

Selling real estate?

The Property Agents and Motor Dealers Act 2000 provides safeguards for people selling a home, vacant land, unit or investment property when dealing with a licensed agent, auctioneer, pastoral house or their registered sales consultants.

Before you sell

Research carefully. To get the best price for your property select an effective and ethical agent. Ask people you know and seek out who is active in your area by checking local newspapers and internet sites, and visiting houses open for inspection.

Shop around. Visit a number of agents to find the one you like and can do it for a price you are prepared to pay as fees are negotiable up to the maximum set by the legislation.

If you are not sure who to appoint, ask two or three agents to inspect your property and provide you with a listing presentation. This will include an indication of the current market price, an overview of market conditions, and a plan on how the agent will market the property.

Check prices. Look at several real estate agents' listings, the internet, or newspapers to find out the average market price for a property similar to yours.

Follow market changes or downturns that may influence the price you want.

Do not be influenced by an agent who gives you a high price. Some unethical agents use this tactic to lock you into a sole or exclusive agency and then can't deliver on their valuation. Ask the agent how they arrived at the price and ask them to show you recent sales and statistics to verify their opinion.

Ask the agent for testimonials from other customers. Contact people to confirm their comments.

Find out the different processes and options involved in selling through a real estate agent, auctioneer or as a private seller.

If you have an investment property, talk to an accountant. Ask about any taxation implications to verify claims made by agents seeking to sell your property.

Remember, once you choose your agent, they work for you and not the buyer. Tell them about any problems with your property so they can deal honestly with potential buyers.

Appointing an agent

All real estate agents, auctioneers, and pastoral houses must be licensed with the Office of Fair Trading. Pastoral houses predominantly operate in the rural market and real estate agents and auctioneers commonly sell residential property.

An agent's licence must be displayed conspicuously in their office. Do not deal with an unlicensed person as you may not have the same level of consumer protection if things go wrong.

While you have the freedom to choose any agent you wish, the agent cannot legally act for you unless you have first appointed them in writing.

There are normally three types of appointment:

- open listing appointment;
- sole agency appointment; and
- exclusive agency appointment.

Agents with an open listing appointment only get a commission if they actually sell the property. You can open list your property with several agents and cancel the appointment at any time by giving written notice to the agent.

An agent with an exclusive agency appointment is entitled to receive an agreed commission upon sale, whether or not they actually sell the house. Therefore if you sell the property yourself, you must still pay the agent's commission. If another agent sells your property, you may also have to pay them a commission – potentially you could be obliged to pay two commissions.

A sole agency appointment is very similar to an exclusive agency, but your agent may not be entitled to commission if you make the sale yourself. Be careful of the distinction between a sole and an exclusive agency. The appointment form outlines the difference between open listings, sole and exclusive agencies.

Open listing appointments give you the flexibility to use a number of agents to compete for the commission on the sale of your house while sole and exclusive agencies allow for a more personalised and targeted marketing.

Details on the appointment form must include:

- the proposed term of the appointment;
- the type of service the agent is providing;

- how it is to be performed;
- the fees, charges and any commission payable for the service;
- the expenses, including advertising and marketing expenses, the agent is authorised to incur;
- the source of and estimated amount of any rebate, discount, commission or benefit that the agent may receive in relation to any expenses that the agent may incur;
- any condition, limitation or restriction on the performance of the service;
- when the fees, charges and any commission for the service become payable;
- that where the commission is based on a percentage of the sale price, it is worked out only on the actual selling price (not listing price); and
- if the appointment is for a sole or exclusive agency, the date the appointment ends (which can be no more than a maximum of 60 days).

NOTE: the commission is negotiable up to a maximum set by law.

What type of appointment?

If you are listing your property for auction, multi-list, or tender, you will most likely be requested to enter into an exclusive agency agreement.

You may reappoint an agent for a sole or exclusive agency for more than one term. However, you cannot reappoint for more than 60 days at a time and the agent cannot be reappointed earlier than 14 days before the term of the sole or exclusive agency ends.

If you enter into a continuing appointment for the agent to provide a number of services (eg selling all the units in a building complex), the appointment form must state:

- the date a continuing appointment ends; and
- the appointment may be revoked on giving 90 days notice or some lesser period (not less than 30 days) agreed by the parties.

The notice revoking a continuing appointment must be signed and given to the agent. Stopping a continuing appointment does not affect existing contracts the agent may have entered into on your behalf.

Make sure the appointment form is signed and dated by you and the agent or their representative and you receive a signed copy of the form.

Selling costs

The Act permits an agent to be reimbursed for costs and expenses incurred on your behalf while selling

your property. Ensure you and the agent discuss who will be responsible for paying these costs and put these details on the listing authority. An agent can only seek reimbursement from you if they were authorised to incur the costs and provide a detailed statement of expenditure. The most common costs will be for searches, bank fees and charges, advertising, couriers, telephone and fax.

If you provide money to an agent in advance for any advertising, marketing, searches etc, it must be placed in the agent's trust account.

Do not give an agent, auctioneer or developer money for advertising or marketing until you have seen a marketing plan with a schedule of how and when the money is to be spent. An agent must be fully accountable to you for how your money is used. The agent is not permitted to seek a general marketing levy where there is no accountability for the actual cost of the services provided.

When you pay for advertising/marketing, it is wise to inspect all advertising copy and photographs. It is also useful to initial your approval on the copies in case they are altered.

