐ Listed in the attached Comparative Market Analysis (attach analysis)

ADDRESS OF PROPERTY:

SALE PRICE: DISTANCE FROM  
PROPERTY:

	\$	
	\$	
	\$	
	\$	
	\$	

Comments:

INITIALS (Note: initials not required if signed with Electronic Signature)

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**H VERIFICATION OF IDENTITY / AUTHORITY TO DEAL**

**Note: Under s19 of the *Property Occupations Regulation 2014*, a real estate agent must, before listing a property for sale, take reasonable steps to find out or verify ownership of the property they are selling.**

**Identification:**

Has the Agent sighted the client/s original photo identification (for example, drivers licence, passport, proof of age card)?

☐ Yes ☒ No

If no, has the Agent requested the client/s to provide photo identification at a later date?

☒ Yes ☐ No
**Authority:**

Has the client/s provided the Agent with proof of their identity to verify ownership or authority to deal with the property?

☒ Yes ☐ No
**If the client is:**

- a company or trust
- acting pursuant to a power of attorney
- a personal representative of a deceased estate

**the Agent should request verification that the person is an authorised representative and entitled to deal with the property on behalf of the property owner.**

**I FACTS MATERIAL TO THE SALE OF THE PROPERTY**

The client/s acknowledge that any material matters that must be disclosed under s20 of the *Property Occupations Regulation 2014* has/have been disclosed in the Property Details and Disclosure Annexure to this PO Form 6 Schedule.

☒ Yes ☐ No
**J PROPERTY FEATURES****Property type** (select one)

☒ House ☐ Apartment ☐ Acreage ☐ Unit ☐ Farm ☐ Mobile Home ☐ Duplex ☐ Townhouse ☐ Vacant Land

**Construction** (select as applies)

- ☐ Brick  
☐ Timber  
☐ Concrete  
☐ Hardiplank  
☐ Fibro  
☐ Rendered  
☐ Cladding  
☐ Brick Veneer  
☐ Block

**Appliances** (select as applies)

- ☐ Gas stove  
☐ Electric stove  
☐ Oven  
☐ Hot Plate  
☐ Rangehood  
☐ Microwave  
☐ Refrigerator  
☐ Dishwasher  
☐ Disposal Unit  
☐ Washing machine  
☐ Dryer  
☐ Ducted vacuum

**Style** (select one)

- ☐ Colonial  
☐ Contemporary  
☐ Brick and tile  
☐ Federation  
☐ Mediterranean  
☐ Pole home  
☐ Queenslander  
☐ Post War

**Type** (select one)

- ☐ Highset  
☐ Lowset  
☐ Split-level  
☐ Double storey  
☐ Multilevel

**Roof** (select one)

- ☐ Tiles  
☐ Fibro  
☐ Iron  
☐ Colorbond

**Pool Compliance & QBCC Notification**

Is there a non-shared pool on the land? ☐ yes ☒ no

If yes:

Is there a Pool Compliance Certificate?

☐ yes - a copy must be provided to the buyer/s prior to settlement

☐ no - a Form 36 Notice of No Pool Safety Certificate must be provided to the prospective buyer **before they enter the contract**

**Does the Client authorise the Agent to prepare the Form 36 and provide a copy of the signed Form 36 to QBCC prior to settlement?:**

☐ yes - clause 8.6 applies ☒ no - clause 8.6 does not apply

## ESSENTIAL TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 **"Act"** means the *Property Occupations Act 2014* (Qld).
- 1.2 **"Agent"** means the party described in Part 2 of the **Appointment of Property Agent**.
- 1.3 **"Appointment of Property Agent"** means the Queensland Government Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer. These terms and conditions and the Schedule are annexed to the Appointment of Property Agent.
- 1.4 **"Client"** means the party described in Part 1 of the Appointment of Property Agent.
- 1.5 **"Commission"** means the commission stated in Part 7 of the Appointment of Property Agent.
- 1.6 **"Conjunction Sale"** means a sale conducted in conjunction with other property agents.
- 1.7 **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign;
- 1.8 **"Property"** means the property described in Part 3 of the Appointment of Property Agent.
- 1.9 **"Property Description Details"** means the particulars listed in the Property Description Details annexed to the Schedule.
- 1.10 **"REIQ"** means The Real Estate Institute of Queensland.
- 1.11 **"Schedule"** means the Residential Sales Schedule forming part of this Agreement.
- 1.12 **"Term"** means the term specified in Part 4, Section 2 of the Appointment of Property Agent.

