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REINSW
REAL ESTATE INSTITUTE
OF NEW SOUTH WALES

EXCLUSIVE MANAGEMENT

AGENCY AGREEMENT (RESIDENTIAL)

USER GUIDE

1. This form has been designed to comply with the Property, Stock & Business Agents Act 2002 (the Act) and Regulations 2003 (the Regulations) which commenced 1 September 2003.
2. The Agent must fully understand the terms of the agency agreement. Failure to comply with the law and follow correct procedure may prevent the Agent from recovering their commission, fees and expenses and/or subject the Agent to penalties for breach of the Act and Regulations. The Agent should be able to explain the agency agreement to the Principal.
3. All parts of the form must be completed. An omission may bring about a defective agency agreement, enabling a Principal to avoid their financial responsibilities to the Agent.
4. A licensee may delegate their authority to an employee (certificate or licence holder) to both inspect the Premises and sign the agency agreement. The licensee must however supervise the certificate or licence holder in accordance with the supervision guidelines published by the Office of Fair Trading.
5. The agency agreement must be signed by both the Agent and Principal, and the copy marked "Principal's Copy" must be served on the Principal within 48 hours in the manner provided by the Act and Regulations. Failure to do so may result in loss of commission.
6. The licensee's licence number must appear on the agency agreement. If the Agent trades as a corporation the licence number is the corporation's licence number, if as a sole trader the Agent's licence number, if as a partnership it is one of the partner's licence numbers.
7. The agency agreement must contain written instructions outlining the extent of the Agent's authority in respect of the management of the leased Premises.
8. This is an exclusive management agency agreement. The Agent should make enquiries of the Principal as to whether the Principal has signed any other agency agreement in respect of the management of the subject Premises. If this is the case, the Principal should check whether the first agency agreement is still current, which may mean that the Principal is liable for the payment of more than one commission.

   There may be the possibility of more than one tenant being signed to a lease, that is, by yourself and another Agent. It is advised that you check with the Principal before signing up a tenant.
9. An inspection report of the Premises must be completed as soon as practicable after entering into this agreement. The practical approach would be to complete the inspection report when completing the condition report for the Residential Tenancy Agreement. A copy of the completed inspection report must be given to the Principal. (Note: A pro forma inspection report is available on the inside cover).
10. GST
    - i GST is payable by the Agent to the ATO in respect of the performance of the Agent's services under this agency agreement. The agency agreement provides that the Agent is entitled to recover GST from the Principal.
    - ii In accordance with ACCC guidelines, all amounts referred to in this form, including fees, expenses and outgoings are expressed as inclusive of GST.
    - iii Where the leasing fee is calculated as an amount based on one week's rent, the form should be completed as follows:
      - one week's rent + 10% = 110% of one week's rent, or
      - a single GST inclusive fee.
    - iv Where the Agent incurs an expense in the course of providing property management services such as advertising and telephone charges, these expenses are considered a taxable supply, even if the expense is GST free in the Agent's hand. When recovering disbursements Agents should subtract the input tax credit received on the original expenses and then add on GST when charging the Principal. Example: postage expenses of $9.90, Agent can claim an input tax credit of 90¢. The Agent charges the Principal $9.00 plus 90¢ GST being a total of $9.90.
    - v Where expenses are paid by the Agent, as agent for the Principal, and the account is addressed directly to the Principal, the Agent should pass the account to the Principal without adding any further GST (e.g. owners corporation levy, accounts for repairs and maintenance).
    - vi The Agent's fee should be calculated on the GST inclusive value of the rent.
11. Ensure that all costs and expenses are included in the agency agreement.
12. The fees and expenses cannot be varied except as agreed by the Principal in writing.
13. Special conditions where space is insufficient (e.g. where the Agent is to perform additional services or where they are to advertise): write "See Annexure Hereto" and then attach to each copy of the agreement. The annexure must also be signed by both parties.
14. If the Agent is instructed by the Principal to pay insurance renewals that instruction must be confirmed by the Principal each and every time the insurance renewal falls due. It is recommended that instructions be in writing, at the minimum the Agent should make a file note.
15. An Agent must not provide financial advice. Any person seeking the Agent's opinion should be advised to consult with their own independent financial and/or investment advisor.
16. A landlord or landlord's agent must disclose any proposal to sell the premises during a tenancy. Failure to disclose may entitle the tenant to terminate the tenancy without compensation.
17. Agents have an obligation to advise a prospective tenant of all material facts in respect of the Premises. The material fact clause will assist in that process, but will not of itself discharge the Agent's obligations. You should raise this issue with the Principal and also undertake reasonable research to become aware of the material facts pertaining to the Premises.
18. An Agent must disclose, on the agency agreement, any rebates, discounts or commissions that the Agent will/may receive in respect of expenses claimed for services provided by the Agent in relation to the real estate transaction. If this disclosure is not made, the Agent will not be entitled to those expenses.
19. It should be noted that there are other disclosure requirements under the Act and Regulations which are required to be given separately from the agency agreement under certain circumstances.
20. Ensure that a person signing on behalf of a Principal corporation identifies their status on the agency agreement, e.g. Director, Secretary.

