



Government of **Western Australia**
Department of **Commerce**

Real estate fees

negotiating with an agent



This booklet contains general information that was current at the time of publication. If you have specific inquiries about matters relating to your situation then you are strongly urged to seek independent professional advice. The producers of this publication expressly disclaim any liability arising out of a reader's reliance on this publication.

This publication is available in other formats on request to assist people with special needs.

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If you plan to engage a real estate and business agent to do any of the following then the information contained in this publication is relevant to you:

- market and sell your home or business;
- manage the renting/leasing of your home or business premises; or
- purchase a property or business.

The government does not fix a maximum fee for agents' services. Agreement on all fees and services

can be determined through negotiations between you and your agent.

Public protection and dispute resolution safeguards which are detailed below, protect consumers if an agent acts illegally or unjustly when negotiating, setting or charging a fee.

As with any other service, it is wise for you to protect yourself by ensuring your agent is licensed, comparing agents' fees and services, and checking contracts carefully.

Ensure your agent is licensed / sales representative is registered

To check if your agent is licensed, or if the sales representative employed by the agent is registered, visit the Consumer Protection section of the Department of Commerce website www.commerce.wa.gov.au/consumerprotection for an online search service. Alternatively you can call the licensing staff at Consumer Protection on 9282 0843, or country callers can dial 1300 30 40 54 for the cost of a local call from anywhere in the State. Consumer Protection is responsible for the licensing of real estate agents and registration of sales representatives, in addition to regulating their conduct.

By dealing with a licensed agent or a registered sales representative who is employed by a licensed agent, you are assured that they have passed certain relevant educational standards. You may also be protected by an insurance scheme known as the Fidelity Guarantee Account if you suffer financial loss due to certain actions of a licensed agent or an agency staff member. For further information concerning the Fidelity Guarantee Account visit the Consumer Protection website.

Compare fees and the quality of services

Before an agent can perform any services for you, the agent is required by law to have a written agreement signed by you that

authorises them to act on your behalf. This agreement is called a 'Written Authority', an 'Appointment to Act' or an 'Authority to Act'.

Before you sign a Written Authority you should safeguard your interests by comparing the fees and services of several agents, much the same way as you would get several quotes before hiring a tradesperson. You should also carefully read the conditions of the Written Authority. Also note that real estate agents can no longer charge a letting fee to the tenant under a residential tenancy agreement. You might also wish to ask if the agent has professional indemnity insurance.

If you feel uncomfortable dealing with an agent by yourself, you might want to have a friend or relative with you to help ask questions and negotiate the best fee for service.

Selecting an agent to sell your home

Generally, agents employ sales representatives who will be the people liaising with sellers and buyers of property. Although all sales representatives must be registered with Consumer Protection, it is the agent who supervises them and is ultimately responsible for the sale of your property and any other dealings you have with the agency.

You can usually gain a fair indication of an agent's knowledge of your local area by:

- their office location;
- the extent of their advertising in local papers; and
- the presence of their 'For Sale' signs in the neighbourhood.

You can also assess an agent's suitability by attending other home-opens to see them in action, or asking for a free market appraisal of your property.

Be aware that a market appraisal is what the agent considers to be the current market price of the property. It is not a valuation, which is a formal and detailed assessment of the property's value carried out by a licensed valuer for a fee.

Some marketing and service questions you may need to ask the agent include:

- Are you a member of a relevant industry body, for example, the Real Estate Institute of WA (REIWA)?
- What are your skills and experience?
- What is your knowledge of my local area?
- How will you determine the market value of my property?
- Will a 'For Sale' sign be erected on the property?
- Will home-opens be conducted, and how many will there be?