### 2. WHAT MAKES UP THIS AGREEMENT

This Agreement comprises the following parts:

- 2.1 Appointment of Property Agent;
- 2.2 Schedule;
- 2.3 Essential Terms and Conditions;
- 2.4 Any additional annexures.

### 3. CLIENT APPOINTS AGENT

- 3.1 For the Commission and other fees payable by the Client, the Agent agrees to sell the Property for the Client in accordance with this Agreement.

### 4. PRICE

- 4.1 The Client instructs the Agent that the Price at which the Agent must offer to sell the Property will be the Price stated in Part 4, Section 3 of the Appointment of Property Agent, or any variation to the Price stated in Part 4, Section 3 of the Appointment of Property Agent as instructed in writing at a later date by the Client.

### 5. ENTITLEMENT TO COMMISSION

- 5.1 The Client agrees to pay the Agent Commission as specified in Part 7 of the Appointment of Property Agent if a Contract of Sale of the Property is entered into with a Buyer, whether within the Term or after the Term, where the Relevant Person is the effective cause of the sale within the Term, provided that:
  - 5.1.1 the Contract of Sale of the Property is completed; or
  - 5.1.2 the Client defaults under the Contract of Sale and that Contract is terminated by reason of or following that default; or
  - 5.1.3 the Contract of Sale is not completed and the whole or part of the deposit paid is liable to be forfeited; or
  - 5.1.4 the Contract of Sale is terminated by mutual agreement of the Client and the Buyer.

- 5.2 For the purposes of Clause 5.1 a Relevant Person is, where the Appointment of Property Agent is for:
  - 5.2.1 an Exclusive Agency, any person (including the Client); or
  - 5.2.2 a Sole Agency, any person other than the Client; or
  - 5.2.3 an Open Listing, the Agent only.

### 6. AUTHORITY TO PAY COMMISSION

- 6.1 The Client:
  - 6.1.1 authorises the Agent, and
  - 6.1.2 authorises and directs the deposit holder or any other person to whom any deposit is paid under a Contract of Sale, to pay to the Agent any Commission to which the Agent is entitled immediately upon:
    - (a) the entitlement to Commission arising; and
    - (b) production of the Agreement or a copy of the Agreement;
- 6.2 The Client agrees that the Agent's receipt for the payment of Commission under Clause 6.1 completely discharges the deposit holder from any duty to account to the Client for the Commission paid to the Agent.

### 7. COMMUNICATION OF EXPRESSIONS OF INTEREST

- 7.1 Unless otherwise agreed in writing between the Client and the Agent, the Client:
  - 7.1.1 only requires the Agent to communicate to the Client:
    - (a) all written offers about the sale; and
    - (b) only those expressions of interest which the Agent determines in its discretion are to be communicated to the Client.

### 8. DISCLOSURE OF RELEVANT FACTS

- 8.1 The Client states that:
  - 8.1.1 the Property is the Client's own property;
  - 8.1.2 the Agent is entitled to sell the Property on behalf of the Client; and
  - 8.1.3 the particulars about the Property contained in the Property Description Details are correct;
- 8.2 The Client authorises the Agent at the Client's cost to:
  - 8.2.1 take reasonable steps to find out or verify:
    - (a) the ownership of the Property; and
    - (b) the description of the Property;
  - 8.2.2 take such other reasonable steps to find out or verify the facts material to the sale, exchange or lease that a prudent property agent would find out or verify in order to avoid error, omission, exaggeration or misrepresentation. These steps may be taken before listing the Property and afterwards as the occasion arises;
- 8.3 The Client will produce to the Agent, at the Agent's request, such information as required by the Agent to satisfy the Agent of the matters referred to in this Clause 8;
- 8.4 This Clause 8 does not oblige the Agent to undertake searches with public authorities;
- 8.5 The Client warrants that the Property is safe and free from any defects for the purposes of a property inspection.
- 8.6 If a Form 36 Notice of No Pool Safety Certificate is required to be provided to a prospective buyer and QBCC under the *Building Act 1975*, the Client authorises the Agent to do so at the relevant notification time/s.

INITIALS (Note: initials not required if signed with Electronic Signature)

000027724972



**9. NOTIFICATION OF SALE TO TENANT**

- 9.1 If the Property is tenanted, the Client states that the managing agent for the Property is as stated in the Property Details and Disclosure Annexure to the Schedule;
- 9.2 The Client acknowledges that where the Agent accepts an appointment to sell a property that is tenanted:
- 9.2.1 The Agent must immediately give written notice of the appointment to any managing agent of the Property; and
- 9.2.2 The managing agent must immediately give the tenant notice of the appointment of the Agent to sell the Property.

