Rural Sales Agency Agreement: Schedule

REAL ESTATE AGENTS GROUP

REISA REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA

An agreement between the Agent and the Vendor (collectively referred to as the "Parties") authorising the Agent to market and sell the Property on the following terms and conditions ("the Agreement"):

1. VENDOR (Land):
Legal Entity/ Full Name(s):

Primary Contact: Given Name: Surname:

Street:

Suburb: State: Postcode:

ABN (if applicable): ACN (if applicable):

Telephone: W: M: H: F:

Email:

☐ The vendor gives the agent the authority to serve all documents and notices to the vendor using this email address supplied or any other email address as advised by the vendor in writing for this purpose.

2. AGENT: Company Name/Legal Entity: REAL Estate Agents Group – Adelaide

Company Representative: David Stockbridge

Street: Level 1, 127 Haydown Road

Suburb: Elizabeth Vale State: SA Postcode: 5112

ABN (if applicable): 36 145 283 147 RLA No: 232366

ACN (if applicable):

Telephone: T: (08) 7073 6888 F: N/A

Email: daves@realagents.properties

3. PROPERTY: Street:

Suburb: State: Postcode:

LH/FH	Section / Allotment	Hundred	Area (hectares)	Register Bk Vol/Folio

☐ **Refer to Annexure or further description of Property (including any non-registered encumbrances and notations)**

4. SPECIFIC AND ASSOCIATED MATTERS REQUIRED:

4A The Agent's genuine estimate of the selling price, expressed without any qualifying words or symbols as a single figure is $ and is based upon the comparable market analysis as provided to the Vendor and/or attached to this Agreement;

4B The selling price sought by, or acceptable to, the Vendor, expressed without any qualifying words or symbols as a single figure is $ (the "Vendor Price") and the preferred settlement period is ;

4C The manner of the sale is ☐ Auction **OR** ☐ Private Treaty **OR** ☐ Tender **OR**
☐ Expression of Interest ☐ Other (Specify)

;

INITIALS

APPROVED BY THE REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA FOR THE EXCLUSIVE USE OF REISA MEMBERS © REISA 2017

Rural Sales Agency Agreement: Schedule

REAL ESTATE AGENTS GROUP

REISA REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA

4D Pricing representations for marketing:

Vendor acknowledges that the Agent is not permitted to advertise a likely selling price of the property that is less than the higher of the figures in 4A and 4B, and agrees the following:

☐ Single figure $ _____ **OR**

☐ Range $ _____ TO $ _____ **OR**

☐ No price representation to be quoted.

Note: *The reserve price at auction (if applicable) must be specified in writing by the Vendor prior to auction.*

4E This agreement is a ☐ Sole (exclusive) Agency **OR** ☐ General (non-exclusive) Agency;

4F The duration of this Agreement (the "Duration"):

Commencement Date: ___ / ___ / 20__

End Date: ☐ ___ / ___ / 20__ (inclusive), or

☐ the conclusion of ___ days after the *auction/close of tender/close of expression of interest; and

** (delete as applicable)*

At the conclusion of any Sole Agency period (if applicable), the Agreement will continue as a General Agency until terminated by either party in writing.

4G The rights of the Vendor to terminate this Agreement are as follows:

(a) subject to 4H(b) below, this Agreement cannot be terminated unless termination is by written agreement between the parties and General Agency;

(b) where this Agreement is entered into as a result of the Vendor making an offer to purchase another property of the Agent, the Vendor may, during this Agreement, terminate this Agreement by written notice to the Agent within seven (7) days of rejection of that offer or lawful termination of any resulting contract; and

(c) a withdrawal from sale by the Vendor is permitted but such withdrawal does not constitue termination of this Agreement.

4H Expenses and Fees:

(a) **Advertising and Promotional Expenses** - The Vendor agrees to pay up to a maximum of $ _____ (inclusive of GST) towards the advertising, sign boards, printed material and promotions.

(b) **Statutory Expenses** - The Vendor agrees to pay up to a maximum of $ _____ (inclusive of GST) towards the other expenses to those referred to in clause 4H(a) above that are incurred by the Agent including Government and other Statutory searches. These searches include certificate of title and any associated documents, survey/strata plans (if applicable), and any other expenses.