- Which agency staff members will conduct the home-open inspections and negotiations with interested purchasers, and what are the skills and experience of those staff members?
- Which websites, newspapers or specialist real estate publications will the property be advertised in?
- How often will the ads be placed and what information will be included in them?
- Will the selling fee (the agent's commission) include advertising and marketing costs? Note that this and all other fees/charges can be negotiated (see the section Written Authorities and sales transactions).
- If advertising and marketing costs are to be separate from the selling fee, what is the maximum amount that will be charged? Ask where these costs are specified in the Written Authority and request an itemised list of the types of advertising to be carried out.
- Does the agreement allow for a conjunctural sale to take place? (See page 11 for more information about conjunctural arrangements).

You should request the agent confirms in writing the answers to the questions above, in particular those relating to home-opens and advertising.

Compare the services, prices and professional manner of the agent.

Negotiate a better fee for service by stating what other agencies are prepared to do for you and be prepared to substantiate this.

Selecting an agent to sell your business

The sale of a business is a specialised area. It is advisable to check the business sales experience of the agent and staff carefully.

Some questions to ask business agents as you compare services include:

Are you a member of a relevant industry body chapter, for example, REIWA's business broking chapter or the Business Brokers Association of Western Australia?

- How will you assess the value of my business?
- Do you have any experience in selling my type of business?
- How many years have you been selling businesses?
- What information about my business will you provide to prospective buyers?
- Can you arrange specialist information as required such as valuations, government and municipal inspections?
- What are your strategies for introducing prospective buyers to me?

- How often will you provide me with reports on the level of buyer interest?
- Are the marketing and advertising fees included in the selling fee? If not, what is the maximum amount that will be charged? Remember, fees/charges can be negotiated – see the section Written Authorities and sales transactions.
- Will there be any other costs?

Some of the questions listed above in regards to selling a home are also relevant.

Compare the services, prices and professional manner of the agent. You are again advised to negotiate a better fee for service by stating what other agencies are prepared to do for you. It is advisable to request the agent to outline in writing what services are offered and at what cost.

Selecting an agent to manage your rental property

Property managers are employees of an agent. Property managers are not usually involved in sales transactions but are still required to be registered under the Act to conduct most property management functions.

You can appoint an agent to advertise for and select a tenant, and to manage the property (that is to collect rent and other costs, lodge bonds, arrange repairs, conduct inspections), or to perform any or all of these tasks.

Although you may negotiate with an agent, ask to meet the specific property manager who will be personally looking after your property, including dealing with your tenants and signing them on.

Some questions to ask about property management services include:

What information and/or assurances can you provide me regarding the quality of property management service your clients receive?

- What are the skills and experience of the property manager/s who will be looking after my property?
- What are the skills and experience of the person in bona fide control of the agency? For example, what involvement do they have with tenant selection and property management?
- How will your agency advertise for tenants?
- How will your agency assess tenants?
- Could you show me your standard lease agreement with a tenant?
- How thoroughly will you check my property during routine inspections and also after the tenant leaves?
- Could you show me a copy of your standard property condition report?

- Will you take and send me photos from routine inspections?
- How often will property condition reports be provided to me?
- How often will financial statements be provided to me?
- Have you had experience in the Small Disputes Division of the Local Court acting on behalf of a property owner?
- How much will the bond be, and where will it be held?
- What arrangement will be made for the apportionment of water rates?
- Please show me your standard Written Authority and explain to me the different fees and total fee you propose to charge me.

Once again, compare the services, prices and professional manner of the agent. Negotiate a better fee for the property management service by stating what other agencies are prepared to do for you. See the Consumer Protection publication *You and your property manager* for more information.

For more detailed information about a landlords rights and obligations toward a tenant, contact the Consumer Protection Contact Centre on 1300 30 40 54.

Consumer Protection can offer advice to landlord's and tenants on residential tenancy matters.

Selecting an agent to assist you in purchasing property

Be aware that the selling or listing agent is engaged and paid by the seller and, therefore, acts for the seller not for the buyer. This being the case, you may wish to consider appointing a 'buyers agent' to act for you if you are seeking to purchase property or a business.

As is the case with appointing an agent to sell your property or a business, or to manage your property, if you want to engage an agent to act as a buyers agent then you must enter into a contract (the Written Authority) with them.