**10. ELECTRONIC SIGNING, COMMUNICATION AND NOTICES**

- 10.1 All written communications under this Agreement must be given to the parties' postal address, facsimile number, email address or mobile telephone number specified in Parts 1 and/or 2 of the Appointment of Property Agent;
- 10.2 The parties consent to the use of electronic communication in accordance with the provisions set out in Chapter 2 of the *Electronic Transactions (Queensland) Act 2001 (Qld)* and the *Electronic Transactions Act 1999 (Cth)*;
- 10.3 If this Agreement is signed by any party using an Electronic Signature, the Client and the Agent:
- (a) agree to enter into this Agreement in electronic form; and
- (b) consent to either or both parties signing the Agreement using an Electronic Signature.
- 10.4 The Client authorises the Agent to give on behalf of the Client any statement or other notice that may be required to be given by the Client in accordance with any law;
- 10.5 Nothing in this Clause 10 requires the Agent to give a statement or other notice on behalf of the Client. The Agent may require the Client to sign the statement or other notice on the Client's own behalf.

**11. AUCTION**

- 11.1 The Reserve Price shall be the amount specified in Part 4, Section 3 of the Appointment of Property Agent or as instructed by the Client in writing prior to the time of Auction;
- 11.2 The date, place and time for the Auction shall be as specified in Part 4, Section 1 of the Appointment of Property Agent and Item E of the Schedule or as otherwise agreed with the Client in writing from time to time;
- 11.3 The general conditions of sale shall be those set out in:
- 11.3.1 the Conditions of Sale by Public Auction Real Property adopted by the REIQ; and
- 11.3.2 the copyright form of Contract and the Terms of Contract/Standard Conditions of Sale adopted by the REIQ and approved by the Queensland Law Society as at the date of the Appointment of Property Agent;
- 11.4 The Agent may, in the Agent's sole discretion, subcontract the performance of the Agent's services in relation to holding the Public Auction by engaging a person licensed as an Auctioneer under the Act to conduct the Public Auction on behalf of the Agent. If the Agent employs an Auctioneer then the Client shall pay the amount as specified in Item E(4) of the Schedule as a fee for the Auctioneer's services.

**12. AGENT'S ENTITLEMENT TO TERMINATION PENALTY**

- 12.1 In this Clause 12:
- 12.1.1 **Relevant Contract** means a relevant contract as defined in the Act; and
- 12.1.2 **Termination Penalty** means the amount of 0.25% of the Purchase Price under the Contract of Sale as defined in the Act.
- 12.2 If:
- 12.2.1 the Contract of Sale is a Relevant Contract; and
- 12.2.2 the Buyer validly terminates the contract at any time before the cooling-off period ends in accordance with the Act; and
- 12.2.3 the Client is entitled to retain from the deposit the Termination Penalty,
- the Client agrees that the Termination Penalty will be divided equally between the Client and the Agent.
- 12.3 The Client:
- 12.3.1 authorises the Agent; and
- 12.3.2 authorises and directs the deposit holder or any other person to whom any deposit is paid under a Contract of Sale,
- to pay to the Agent, the Agent's share of the Termination Penalty to which the Agent is entitled in accordance with the Clause 12.2 immediately upon production of the Agreement or a copy of the Agreement.
- 12.4 The Client agrees that the Agent's receipt for the payment of one half of the Termination Penalty under Clause 12.2 completely discharges the deposit holder from any duty to account to the Client for the Agent's share of the Termination Penalty paid to the Agent.

**13. INDEMNITY**

- 13.1 The Client shall be liable for and shall indemnify and defend the Agent, its directors, officers, employees, and agents from and against any and all losses, claims, demands, actions, suits (including costs and legal fees on an indemnity basis), and damages, including, but not limited to:
- 13.1.1 injury, bodily or otherwise, to or death of any person;
- 13.1.2 loss, damage to or destruction of property, whether real or personal, belonging to the Client, the Agent or others; and
- arising from or in connection with any act or omission or negligence of the Client or any other person (other than the Agent) or arising out of or in connection with the Property or this Appointment of Property Agent.

**14. CLIENT AND AGENT'S ACKNOWLEDGEMENTS**

The Client and the Agent acknowledge that:

- 14.1 they have received a copy of the Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer, the Schedule, these Essential Terms and Conditions and any additional annexures;
- 14.2 they have read and fully understood the Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer, the Schedule, these Essential Terms and Conditions and any additional annexures, including the warranties and indemnities contained therein and agree to be fully bound by them.

**15. ENTIRE AGREEMENT**

- 15.1 This document constitutes the entire agreement of the parties with respect to the subject matter of this document and supersedes all prior negotiations or expressions of intent or understandings with respect to the appointment of the Agent to the Property.