(c) As per attached schedule _____ (collectively referred to as "Expenses and Fees").

4I Payment of Expenses and Fees:

(a) The sum of $ _____ is paid now and is to be held in the Agent's Trust Account and will be used to pay the agreed Expenses and Fees referred to in clause 4H above as they arise from time to time and the sum of $ _____ will be paid _____

(b) As per attached schedule _____

4J The nature and source and, if known, the amount of value of any rebate, discount, refund or other benefit expected to be received by the Agent from a third person in relation to services under this Agreement is expressley acknowledged and accepted by the Vendor:

☐ None Known ☐ Refer Form R2 attached ☐ Refer Attachment _____

4K The Agent has authority to accept an offer by executing an agreement to sell the Propery on behalf of the Vendor ☐ Yes ☐ No

5. CHATTELS

5A Included Chattels of Property: ☐ Not Applicable

☐ Built-in furniture ☐ Dishwasher ☐ Window treatments and fittings

☐ Fixed floor coverings ☐ Light fittings ☐ Rubbish bins

☐ Other (specify) _____

Excluded Chattels of Property: ☐ Not Applicable ☐ Vendor's; and/or ☐ Tenant's:

☐ Personal effects and chattels ☐ Dishwasher ☐ Loose floor coverings

☐ Garden pots and ornaments ☐ Rubbish Bins ☐ Freestanding furniture

☐ Other (specify) _____

INITIALS

APPROVED BY THE REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA FOR THE EXCLUSIVE USE OF REISA MEMBERS © REISA 2017

Rural Sales Agency Agreement: Schedule

5B Professional Fee (when payable):

Payment of Professional Fee

5B.1 The Professional Fee is immediately payable by the Vendor to the Agent:

5B.1.1 upon completion of the sale of the Property; or

5B.1.2 in the case of clause 5B.2.4 or clause 5B.2.7, immediately upon written notice to the Vendor by the Agent.

Circumstances where Professional Fee is payable

5B.2 The Vendor must pay the Professional Fee where:

5B.2.1 the Agent effects the sale of the Property; or

5B.2.2 during a Sole Agency the Vendor enters into a contract to sell the Property not withstanding that the purchaser may not have been introduced by, or sourced by, the Agent; or

5B.2.3 subject at all times to clause 5B.3.2, the Agent introduces or otherwise procures a purchaser and the Vendor enters into a contract (including an option to purchase) for the sale of the Property with that purchaser within six (6) months from the date the Agent introduced that purchaser to the Property. For the purpose of this clause 5B.2.3, the purchaser includes the purchaser's assignee or nominee; or

5B.2.4 a contract for the sale of the Property is effected by the Agent and entered into by the Vendor, and that contract is terminated due to the breach, default or unwillingness of the Vendor; or

5B.2.5 the Vendor is a Body Corporate, and a contract for the sale of the Property through the purchase of an interest in the Body Corporate is effected by the Agent and entered into by the Vendor or shareholders of the Vendor (as the case may be); or

5B.2.6 the Vendor is the trustee of a trust and the Property is trust property, and a contract for the sale of a beneficial interest in the trust is effected by the Agent and entered into by the Vendor;

5B.2.7 subject at all times to clause 5B.3.2, the Agent procures an unconditional contract for the sale of the Property containing a price offer for the Property at or above the Vendor Price, or, in the case of auction, at or above the Vendor's reserve price, or, such other price as may be agreed by the Vendor in writing and, the Vendor refuses to enter into that contract.

Circumstances where Professional Fee is not payable

5B.3 The Vendor is not liable to pay the Professional Fee to the Agent where:

5B.3.1 if more than one general agency exists, the contract for sale and purchase of the Property is procured or effected by another registered agent (as defined under the *Land Agents Act 1994*);

5B.3.2 the Vendor has, following expiration or the termination of the sole agency agreement, entered into a new sole agency agreement with another registered agent (as defined under the *Land Agents Act 1994*).