Being clear with your agent

An agent must protect your confidentiality in a transaction. Discuss with the agent how the question of 'reason for sale' should be disclosed when dealing with buyers. Also discuss how price should be dealt with.

If you advertise a price, make it clear to the agent whether the price can be quoted as negotiable or not. This instruction should be in writing. Likewise, if you are advertising without price, discuss how buyers will be guided to what is a suitable offer. Many agents will often guide buyers with market research in the form of a Competitive Market Analysis (CMA). Ask to see a copy of this document and approve it in writing before it is given to buyers.

Be careful of agents using low lead-in prices. They can damage the price integrity of your property and may breach the *Fair Trading Act* for engaging in false or misleading conduct.

Ask the agent to guide you on what items in the property are standard inclusions in a sale. If there are items you wish to retain, make sure the agent excludes them from the sale.

An agent will require a great deal of information from you when listing a property for sale. Provide a copy of your rates notice, a title reference certificate, or some other documentation to verify you own the property and confirm its description details.

If you are listing a tenanted property for sale, ensure your tenant and managing agent have been given the appropriate notices notifying them of the pending sale. You must ensure all inspections are conducted according to guidelines set out in the *Residential Tenancies Act*. Your appointed agent must also respect your tenant's right to 'peaceful enjoyment' of the property. Sellers often appoint just one agent as a sole or exclusive agency when marketing rented property.

Remember, once you choose your agent, they are working for you and not the buyer. You must tell them about any problems there may be with your property so they can deal honestly with potential buyers and minimise the risk of a contract falling through.

Selling the property

Carefully read any advertising/promotional material prepared by your agent and approve it in writing before it is published or promoted.

While your property is listed for sale, ask for a written activity report, at least weekly, that outlines who has been through the property, buyer feedback and general market updates.

Instruct the agent through the agency appointment form to inform you both orally and in writing of any offers from buyers for the property.

Check all signs relating to the sale of your property are only placed by your agent.

When the buyer signs a sales contract

Some agents will prepare a draft contract on your property at the time of listing. This gives them an opportunity to conduct searches and ensure that the information it contains is correct before you and a buyer signs. Check the sales contract to make sure it is accurate and reflects your instructions. It is also good practice to ask your solicitor to check the draft contract.

Do not accept a contract to sell your property unless:

- it has been properly signed by the buyer;
- the initial deposit stated in the contract has been received by the agent;
- the agent has signed the contract acknowledging receipt of the deposit and given you a copy of the trust account receipt;
- the terms and conditions of the offer to purchase are acceptable to you;
- you can fully comply with all contractual requirements (including the notices required under various Acts related to the transfer of the property); and

- you have made appropriate provision in the contract to pass on to the buyer any restrictive or building covenant or unregistered agreement in the sale contract.

Check the dates for payment of any additional deposits are stated in the contract and fall within a few days from when the contract is signed. Make sure the agent immediately advises you if these additional deposits are not received.

Don't sign until you check the address and description of the property are correct.

Make sure you receive every page of a contract, including all standard conditions before you sign it. Read and understand these.

Remember the agent is not qualified to give legal advice on the contract or to modify or vary it. Discuss any changes with your solicitor.

Don't allow the agent to deter you from seeking legal advice before signing a contract or an agency appointment.

If you have a solicitor acting for you, make it clear the solicitor will be the one who communicates with the buyer or buyer's solicitor or agent on your behalf.

Be aware that it is common in Queensland to conduct negotiations on the sales contract. When a buyer makes an offer that is not acceptable to you, you have at least three options.

1. Accept the offer by signing the contract.
2. Reject the offer by not signing the contract.
3. Respond with a counter offer by altering and signing the contract to suit your terms of sale. If the buyer accepts the counter offer by initialling the changes, the contract becomes binding. Make sure you understand the process.

If either party alters a sales contract in any way, ensure all parties signing the contract initial the changes. Failure to do so will void your contract.

Settling the contract

Usually, the agent will deduct their commission from the deposit held and forward the balance to you after settlement. The agent is accountable to you for the money received as well as the expenses paid on your behalf.

You may not be obliged to pay a commission to an unlicensed agent or to an agent who does not have a written and current agency appointment.

Codes, conduct and consumer complaints

Licensed agents, auctioneers and pastoral houses are required to conduct themselves and their businesses practices according to a mandatory **Code of Conduct**. The Code of Conduct requires agents to establish their own complaint process to resolve problems buyers may have.

If you have a complaint about a licensed agent's conduct, approach them first to resolve the dispute using their complaint process.

If you are not satisfied, you can complain in writing to the Office of Fair Trading. Officers will investigate to see if the law has been broken.

Investigations may lead to disciplinary action, reprimands, fines and suspension or disqualification of licences or registration certificates.

You can report any personal loss of money you believe was caused by the actions of an agent or their salesperson. You may be eligible for reimbursement from the Claim Fund, but there are time limitations for lodging a claim.

For more information:

The Office of Fair Trading website

www.fairtrading.qld.gov.au

or call 1300 658 030 (for the cost of a local call).

© The State of Queensland (Office of Fair Trading, an office of the Department of Tourism, Racing and Fair Trading) 2003.

Copyright protects this publication. The State of Queensland has no objection to this material being reproduced but asserts its right to be recognised as author of its original material and the right to have its material remain unaltered.