## REIQ Fact Sheet

### Sales - General



# New tax rules for properties \$750,000 and above

From 1 July 2017, new tax rules will apply on any property transaction where the market value of the property is \$750,000 and above.

Although the new laws are aimed at foreign residents, real estate agents must be aware that these new laws also impact Australian residents selling properties above this value.

## Summary

The new laws require a purchaser to withhold 12.5 per cent of the purchase price of real property valued at \$750,000 or more and to pay that amount to the Australian Taxation Office (ATO) on settlement unless the seller obtains a clearance certificate.

The new laws will start on 1 July 2017 and are aimed at vendors who are 'foreign persons'. However, it will impact all property transactions valued \$750,000 and over, irrespective of whether the vendor is a foreign person or not.

For any sale contract entered into on or after 1 July 2017 where the purchase price is \$750,000 or greater, the purchaser has a statutory obligation to withhold 12.5 per cent of the purchase price at settlement from the vendor and pay that amount to the ATO. Following settlement, the vendor applies for a tax credit in relation to the amount withheld by the ATO for the capital gains liability arising from the transaction.

**This means that Australian resident vendors who are selling property with a market value of \$750,000 or above will need to apply for a clearance certificate from the ATO to ensure that their sale proceeds are not withheld.**

## How can your clients obtain a clearance certificate?

The ATO will only issue a clearance certificate to a vendor that is not a 'foreign person' for taxation purposes.

Any vendor that is not a foreign person can apply online for a clearance certificate from the ATO, and that certificate will remain valid for 12 months from the date of issue. The certificate may be used for multiple property sales within the 12-month period.

If a valid clearance certificate is provided to the purchaser prior to settlement, the purchaser is not entitled to withhold 12.5 per cent of the purchase price at settlement and the full sale proceeds are to be released to the vendor.

## How do Australian residents obtain a clearance certificate?

A vendor who is an Australian resident can obtain a clearance certificate by making an application on [ato.gov.au/FRCGW](http://ato.gov.au/FRCGW) (hyper link).

If the vendor is automatically assessed as an Australian resident, a clearance certificate will be issued within days of the application however, the process may take longer for more complex applications.

## When does the clearance certificate have to be given?

Australian resident vendors must give the clearance certificate to the purchaser on or before settlement occurs to avoid the purchaser withholding 12.5 per cent of the purchase price.

1 July 2017



### **What if my client is a foreign person?**

Where the vendor is a 'foreign person', the purchaser must retain 12.5 per cent of the purchase price and pay that to the ATO at settlement, unless the vendor provides a valid 'Variation Notice' in which case the purchaser must remit the amount stated in the notice.

### **When will the new laws apply?**

The new laws will apply to sale contracts (for \$750,000 and above) entered into on or after 1 July 2017.

### **What types of properties do these rules apply to?**

All property including, vacant land, residential property, commercial property, strata title and community titles schemes.

### **What does this mean for agents?**

#### **Australian resident vendor/s**

- If you are appointed to sell a property and you consider its market value to be \$750,000 or more then you should advise your vendor to apply for a clearance certificate from the ATO as soon as practicable to avoid 12.5 per cent of the purchase price being withheld at settlement.
- If you are unsure about the ultimate purchase price but there is some prospect that it may sell for \$750,000 or above (for example, it is being sold at auction and the purchase price is unknown or it is being sold by expression of interest) you should advise your vendor to apply for a clearance certificate from the ATO as soon as practicable to avoid 12.5 per cent of the purchase price being withheld at settlement.

#### **Foreign resident vendors**

- If the purchase price is \$750,000 or above and the vendor is a foreign resident, you should advise them that 12.5 per cent of the purchase price will be withheld at settlement by the purchaser and provided to the ATO.

### **Will the REIQ amend its contracts?**

Yes, all REIQ property sale contracts (residential and commercial) will be amended to include provisions which reflect the above new tax rules.

### **Where can I find more information?**

You can find more information on the ATO fact sheet for real estate agents.

**DISCLAIMER:** The information contained in this fact sheet is provided for general information purposes only. The information should not be used or relied on as a substitute for legal advice. If you require legal advice concerning a specific fact or situation, you should seek independent legal advice. REIQ accepts no liability or responsibility for any loss occurring as a result of anyone acting or refraining from acting on the basis of the information contained herein. Whilst REIQ has taken all reasonable measures to ensure that the information contained in this fact sheet is correct, REIQ gives no warranty and accepts no responsibility for the accuracy or the completeness of the information.