5C Professional Fee (amount):

The following Agent's Professional Fee has been agreed:

*(i) The Agent's Professional Fee inclusive of GST, being _____ % of the actual selling price of the property. **OR**

*(ii) Other:

(*delete or complete as appropriate whenever asterisk (*) appears)

5D The Agent warrants that it will comply with all the Agent's obligations under the Act and Regulations and will act in the Vendor's best interests.

6. OTHER MISCELLANEOUS MATTERS:

6A Has there been a previous sales agency agreement for the property? No / Yes (if yes, has it been lawfully terminated in writing)

6B Is the property subject to an existing tenancies and/or lease(s) of land? No / Yes (if yes include attachment "Tenancy Annexure" for further details or to be supplied at a later date).

6C GST

The Vendor ☐ will seek and obtain **OR** ☐ has sought and obtained professional accounting advice on the GST and tax implications of this sale or has otherwise made itself fully aware of those implications. The Vendor advises that:

The Vendor is or is not required to be registered for GST	☐ Yes	☐ No
The Property is to be sold _____ of GST unless the Agent is otherwise instructed	☐ Yes	☐ No
The Property has been used as a farming business for the last five (5) continuous years	☐ Yes	☐ No
The Property is to be marketed as a "going concern" within the meaning of the GST Law	☐ Yes	☐ No
The Margin Scheme is not to be applied to this sale unless the Agent is otherwise instructed	☐ Yes	☐ No

Note: *The Agent is not qualified to provide advice on GST and other taxation issues relating to the sale or purchase of the Property. The Vendor or Purchaser must obtain their own independent taxation advice.*

INITIALS

APPROVED BY THE REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA FOR THE EXCLUSIVE USE OF REISA MEMBERS © REISA 2017

Rural Sales Agency Agreement: Schedule

REAL ESTATE AGENTS GROUP

REISA REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA

6D Vendor Disclosures in relation to Property:

Services to the Property (Annexure 1) ☐ Applicable ☐ Not applicable

Building works done without necessary consents and approvals	☐ None known; or	☐ As described below
Encroachments or fences not on their true boundaries	☐ None known; or	☐ As described below
Breaches of the *Strata Titles Act 1988* or articles, the *Community Titles Act 1996* or by-laws	☐ None known; or	☐ As described below
Notices, orders or charges received but not yet complied with or Proceedings commenced and served on the Vendor under the *Natural Resources Management Act 2004*, *Environment Protection Act 1993*, or *Native Vegetation Act 1991*	☐ None known; or	☐ As described below
Non-compliance with swimming pool safety requirements as outlined in the *Development Act 1993* or associated legislation or relevant standards.	☐ None known; or	☐ As described below

Details relating to Item 6D above (specify):

6E Vendor must effect and maintain the following insurance policies for the Duration of this Agreement:

☐ Building / Property ☐ Public Liability ☐ Other (Specify)

6F Additional Terms & Conditions (if any) - the Parties agree to the following additional terms and conditions as specified:

6G Detailed Property Schedule

☐ Agent to prepare detailed Property Schedule for approval by Vendor prior to commencement of marketing of Property

Note: *Approval of the Property Schedule shall not be unreasonably withheld by Vendor*

☐ Detailed Property Schedule attached

6H Additional Annexures

Additional Annexures to form part of this Agreement:

☐ Services to Property/Dwelling ☐ Detailed Property Schedule

☐ Livestock ☐ Plant and Equipment ☐ Water Resources

☐ It is acknowledged that the above matters are relevant to the sale of the Property and the Parties agree to use their best endeavours to ensure the Agent is aware of the particular matters for marketing and sale purposes

7. VENDOR WARRANTIES, ACKNOWLEDGEMENTS AND INDEMNITIES

7.1 The Vendor warrants that:

7.1.1 it is the owner of the Property or has the written authority of the registered proprietor to enter into this Agreement;
7.1.2 it has the legal capacity to enter into this Agreement;
7.1.3 it has, and will continue to, disclose to the Agent all relevant information relating to the Property and that all such information is true and correct;
7.1.4 all fittings and fixtures to be included in the sale of the Property are in working order;
7.1.5 all disclosures made by the Vendor to the Agent are true and accurate in all respects;
7.1.6 it holds and will maintain appropriate insurance in respect of the Property as specified in clause 6F and will provide evidence of such cover upon request of the Agent;
7.1.7 it has disclosed to the Agent the existence of any other current agency agreement in place in respect of the Property; and
7.1.8 it has sought or will obtain professional accounting advice on the GST and tax implications of this sale or has otherwise made itself fully aware of those implications.