SAMPLE

FM00100

INSPECTION REPORT

Between Principal ABN / ACN

Address GST Registered ☐ Yes ☐ No

Postcode

Phone: Work Mobile Home

Fax Email

And Agent

Agents Licence No. ABN / ACN

Trading as GST Registered ☐ Yes ☐ No

Address

Postcode

Phone: Work Mobile Home

Fax Email

Address of Premises

Description of Premises (e.g. house, unit, number of bedrooms, garage, etc.)

Description of the exterior condition of the Premises

Description of the interior condition of the Premises

Fixtures to the Premises

Smoke alarms

Fittings (not being fixed to the Premises) which are provided with the Premises

Improvements made to the Premises

Anything provided with the Premises

Work to be done by the Principal

Estimated date of completion

/ /

/ /

/ /

Signature of Agent

Date / /

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REINSW
REAL ESTATE INSTITUTE OF NEW SOUTH WALES

EXCLUSIVE MANAGEMENT AGENCY AGREEMENT
(RESIDENTIAL)

The Property, Stock & Business Agents Act 2002 and Regulations requires all Agent's instructions to be in the form of a written agreement.

EXCLUSIVE MANAGEMENT AGENCY AGREEMENT

PARTIES

Principal

ABN / ACN GST Registered ☐ Yes ☐ No

Address

Postcode

Phone: Work Mobile

Phone: Home Fax

Email

Agent

Licensee's Licence No.* (see note)

ABN / ACN GST Registered ☐ Yes ☐ No

Trading as

Address

Postcode

Phone: Work Mobile

Fax Email

*** Note:** If the Agent trades as a corporation the licensee's licence number is the corporation's licence number.

PREMISES

Address of Premises to be leased

Postcode

Being: ☐ Furnished ☐ Unfurnished Garage/Car Space included ☐ Yes ☐ No

AGREEMENT

Agent's Appointment

1. The Principal hereby appoints the Agent exclusively to lease and to manage the Premises in accordance with this agreement.
2. It is agreed that the Agent may from time to time delegate to the Agent's employees all or any of the authority vested in the Agent by this agreement.
3. This agreement shall commence on the / / and may be terminated by either party giving not less than written notice of termination but without prejudice to either party's rights accrued or obligations incurred prior to the effective termination.

Leasing

4. The Agent is authorised to lease all or any part of the Premises on the following conditions, or as otherwise instructed:
   - i Term of the tenancy agreement
   - ii Rent $ per payable in advance or such other rent as the Principal may agree to accept.
   - iii Rental bond $ or equivalent to weeks rent in respect of each tenancy.

Special Instructions

5.