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**Part 5—Termination of appointment**

<b>Residential sales of 1 or 2 properties only</b>	<p><b>Open listing:</b> You may terminate in writing at any time.</p> <p><b>Sole or exclusive:</b> 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.</p>
<b>Open listing</b>	You may terminate an open listing for either commercial or residential property sales at any time.
<b>Other fixed term appointments</b> (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.
<b>Continuing appointments</b> (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)



Section 1  
Advertising/marketing

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

Authorized amount \$.....

**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 \$.....

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





## Appointment of Real Estate Agent (Residential Sales)

### ITEMS SCHEDULE

#### A PRIOR APPOINTMENT

Pursuant to Section 21 of the *Property Occupations Regulation 2014* (Qld), prior to accepting this Appointment of Property Agent, the Agent must take reasonable steps to find out whether the Client has already appointed another property agent to perform the service(s) listed in this Appointment of Property Agent.

- ☒ The Client acknowledges that the Agent has taken reasonable steps to find out whether the Client has already appointed another property agent to perform the service(s) listed in this Appointment of Property Agent.
- ☒ The Client further warrants that another property agent has not been appointed to perform the service(s) listed in this Appointment of Property Agent.
- ☐ If the Client is not able to warrant that another property agent has **not** been appointed to perform the service(s) listed in this Appointment of Property Agent, the Client acknowledges that a statement in accordance with Section 21 (4) of the *Property Occupations Regulation 2014* (Qld) has been provided by the Agent.

**Note: A copy of the statement provided to the Client must be annexed to this Appointment of Property Agent.**

#### B ADVICE AS TO MARKET PRICE

Has the Client requested information regarding the price at which the Property is to be offered for sale?

(Select applicable Box)

☐ Yes ☒ No

- If Yes, ☐ The Client acknowledges receipt of the Comparative Market Analysis; OR
- ☐ The Client acknowledges receipt of the written explanation showing how the Agent decided the market value of the Property.

#### C COMPARATIVE MARKET ANALYSIS

Compares the Property with at least 3 properties sold within the previous 6 months that are of a similar standard or condition to the Property and are within 5km of that Property.

- ☐ Listed below; OR
- ☐ Listed in the attached Comparative Market Analysis (attach analysis)

ADDRESS OF PROPERTY:

SALE PRICE:

DISTANCE FROM  
PROPERTY:

	\$	
	\$	
	\$	
	\$	
	\$	

Comments:

**H VERIFICATION OF IDENTITY / AUTHORITY TO DEAL**

**Note: Under s19 of the *Property Occupations Regulation 2014*, a real estate agent must, before listing a property for sale, take reasonable steps to find out or verify ownership of the property they are selling.**

**Identification:**

Has the Agent sighted the client/s original photo identification (for example, drivers licence, passport, proof of age card)?

☐ Yes ☒ No

If no, has the Agent requested the client/s to provide photo identification at a later date?

☒ Yes ☐ No

**Authority:**

Has the client/s provided the Agent with proof of their identity to verify ownership or authority to deal with the property?

☒ Yes ☐ No

**If the client is:**

- a company or trust
- acting pursuant to a power of attorney
- a personal representative of a deceased estate

**the Agent should request verification that the person is an authorised representative and entitled to deal with the property on behalf of the property owner.**

**I FACTS MATERIAL TO THE SALE OF THE PROPERTY**

The client/s acknowledge that any material matters that must be disclosed under s20 of the *Property Occupations Regulation 2014* has/have been disclosed in the Property Details and Disclosure Annexure to this PO Form 6 Schedule.

☒ Yes ☐ No

**J PROPERTY FEATURES****Property type** (select one)

☒ House ☐ Apartment ☐ Acreage ☐ Unit ☐ Farm ☐ Mobile Home ☐ Duplex ☐ Townhouse ☐ Vacant Land

**Construction** (select as applies)

- ☐ Brick  
☐ Timber  
☐ Concrete  
☐ Hardiplank  
☐ Fibro  
☐ Rendered  
☐ Cladding  
☐ Brick Veneer  
☐ Block

**Appliances** (select as applies)

- ☐ Gas stove  
☐ Electric stove  
☐ Oven  
☐ Hot Plate  
☐ Rangehood  
☐ Microwave  
☐ Refrigerator  
☐ Dishwasher  
☐ Disposal Unit  
☐ Washing machine  
☐ Dryer  
☐ Ducted vacuum

**Style** (select one)

- ☐ Colonial  
☐ Contemporary  
☐ Brick and tile  
☐ Federation  
☐ Mediterranean  
☐ Pole home  
☐ Queenslander  
☐ Post War

**Type** (select one)

- ☐ Highset  
☐ Lowset  
☐ Split-level  
☐ Double storey  
☐ Multilevel

**Roof** (select one)

- ☐ Tiles  
☐ Fibro  
☐ Iron  
☐ Colorbond

**Pool Compliance & QBCC Notification**

Is there a non-shared pool on the land? ☐ yes ☒ no

If yes:

Is there a Pool Compliance Certificate?