7.2 The Vendor expressly acknowledges and agrees that:

7.2.1 it is liable to pay the Expenses and Fees, and any other expenses agreed in writing, whether or not the Property is sold;
7.2.2 the Agent may receive a benefit as disclosed in clause 4I and the Vendor consents to the Agent receiving that benefits;
7.2.3 any amount owing by the Vendor to the Agent is deemed a debt of the Vendor to the Agent;
7.2.4 if an amount owing by the Vendor remains outstanding for seven (7) days, the Agent may issue a written notice to the Vendor requiring payment within three (3) business days;

INITIALS

APPROVED BY THE REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA FOR THE EXCLUSIVE USE OF REISA MEMBERS © REISA 2017

Rural Sales Agency Agreement: Schedule

7.2.5 in addition to any amounts owing to the Agent, the Vendor is expressly liable for any and all costs associated with the recovery and collection of those monies by the Agent from the Vendor (including legal fees on a full indemnity basis).

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

8. AGENT'S AUTHORITY AND OBLIGATIONS:

8.1 The Vendor authorises the Agent to:

8.1.1 advertise and market the Property in such a manner as the Agent considers appropriate;
8.1.2 appoint an auctioneer (if any) to assist in conducting an auction of the Property;
8.1.3 sign, on behalf of the Vendor, any contract for the sale of the Property effected by public auction and to authorise the auctioneer to sign such a contract on behalf of the Vendor;
8.1.4 accept any monies due to the Vendor prior to settlement in respect of the sale or proposed sale of the Property;
8.1.5 incur the Expenses and Fees up to the expenses limit;
8.1.6 transfer to itself from trust any monies payable to the Agent under this Agreement; and
8.1.7 serve the tenant any written notice/s required under the *Residential Tenancies Act 1995* (if applicable).

8.2 Unless otherwise specified in the Agreement, the Agent will:

8.2.1 use its best endeavours to sell the Property at the Vendor Price;
8.2.2 market and promote the Property for sale in accordance with this Agreement;
8.2.3 negotiate the terms and conditions of sale with prospective purchasers in accordance with the Vendor's instructions;
8.2.4 provide to the Vendor a copy of any signed offer within forty eight (48) hours of receipt of such offer, or as otherwise agreed with the Vendor;
8.2.5 complete and serve all forms and notices required to be served by the Agent on behalf of the Vendor under the relevant laws;
8.2.6 unless directed otherwise by the Vendor, utilise the standard form of contract for sale and purchase of property authorised and approved by REISA from time to time; and
8.2.7 at all times act in the best interests of the Vendor, and in compliance with its obligations under the Act and Regulations.

9. DISPUTES:

The Vendor has the right to refer any dispute that arises with the Agent to a number of different institutions. Depending upon the nature of the dispute these institutions may include the civil and criminal legal systems, the South Australian Consumer & Business Services and/or the Australian Competition and Consumer Commission. Prior to referring any such dispute to any of the aforementioned organisations the parties agree to refer the matter to the Institute of Arbitrators and Mediators Australia ("IAMA") for resolution. Each matter will be referred to a conciliator appointed by the IAMA, unless either party wishes to proceed directly to arbitration. If conciliation is not concluded within six weeks and if a party wants to proceed directly to arbitration, the IAMA will appoint an Arbitrator who will make a final and binding award (and all costs of such will be paid by the party/ies as directed by the Arbitrator).

10. GST:

Any amounts referred to in this Agreement which are payable by the Vendor to the Agent in respect of services provided by the Agent under this Agreement, including reimbursement of expenses are expressed as indicated at the current rate of ten (10) per cent. If the current rate is increased or decreased, the parties agree that any amounts referred to in this Agreement will be varied accordingly.