Also, remember to check with Consumer Protection that the agent or sales representative is licensed or registered respectively. Ask pertinent questions of the agent such as the extent of experience they have acting as a buyers agent, and whether they can put you in contact with buyers they have acted for in the past.

Speak to different agents, compare the costs of their service then negotiate a contract you fully understand and are happy with.

Read and amend the Written Authority

Before you sign a Written Authority with an agent for any type of service, you should read the document very carefully. Once you sign the Written Authority it becomes legally binding so it is important that you do not

agree to anything that is unreasonable, and you include any requirements you specifically want from the agent.

Do not necessarily sign immediately. Ask the agent to clarify anything you may not understand.

You can give yourself time to think about the terms and conditions of the Written Authority. You may want to discuss the Written Authority and its conditions with your legal practitioner, a trusted family member or a friend.

You can cross out existing conditions in the Written Authority if you are not satisfied with them and if the agency agrees. You can add your own conditions but make sure you word them carefully to avoid misunderstandings.

Consumer protection mechanisms in Written Authorities

Agents' fees are deregulated and are therefore open for negotiation. Current legislation protects the consumer from unknowingly agreeing to pay high fees.

Agents are required to define fees and services clearly in their Written Authorities. The written agreement you have with the agent should therefore be clear for you to understand.

In order to be valid, Written Authorities must include the following:

- A statement explaining that the agent's fees are not fixed by a regulated scale of fees, and are to be agreed upon between the parties. This statement must be placed immediately before the agent's commission or selling fee.
- A statement stating that in the event of a dispute, Consumer Protection can be approached for assistance.
- The agent's commission or selling fee must be expressed in dollar terms and not just as a percentage.
- If the selling fee for a sales transaction is expressed in an hourly or weekly rate the maximum amount to be received by the agent must also be included.
- In property management, and other areas where the calculation of fees is based on the use of certain services, the Written Authority should provide a full explanation of the nature of the services on which the fees are based. Make sure you know the difference between management fees and a letting fee.

Management fees are charged for the on-going management of the property, whereas a **letting fee** is charged only for finding and selecting a new tenant. Effective since 5 April 2007, real estate agents cannot include a letting fee for finding a

tenant as part of a residential tenancy agreement. However agents can still charge these fees to owners if agreed upon in the Written Authority. Further information on this can be received by calling 1300 30 40 54.

- If an agent seeks expenses from you such as advertising costs, repairs for the sale of a property or property management, the agent must specify the expense, set out the way the expense is calculated, and provide you with relevant written information to verify the costs.
- A Written Authority must include your initials next to the agreed commission rate, advertising expenses, general expenses and any other costs. This will give you the opportunity to consider the commission or expense carefully. Do not initial or sign until you understand and agree with the cost.
- In addition, an agent must not act unjustly in all circumstances when negotiating, setting or charging a fee. Disputes over any unjust conduct can be referred to the Department (see We can assist page 13).
- A copy of the Written Authority must be given to you immediately after being signed by you and the agent.

Written Authorities and sales transactions

There are certain common conditions in most sales-related Written Authorities. The information below highlights some of these conditions. Be aware that there is no standard set of conditions for Written Authorities that are prescribed by the government, so agents may create their own. You should, therefore, read very carefully the Written Authority presented to you by the agent because it could have important conditions and special wording other than what is described here.

Bearing in mind that the terms and conditions of a Written Authority are usually in the agent's favour, you should be prepared to negotiate before you sign it.

The 'period of agency' on the Written Authority is the time period for which you agree to employ the agent and to follow the conditions of the authority. You can write in whatever period of time you prefer.

A Written Authority to sell exclusively will usually also contain several important options from which you must explicitly choose, and then initial.