☐ yes - a copy must be provided to the buyer/s prior to settlement

☐ no - a Form 36 Notice of No Pool Safety Certificate must be provided to the prospective buyer **before they enter the contract**

**Does the Client authorise the Agent to prepare the Form 36 and provide a copy of the signed Form 36 to QBCC prior to settlement?:**

☐ yes - clause 8.6 applies ☒ no - clause 8.6 does not apply



## ESSENTIAL TERMS AND CONDITIONS

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  - 5.1.2 the Client defaults under the Contract of Sale and that Contract is terminated by reason of or following that default; or
  - 5.1.3 the Contract of Sale is not completed and the whole or part of the deposit paid is liable to be forfeited; or
  - 5.1.4 the Contract of Sale is terminated by mutual agreement of the Client and the Buyer.

- 5.2 For the purposes of Clause 5.1 a Relevant Person is, where the Appointment of Property Agent is for:
  - 5.2.1 an Exclusive Agency, any person (including the Client); or
  - 5.2.2 a Sole Agency, any person other than the Client; or
  - 5.2.3 an Open Listing, the Agent only.

### 6. AUTHORITY TO PAY COMMISSION

- 6.1 The Client:
  - 6.1.1 authorises the Agent, and
  - 6.1.2 authorises and directs the deposit holder or any other person to whom any deposit is paid under a Contract of Sale, to pay to the Agent any Commission to which the Agent is entitled immediately upon:
    - (a) the entitlement to Commission arising; and
    - (b) production of the Agreement or a copy of the Agreement;
- 6.2 The Client agrees that the Agent's receipt for the payment of Commission under Clause 6.1 completely discharges the deposit holder from any duty to account to the Client for the Commission paid to the Agent.

### 7. COMMUNICATION OF EXPRESSIONS OF INTEREST

- 7.1 Unless otherwise agreed in writing between the Client and the Agent, the Client:
  - 7.1.1 only requires the Agent to communicate to the Client:
    - (a) all written offers about the sale; and
    - (b) only those expressions of interest which the Agent determines in its discretion are to be communicated to the Client.

### 8. DISCLOSURE OF RELEVANT FACTS

- 8.1 The Client states that:
  - 8.1.1 the Property is the Client's own property;
  - 8.1.2 the Agent is entitled to sell the Property on behalf of the Client; and
  - 8.1.3 the particulars about the Property contained in the Property Description Details are correct;
- 8.2 The Client authorises the Agent at the Client's cost to:
  - 8.2.1 take reasonable steps to find out or verify:
    - (a) the ownership of the Property; and
    - (b) the description of the Property;
  - 8.2.2 take such other reasonable steps to find out or verify the facts material to the sale, exchange or lease that a prudent property agent would find out or verify in order to avoid error, omission, exaggeration or misrepresentation. These steps may be taken before listing the Property and afterwards as the occasion arises;
- 8.3 The Client will produce to the Agent, at the Agent's request, such information as required by the Agent to satisfy the Agent of the matters referred to in this Clause 8;
- 8.4 This Clause 8 does not oblige the Agent to undertake searches with public authorities;
- 8.5 The Client warrants that the Property is safe and free from any defects for the purposes of a property inspection.
- 8.6 If a Form 36 Notice of No Pool Safety Certificate is required to be provided to a prospective buyer and QBCC under the *Building Act 1975*, the Client authorises the Agent to do so at the relevant notification time/s.

INITIALS (Note: initials not required if signed with Electronic Signature)

000027724972



**9. NOTIFICATION OF SALE TO TENANT**

- 9.1 If the Property is tenanted, the Client states that the managing agent for the Property is as stated in the Property Details and Disclosure Annexure to the Schedule;
- 9.2 The Client acknowledges that where the Agent accepts an appointment to sell a property that is tenanted:
- 9.2.1 The Agent must immediately give written notice of the appointment to any managing agent of the Property; and
- 9.2.2 The managing agent must immediately give the tenant notice of the appointment of the Agent to sell the Property.