11. INFORMATION USE AND PRIVACY CONSENT:

11.1 The Agent collects and uses the Vendor's Personal Information and any other information about the Vendor and/or the Property acquired by the Agent in the course of acting for the Vendor (collectively **"the Information"**) to act on the Vendor's behalf and to perform the services and functions required by the Vendor in connection with this Agreement (**"Primary Purpose"**). Without limiting the generality of this clause, the Agent may disclose the Information to third parties as may be required to facilitate marketing and promotion activities, to arrange any works, repairs and maintenance in respect of the Property (where applicable), to comply with legislative requirements and for administration purposes.

11.2 Without provision of certain information the Agent may not be able to act effectively or at all on the Vendor's behalf.

11.3 In addition to the Primary Purpose, the Vendor acknowledges and agrees the Agent may subject to the *Privacy Act 1988 (Cth)* (where applicable):

11.3.1 collect, use and disclose the Information to promote the services of the Agent to the public and/or to seek potential clients; and
11.3.2 disclose the Information to third parties such as, but not limited to, other real estate business, real estate related bodies, valuers, data collection agencies, financial institutions and media organisations.

11.4 Subject to any applicable statutory limitations and requirements, the Vendor has the right to access any Personal Information which may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.

11.5 By signing this Agreement the Vendor expressly consents to the collection and use of the Information as provided for in this clause 11, and for the purposes of this agreement, **"Personal Information"** has the same meaning as in the *Privacy Act 1988 (Cth)*.

12. GENERAL:

12.1 This Agreement, or a right created under it, may not be waived or varied except in writing, signed and dated by the Parties.

12.2 This Agreement constitutes the entire agreement and understanding between the Parties.

12.3 This Agreement is governed by and construed in accordance with the laws from time to time in force in South Australia and the Parties submit to the non-exclusive jurisdiction of the Courts of South Australia.

12.4 If any provision of this Agreement shall be found by a court of competent jurisdiction to be invalid or unenforceable in law, then in such case, the Parties hereby request and direct such court to sever such provisions from this Agreement.

INITIALS

APPROVED BY THE REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA FOR THE EXCLUSIVE USE OF REISA MEMBERS © REISA 2017

Rural Sales Agency Agreement: Execution Page

REAL ESTATE AGENTS GROUP

REISA REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA

EXECUTED AS AN AGREEMENT

☐ The vendor agrees that the agent is able to provide a copy of this agreement to the vendor within 48 hours of its execution.

Dated this _____ day of _____ 20

Signed by or on behalf of the Vendor (Land)

Full name

Signed by or on behalf of the Vendor (Land)

Full name

Signed by or on behalf of the Plant and Equipment Vendor (if applicable)

Full name

Signed by or on behalf of the Water Resources Vendor (if applicable)

Full name

Signed by or on behalf of the Livestock Vendor (if applicable)

Full name

Signed by or on behalf of the Agent

Full name

Vendor Please Note:

1. REISA recommends that you should not sign any document unless you are satisfied that you understand its terms.
2. Use of this Agreement by a non-member of REISA is a breach of Copyright.

Credit Card Authority for Expenses

Credit Card Type: ☐ Visa ☐ Amex ☐ Mastercard ☐ Bankcard ☐ Diners Club

Card Number:

Expiry Date:

CCV:

Cardholder Name:

Signature

Amount: $

Payment by EFT into Trust Account

BSB:

Trust Account Number:

Trust Account Name:

Reference:

NOTE: ALL PARTIES SHOULD INITIAL ALL PAGES

INITIALS

APPROVED BY THE REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA FOR THE EXCLUSIVE USE OF REISA MEMBERS © REISA 2017

Form R1

Sales Agency Agreements

Rights & obligations of vendor
Land and Business (Sale and Conveyancing) Act 1994 section 20(2)

An agent must give you, the vendor, this guide outlining your rights and obligations before making a sales agency agreement with you.

Choosing an agent

Agents, including companies that are agents, must be registered under the Land Agents Act 1994. You can check whether they are registered on the Consumer and Business Services website: www.cbs.sa.gov.au.