Essentially, for an exclusive selling agreement you have the option to **agree** or **not agree** to pay:

- The selling fee to the agent if the property is sold **after** the 'exclusive rights period'.
- Marketing/advertising costs and/or expenses. If you agree to pay the marketing costs then you can specify the maximum amount that you are willing to pay. Alternatively, the agent may agree to waive reimbursement of marketing costs and/or expenses if the property is sold during the period of agency. If you decide to draw up a schedule of marketing costs then ensure you are specific about cost items and maximum amounts. After advertising has been carried out, and on your request, an agency must be able to provide information about the marketing activities they have charged you for and how the costs were calculated.
- A selling fee to the agent if you and not the agent introduce the ultimate purchaser to the property.
- A selling fee and other charges as outlined in the Written Authority to the agent if, during the 'exclusive rights period', you appoint another agent, who ultimately finds a successful purchaser.

You will need to be clear about what options you choose and what clauses you may decide to strike out before initialling and signing the Written Authority.

Types of Written Authorities for sales transactions

There are a number of broad categories of Written Authority that you can sign when employing an agent to sell your home or business. You can specifically request a certain type of Written Authority if you think it will suit you best. There are five main types of Authority to Sell. These are:

1. Exclusive Listing

- One agent is given exclusive authority to sell for a specified period, usually 60 to 120 days, or for any period to which you agree. There is usually a provision in an exclusive listing contract to also designate a non-exclusive period for which you will have the choice to agree or refuse to pay the agent a selling fee if the property is sold after the exclusive period but before the non-exclusive period ends.
- As with all other types of Written Authority, the agent may allow another agent to present buyers in a conjunctural arrangement (see page 11 for the section on Conjunctural arrangements for more information).
- Agents prefer this type of listing because a selling fee is guaranteed to the agent in the event of sale.

2. Multi-listing (not for business sales)

- The exclusive period is for 90 days, plus a non-exclusive period of one year.
- Applies only to member agents of the industry association, REIWA, and the Multi Listing Service (MLS).
- Other MLS members may introduce prospective buyers to the property.
- You deal only with the listing agent, who is responsible for all negotiations with other agents and interested buyers.
- Commission is split between the agents if another MLS member sells the property.

3. Sole Listing

- Only one agent has the right to sell but the seller can still attract a buyer without having to pay a commission if so agreed.
- The agent is entitled to a commission only if he or she is the one who sells the property.

4. Open Listing

- The seller can give authority to sell to several agents at the same time.
- Only the agent who makes the sale gets the commission.
- The seller can still sell privately.

5. Auction (not for business sales)

- One agent has the authority for a specific period, including the day of auction.
- The agent may be given an exclusive listing period if the property is passed in.

Conjunctional arrangements

Most Written Authorities allow the listing agent to enter into a sales agreement with a sub-agent, known as a conjunctional agent. In a conjunctional arrangement, another agent approaches your listing agent with an offer from a potential buyer. If the offer is accepted then the commission you have agreed to pay to your listing agent is divided between the two agents as they have agreed.

Conjunctional deals increase the prospects of sale but are not as attractive to agents because of the splitting of the agent's commission. Nevertheless, agents are required by law to inform the seller of all written offers from potential buyers, even if it is through another agent. Remember that a listing agent and the conjuncting agent both act for you as the seller and, therefore, have certain obligations to you in selling your property.

Written Authorities for property management

There are certain common conditions in most Written Authorities for property management services. The information below highlights some of

these conditions. You should, however, read your own Written Authority very carefully since it may also have other important conditions and wording.

In both residential and business tenancy situations, the Written Authority will specify what types of services you will be paying for. You can strike out some of these or add others.

REIWA's Exclusive Management Authority for Residential Premises (2009) provides for you to specify the rental details for the premises, the period of agency, the payments the agent can make on your behalf using the rental money collected, and your bank account details for depositing rental money collected. You may also specify other conditions relating to the authority of the agent to act on your behalf, such as having the agent pay the electricity and water rates but not Council rates out of the rental money collected.

If you want an agent to select a tenant and manage your rental property, you should be aware that fees will probably be stated separately in the Written Authority. Ask the agent for the total cost of all the fees.