**10. ELECTRONIC SIGNING, COMMUNICATION AND NOTICES**

- 10.1 All written communications under this Agreement must be given to the parties' postal address, facsimile number, email address or mobile telephone number specified in Parts 1 and/or 2 of the Appointment of Property Agent;
- 10.2 The parties consent to the use of electronic communication in accordance with the provisions set out in Chapter 2 of the *Electronic Transactions (Queensland) Act 2001 (Qld)* and the *Electronic Transactions Act 1999 (Cth)*;
- 10.3 If this Agreement is signed by any party using an Electronic Signature, the Client and the Agent:
- (a) agree to enter into this Agreement in electronic form; and
- (b) consent to either or both parties signing the Agreement using an Electronic Signature.
- 10.4 The Client authorises the Agent to give on behalf of the Client any statement or other notice that may be required to be given by the Client in accordance with any law;
- 10.5 Nothing in this Clause 10 requires the Agent to give a statement or other notice on behalf of the Client. The Agent may require the Client to sign the statement or other notice on the Client's own behalf.

**11. AUCTION**

- 11.1 The Reserve Price shall be the amount specified in Part 4, Section 3 of the Appointment of Property Agent or as instructed by the Client in writing prior to the time of Auction;
- 11.2 The date, place and time for the Auction shall be as specified in Part 4, Section 1 of the Appointment of Property Agent and Item E of the Schedule or as otherwise agreed with the Client in writing from time to time;
- 11.3 The general conditions of sale shall be those set out in:
- 11.3.1 the Conditions of Sale by Public Auction Real Property adopted by the REIQ; and
- 11.3.2 the copyright form of Contract and the Terms of Contract/Standard Conditions of Sale adopted by the REIQ and approved by the Queensland Law Society as at the date of the Appointment of Property Agent;
- 11.4 The Agent may, in the Agent's sole discretion, subcontract the performance of the Agent's services in relation to holding the Public Auction by engaging a person licensed as an Auctioneer under the Act to conduct the Public Auction on behalf of the Agent. If the Agent employs an Auctioneer then the Client shall pay the amount as specified in Item E(4) of the Schedule as a fee for the Auctioneer's services.

**12. AGENT'S ENTITLEMENT TO TERMINATION PENALTY**

- 12.1 In this Clause 12:
- 12.1.1 **Relevant Contract** means a relevant contract as defined in the Act; and
- 12.1.2 **Termination Penalty** means the amount of 0.25% of the Purchase Price under the Contract of Sale as defined in the Act.
- 12.2 If:
- 12.2.1 the Contract of Sale is a Relevant Contract; and
- 12.2.2 the Buyer validly terminates the contract at any time before the cooling-off period ends in accordance with the Act; and
- 12.2.3 the Client is entitled to retain from the deposit the Termination Penalty,
- the Client agrees that the Termination Penalty will be divided equally between the Client and the Agent.
- 12.3 The Client:
- 12.3.1 authorises the Agent; and
- 12.3.2 authorises and directs the deposit holder or any other person to whom any deposit is paid under a Contract of Sale,
- to pay to the Agent, the Agent's share of the Termination Penalty to which the Agent is entitled in accordance with the Clause 12.2 immediately upon production of the Agreement or a copy of the Agreement.
- 12.4 The Client agrees that the Agent's receipt for the payment of one half of the Termination Penalty under Clause 12.2 completely discharges the deposit holder from any duty to account to the Client for the Agent's share of the Termination Penalty paid to the Agent.

**13. INDEMNITY**

- 13.1 The Client shall be liable for and shall indemnify and defend the Agent, its directors, officers, employees, and agents from and against any and all losses, claims, demands, actions, suits (including costs and legal fees on an indemnity basis), and damages, including, but not limited to:
- 13.1.1 injury, bodily or otherwise, to or death of any person;
- 13.1.2 loss, damage to or destruction of property, whether real or personal, belonging to the Client, the Agent or others; and
- arising from or in connection with any act or omission or negligence of the Client or any other person (other than the Agent) or arising out of or in connection with the Property or this Appointment of Property Agent.

**14. CLIENT AND AGENT'S ACKNOWLEDGEMENTS**

The Client and the Agent acknowledge that:

- 14.1 they have received a copy of the Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer, the Schedule, these Essential Terms and Conditions and any additional annexures;
- 14.2 they have read and fully understood the Property Occupations Form 6 - Appointment and reappointment of a property agent, resident letting agent or property auctioneer, the Schedule, these Essential Terms and Conditions and any additional annexures, including the warranties and indemnities contained therein and agree to be fully bound by them.

**15. ENTIRE AGREEMENT**

- 15.1 This document constitutes the entire agreement of the parties with respect to the subject matter of this document and supersedes all prior negotiations or expressions of intent or understandings with respect to the appointment of the Agent to the Property.