Choosing the best real estate agent to negotiate the sale of your property is important. The services provided and the associated costs may vary significantly so it is a good idea to obtain advice from several agents before signing an agency agreement. You should ask them for their proposed marketing plan — what they will do to market your property and what will be your financial contribution to the marketing of the property.

It may not be in your best interests to choose the agent who provides you with the highest estimated sale price of your property because this price may be unachievable and could delay the sale.

When the agent provides you with an estimated sale price of your property you should ask how they have determined the estimated sale price. It is a requirement to include recent sales figures for comparable properties in your area and any other information the agent relies upon for their genuine estimate of the selling price in any sales agency agreement you choose to sign with an agent. You can also engage a qualified valuer to prepare an independent valuation if you so choose.

Role of the agent

When you list your property with an agent, you are employing them to sell your property for a price that is acceptable to you. The agent should always act in your best interest and engage in good business practices. The agent will charge a fee for their services either in the form of a commission, a set fee or a combination of both.

The agent should outline a marketing plan for your property and undertake various searches. You can generally expect the agent to:

- advise on a method of sale
- advertise and market the property
- organise and attend open house and other inspections
- attract prospective buyers
- communicate offers to you
- organise an auction, if this is the preferred method of sale
- arrange the signing of the contract of sale
- assist in the preparation of the disclosure statement to be given to the purchaser.

The sales agency agreement

An agent must not act for you unless they have been authorised by a sales agency agreement that is dated and signed by you, the vendor, and the agent. This contractual agreement sets out the rights and obligations of both you, the vendor, and the agent. A copy must be given to you when you sign it or at a later time within 48 hours as agreed by you and the agent.

Every sales agency agreement for residential property must include:

- a description of the land that is the subject of the agreement
- your full name and that of the agent
- the agent's registration number
- the chattels that are included in or excluded from the sale
- the services that will be provided by the agent or another person for which you will be separately charged (e.g. advertising and marketing)
- the nature, source and amount of rebates that the agent expects to receive in relation to separately charged services (e.g. advertising and marketing)
- details of the circumstances in which the agent will be entitled to receive commission or fees for the sale of the land, and also the circumstances in which the sale may not be attributable to the agent
- the duration of the agency agreement (maximum term is 90 days for sale of residential land)
- the agent's genuine estimate of the sale price of the property (a single figure)
- the selling price you are seeking or would accept (a single figure)
- comparable sales data and any other information the agent relies upon to support their estimate
- the manner of sale of the property (e.g. auction, private treaty or tender)
- your rights to terminate the agreement
- whether the agreement is a sole agency agreement
- whether the agent has authority to accept an offer for the property on your behalf
- a term warranting that the agent will comply with the Act and will act in your best interests.

Advertising and marketing

The sales agency agreement must specify all services that will be separately charged for, including advertising and marketing, and whether those services will be provided by the agent or by a third person. Amounts to be charged for the services and the time for payment must also be specified.

You should make sure you have a clear understanding of how the agent intends to market your property and what this will cost you. The cost of advertising and marketing a property varies significantly depending on the type of advertisement and where the advertisement will appear, e.g. the internet, The Advertiser. Some agents may charge a low commission rate but charge more for marketing and advertising your property.

You may be charged the up front cost of advertising with a particular publication, but agents commonly receive a rebate as a result of placing large numbers of advertisements.

You should make sure you ask the agent questions about the amount of advertising rebate that the agent expects to receive. You are within your rights to negotiate with the agent to receive some benefit from those rebates.

You should determine whether the amount you are paying for advertising and marketing a property is reasonable. The agent must disclose the nature, source and, if known, the amount or value of any rebate, discount, refund or other benefit they expect to receive in relation to these services. You can also include in a sales agency agreement a clause requiring the return to you of some or all of the rebate when it has been paid to the agent.

You must also ensure that any information provided to the agent about your property is factual and up-to-date. If a buyer can show that advertising of a property is false or misleading, the buyer may be able to take legal action. Under s36 of the Act, significant penalties apply to making false or misleading representations for the purpose of inducing another person to purchase a property.