The agreement also requires you to specify whether or not you agree to pay separate marketing and advertising costs. An agreed letting fee and management fee schedule must also be specified.

An agent may claim expenses from you that are actually incurred and related to their duties, such as photocopying costs, fax costs, or reimbursement for repairs paid on your behalf. These may be called 'disbursements'. You should discuss these expenses with the agent before signing the Written Authority. It is important to specify in the Written Authority the nature of these expenses, and clearly set out the method by which they will be calculated.

It may be prudent to require the agent to seek your permission before undertaking any repairs on the property. To do so, explicitly state this in the Written Authority. Alternatively, you may authorise the agent to approve certain urgent repairs without contacting you first. For property maintenance, you can also specify that the agent must use a certain company to perform repairs. All amendments need to be initialled by you.

If a strata company is responsible for the property, there is also provision for you to specify the strata company's details, including to where the company's invoices and correspondence should be forwarded.

Termination clause

It is important to be aware of the fact that most property management Written Authorities allow for the agreement to be terminated prior to

the period of agency concluding. If you decide to terminate a property management Written Authority you will generally need to inform the agent in writing 28 days before you wish to end the management contract. The Written Authority usually allows for 'damages' to be paid to the agent as a percentage of the management fee that the agent would be expected to receive for the unexpired period of agency. If you do not agree with this clause you may negotiate another rate with the agent or strikeout this clause completely before you sign the Written Authority.

You should ensure you closely scrutinise any clauses in the appointment to act which may give you the option of terminating the agreement if you are not satisfied with the performance of the agent, or for any other reason.

It is important that the following information concerning terminating a written authority to manage a property be obtained before signing:

- What notice do you have to give to terminate the contract?
- Can the agent charge you, and how much, if you:
 - (a) terminate without a reason;
 - (b) provide the agent notice; or
 - (c) believe the agent has substantially breached the agreement? If so, do they have a right to remedy the breach?

Dispute resolution assistance

Real estate and business agents are regulated under the *Real Estate and Business Agents Act 1978*. There is also a Code of Conduct covering the responsibilities of agents and sales representatives during real estate transactions including those limited to property management services.

Consumer Protection is responsible for maintaining industry standards by licensing agents and registering the sales representatives employed by agents and developers. Consumer Protection also provides education and advisory services to the industry and public, and conducts investigations into allegations of misconduct by agents or their employees.

Where appropriate, Consumer Protection can bring proceedings before the State Administrative Tribunal or Magistrates Court for disciplinary action to be taken against agents and sales representatives.

In addition, Consumer Protection has the power to provide some advice and a conciliation service to resolve most types of sales or property management disputes between consumers and agents. The conciliation service specifically deals with breaches of a minor or technical nature where a complainant is seeking some remedial action or even financial compensation.

We can assist

If you are experiencing a dispute about fees with a real estate and business agent, or you have a general concern about the conduct of an agent or sales representative, including property managers, then you can phone Consumer Protection on 1300 30 40 54 for the cost of a local call from anywhere in the State.

Complaints may be lodged in writing with:

Consumer Protection
Locked Bag 14
Cloisters Square
Western Australia 6850

Department of Commerce

Consumer Protection Division

Advice Line 1300 30 40 54

(for the cost of a local call from anywhere in the State)
8.30am - 5.00pm weekdays

Forrest Centre
219 St Georges Terrace
Perth Western Australia 6000

Locked Bag 14 Cloisters Square Western Australia 6850
Administration: (08) 9282 0777 Facsimile: (08) 9282 0850
National Relay Service: 13 36 77

Website: www.commerce.wa.gov.au/consumerprotection
Email: consumer@commerce.wa.gov.au

Great Southern	(08) 9842 8366
South-West	(08) 9722 2888
Mid-West	(08) 9964 5644
Goldfields	(08) 9026 3250
North-West	(08) 9185 0900
Kimberley	(08) 9191 8400