## REIQ Fact Sheet

### Sales - General



# New tax rules for properties \$750,000 and above

From 1 July 2017, new tax rules will apply on any property transaction where the market value of the property is \$750,000 and above.

Although the new laws are aimed at foreign residents, real estate agents must be aware that these new laws also impact Australian residents selling properties above this value.

## Summary

The new laws require a purchaser to withhold 12.5 per cent of the purchase price of real property valued at \$750,000 or more and to pay that amount to the Australian Taxation Office (ATO) on settlement unless the seller obtains a clearance certificate.

The new laws will start on 1 July 2017 and are aimed at vendors who are 'foreign persons'. However, it will impact all property transactions valued \$750,000 and over, irrespective of whether the vendor is a foreign person or not.

For any sale contract entered into on or after 1 July 2017 where the purchase price is \$750,000 or greater, the purchaser has a statutory obligation to withhold 12.5 per cent of the purchase price at settlement from the vendor and pay that amount to the ATO. Following settlement, the vendor applies for a tax credit in relation to the amount withheld by the ATO for the capital gains liability arising from the transaction.

**This means that Australian resident vendors who are selling property with a market value of \$750,000 or above will need to apply for a clearance certificate from the ATO to ensure that their sale proceeds are not withheld.**

## How can your clients obtain a clearance certificate?

The ATO will only issue a clearance certificate to a vendor that is not a 'foreign person' for taxation purposes.

Any vendor that is not a foreign person can apply online for a clearance certificate from the ATO, and that certificate will remain valid for 12 months from the date of issue. The certificate may be used for multiple property sales within the 12-month period.

If a valid clearance certificate is provided to the purchaser prior to settlement, the purchaser is not entitled to withhold 12.5 per cent of the purchase price at settlement and the full sale proceeds are to be released to the vendor.

## How do Australian residents obtain a clearance certificate?

A vendor who is an Australian resident can obtain a clearance certificate by making an application on [ato.gov.au/FRCGW](http://ato.gov.au/FRCGW) (hyper link).

If the vendor is automatically assessed as an Australian resident, a clearance certificate will be issued within days of the application however, the process may take longer for more complex applications.

## When does the clearance certificate have to be given?

Australian resident vendors must give the clearance certificate to the purchaser on or before settlement occurs to avoid the purchaser withholding 12.5 per cent of the purchase price.

1 July 2017

### **What if my client is a foreign person?**

Where the vendor is a 'foreign person', the purchaser must retain 12.5 per cent of the purchase price and pay that to the ATO at settlement, unless the vendor provides a valid 'Variation Notice' in which case the purchaser must remit the amount stated in the notice.

### **When will the new laws apply?**

The new laws will apply to sale contracts (for \$750,000 and above) entered into on or after 1 July 2017.

### **What types of properties do these rules apply to?**

All property including, vacant land, residential property, commercial property, strata title and community titles schemes.

### **What does this mean for agents?**

#### **Australian resident vendor/s**

- If you are appointed to sell a property and you consider its market value to be \$750,000 or more then you should advise your vendor to apply for a clearance certificate from the ATO as soon as practicable to avoid 12.5 per cent of the purchase price being withheld at settlement.
- If you are unsure about the ultimate purchase price but there is some prospect that it may sell for \$750,000 or above (for example, it is being sold at auction and the purchase price is unknown or it is being sold by expression of interest) you should advise your vendor to apply for a clearance certificate from the ATO as soon as practicable to avoid 12.5 per cent of the purchase price being withheld at settlement.

#### **Foreign resident vendors**

- If the purchase price is \$750,000 or above and the vendor is a foreign resident, you should advise them that 12.5 per cent of the purchase price will be withheld at settlement by the purchaser and provided to the ATO.

### **Will the REIQ amend its contracts?**

Yes, all REIQ property sale contracts (residential and commercial) will be amended to include provisions which reflect the above new tax rules.

### **Where can I find more information?**

You can find more information on the ATO fact sheet for real estate agents.

**DISCLAIMER:** The information contained in this fact sheet is provided for general information purposes only. The information should not be used or relied on as a substitute for legal advice. If you require legal advice concerning a specific fact or situation, you should seek independent legal advice. REIQ accepts no liability or responsibility for any loss occurring as a result of anyone acting or refraining from acting on the basis of the information contained herein. Whilst REIQ has taken all reasonable measures to ensure that the information contained in this fact sheet is correct, REIQ gives no warranty and accepts no responsibility for the accuracy or the completeness of the information.



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