Duration of the agreement

You should consider the length of the sales agency agreement because you may be obliged to continue under it even if you are unhappy with the services provided by the agent.

Under the Act, the maximum duration of a sales agency agreement is 90 days.

Towards the end of the sales agency agreement, you and your agent may decide to extend the sales agency agreement or enter into a subsequent or new sales agency agreement.

Price

In a sales agency agreement the agent must specify the agent's genuine estimate of the selling price of the property. It is important to note that this genuine estimate is not a valuation but rather the agent's best estimate of the likely price you could expect based upon a whole range of factors – it is in no way any guarantee that you will receive that price in the market place. The price must be expressed as a single figure without any words or symbols (eg $300,000). In addition, the agent must provide you with details of sales of comparable land and any other information on which the agent will rely in support of their genuine estimate of the selling price.

The agreement must also specify a single figure sale price for the property that you would find acceptable to ensure any price advertising is not misleading or deceptive. If you are auctioning your property, you cannot increase your acceptable price in the agreement.

To help you decide on a price you should:

- consider the agent's estimated selling price
- research sale prices in your area
- consider seeking an independent valuation by a qualified valuer
- not allow emotion to cloud your judgment.

Having a realistic idea of the likely sale price of your property will help you avoid both disappointment and the risk of purchasing another property based on an unrealistic expectation of the sale price of your own property.

Prescribed minimum advertising price

The price that you and your agent list in the sales agency agreement will affect the price for which the property can be advertised. For example, if you advertise a likely sale price for your property, the price cannot be lower than the higher of the:

- amount you specify as acceptable in the sales agency agreement and
- amount the agent has estimated as the sale price.

Reserve price

The reserve price for the land must not, at any time before or during the auction, be set at an amount exceeding 110% of the amount that you have specified as your acceptable price in the sales agency agreement. For example, if you specify $400,000 in the sales agency agreement as your acceptable selling price, then the reserve cannot be more than $440,000.

Manner of sale

The sales agency agreement must specify the manner of the sale.

The most common ways to sell a property are by auction or private treaty. Your agent should advise you of the most appropriate way to sell your property. You should ask the agent about the advantages and disadvantages of both methods of sale before you decide what to do.

Termination of the agreement

A sales agency agreement must specify your rights to terminate the agreement. An agreement may limit your rights in this respect to certain circumstances, or provide for costly termination fees. An agreement may also deem termination to occur in certain circumstances; for example, if you sell the property privately, or through another agent. In such circumstances, depending on the agreement, the first agent may still be entitled to a commission. You should seek independent legal advice if you are unsure about your rights or the consequences of termination of an agreement.

Sole agency agreement

The agreement must specify whether the agreement is a sole agency agreement.

Sole agency agreements are the most common form of agreement in South Australia. Your agent will most likely suggest a sole agency agreement, particularly where sale is to be by auction.

Under a sole agency agreement the agent has the exclusive right to sell the property and is entitled to receive the agreed commission whether or not they are the one to actually sell the property. In other words, if you sell the property yourself you will generally still have to pay the agent their commission. This will depend on the wording of the agreement.

Authority to accept an offer

The sales agency agreement must specify whether or not the agent has authority to accept an offer on your behalf, for example when circumstances make it difficult to contact you at the time an offer to buy the property is made.

If an agent signs a contract of sale on your behalf, then the contract is binding on you. So, if you think it is appropriate for the agent to be able to accept an offer on your behalf then the contract should clearly state when and in what circumstances you consider it acceptable for the agent to accept an offer.

If, on the other hand, you retain the right to accept an offer yourself, then your property cannot be sold unless you agree to the offer.

Disputes and complaints

If you have a dispute with an agent you should first try to resolve it with the agent. If that is unsuccessful, you can contact Consumer and Business Services on 131 882 for advice.

If you engage a Conveyancer or legal practitioner for selling a property, a formal process to verify the identity and right to deal applies. Your conveyancer or legal practitioner must sign the settlement documents on your behalf and have a Client Authorisation signed by you to do so.

Disclaimer: This publication is a plain language guide to your rights and responsibilities. It must not be relied upon as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.