Agent's Authority

6. At the end of each tenancy, the Agent is authorised to:
   - i Re-lease the Premises at market rent for a term not exceeding ☐ Yes ☐ No
   - ii Refer to the Principal for instructions concerning re-leasing and advertising/promotion ☐ Yes ☐ No
   - iii Review the rent when in the opinion of the Agent such a review is appropriate. ☐ Yes ☐ No

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Agent's Remuneration

7. The Agent shall be entitled to the following fees: (GST inclusive)

i A leasing fee upon leasing of _____ regardless of whether the Premises are let by the Agent; any other agent; or the Principal. The Agent's Leasing Fee is due and payable by the Principal when a tenant enters into possession of the Premises or signs a residential tenancy agreement or pays rent, whichever occurs first.

ii A tenancy agreement preparation fee of $ _____

iii A management fee of _____ % of all monies collected on behalf of the Principal

iv An administration fee of $ _____ per _____

v Other _____

Service Fees, Charges and Expenses

8. The Agent shall perform the following services and be entitled to the following fees (GST inclusive):

	Fee	When due and payable
Attendance at a tribunal/court	$ per hour	
Arrangement of repairs and maintenance	$	
Service of any notice	$	
Applying for a court or tribunal order	$	
Preparation of a tribunal case	$	
Calculation and collection of water and sewerage usage charges	% of cost	
Arrangement of refurbishment or improvements	$	
Processing insurance claims, including valuations for insurance purposes	$ per hour	
Disaster/emergency management fee	% of cost	
Other _____	$	

9. In the event that the Agent incurs expenses or charges relating to the leasing and/or management of the Premises or any part thereof they are entitled to reimbursement as follows:

	Fee	When due and payable
Marketing and/or promotional expenses for each leasing	$	
Statements/administration fees	$	
Office expenses in respect of each management being postage, phone calls and out of pocket expenses	$	
Other _____	$	

Variation of Fees and Expenses

10. The services to be provided by the Agent and any fees or expenses payable by the Principal to the Agent pursuant to this agreement cannot be varied except as agreed by the Principal in writing.

Promotional Activities

11. The Premises are to be advertised and/or otherwise promoted ☐ as per the attached schedule **OR** ☐ not advertised **OR** as follows: _____

The promotional fee for each leasing is

$ _____ and is due and payable _____

For Lease Sign: Permission is hereby granted for the Agent to erect "For Lease" signage ☐ Yes ☐ No

It is acknowledged that the Agent is not responsible for any liability, damages or injuries incurred as a result of the erection of the signage.

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Administration of Tenancy Agreement

12. In respect of each tenancy, the Agent is authorised and directed on behalf of the Principal to:

- i Arrange inspection and show prospective tenants ☐ Yes ☐ No
- ii Obtain references ☐ Yes ☐ No
- iii a Select tenants; **OR** ☐ Yes ☐ No
  - b Recommend tenants ☐ Yes ☐ No
- iv Enter into and sign tenancy agreements in respect of all or any part of the Premises ☐ Yes ☐ No
- v Collect rent ☐ Yes ☐ No
- vi Issue receipts for monies received from tenants pursuant to tenancy agreements ☐ Yes ☐ No
- vii Collect and lodge rental bonds in accordance with the provisions of the Residential Tenancies Act 2010 ☐ Yes ☐ No
- viii Make claims for the refund of bond monies, having regard to rent due and the condition of the Premises at the end of each tenancy ☐ Yes ☐ No
- ix Respond to any applications by tenants before the Consumer, Trader & Tenancy Tribunal (CTTT) or the like and represent the Principal in any such proceedings ☐ Yes ☐ No
- x Exercise the Principal's right to enforce or terminate tenancy agreements by service of notices as necessary ☐ Yes ☐ No
- xi Forward to the Principal copies of any documents signed by the Agent on behalf of the Principal ☐ Yes ☐ No
- xii Undertake periodic inspections at Agent's discretion. ☐ Yes ☐ No
- xiii If required, obtain copies of any by-law or management statement relating to a strata or community scheme, which is required to be provided to the tenant ☐ Yes ☐ No

13. In respect of each tenancy, the Agent and each and every one of their partners, employees or other officers from time to time as the case may be is authorised and directed on behalf of the Principal to make application before the CTTT or the like and to do all things necessary to commence and (as far as practicable) complete proceedings for:

- i The recovery of possession of the Premises from tenants ☐ Yes ☐ No
- ii The recovery of monies due ☐ Yes ☐ No

S.5A Lease: Release from Rent Control

14. The Premises have been released from rent control by 5A Lease registration or through having become vacant on or after 1 January 1986 ☐ Yes ☐ No

Inventories (Furnished Premises)

15. Where the Premises are furnished an inventory shall be prepared by the: ☐ Principal **OR** ☐ Agent

Inspection

16. Unless the Principal advises the Agent to the contrary, any prospective tenant is entitled to inspect the Premises in the following circumstances:

Repairs and Maintenance

17. The Agent is authorised to engage appropriately qualified or licensed tradespersons to effect repairs and maintenance in accordance with the Principal's obligations to repair (if any) or as otherwise instructed, provided that expenditure in excess of $ _____ for any one item shall not be incurred without the prior approval of the Principal except where in the opinion of the Agent that because of an emergency, repairs are necessary for the protection of the Premises or the supply of essential services to tenants.

Disbursements from Principal's Monies

18. The Agent is authorised and instructed to pay the following from monies received on behalf of the Principal:

- i Accounts for repairs and maintenance in accordance with Clause 17 ☐ Yes ☐ No
- ii Council rates (see attached Schedule) ☐ Yes ☐ No
- iii Water, sewerage and drainage rates (see attached Schedule) ☐ Yes ☐ No
- iv Insurance premiums (see attached Schedule) ☐ Yes ☐ No
- v Owners corporation levies (see attached Schedule) ☐ Yes ☐ No
- vi Maintenance costs of caretaking/cleaning/gardening ☐ Yes ☐ No
- vii Maintenance contracts for services installed (lifts, etc) ☐ Yes ☐ No
- viii CTTT application fee ☐ Yes ☐ No
- ix Writ of execution ☐ Yes ☐ No
- x Sheriff's fees ☐ Yes ☐ No

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xi Any fee required to obtain a by-law or management statement ☐ Yes ☐ No

xii _____ ☐ Yes ☐ No

xiii _____ ☐ Yes ☐ No

See attached Schedule for particulars

Statement of Account

19. The Agent shall render a statement monthly or as instructed, accounting for monies received and expenses incurred on behalf of the Principal and for fees and charges retained in respect of services performed for the Principal, and the balance less disbursements shall be remitted to the Principal as hereinafter specified (see attached Schedule). If at any time amounts payable exceed the balance of the account, the Principal agrees to pay the excess amount to the Agent upon demand.

Authority to Deduct

20. In the event of any monies being paid to the Agent on behalf of the Principal, the Agent is hereby authorised to deduct from such monies all of the above mentioned fees, expenses and charges before accounting to the Principal.

Financial Institution Taxes or Deductions

21. The Agent shall be entitled to be reimbursed for any taxes or deductions debited by banks or other financial institutions against the Agent's account that are attributable to the affairs of the Principal.

GST

22. Any amounts referred to in this agreement which are payable by the Principal to the Agent in respect of services provided by the Agent under this agreement, including reimbursement of expenses, are expressed inclusive of the Goods and Services Tax ("GST"), at the rate of 10% (the current rate). If the current rate is increased or decreased, the parties agree that any amounts referred to in this agreement will be varied accordingly.

Agent's Indemnity and Liability

23. The Principal 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 the proper performance or exercise of any of the powers, duties or authorities of the Agent under this agreement.

Financial and Investment Advice

24. The Principal acknowledges that any financial or investment advice provided by the Agent to the Principal is of a general nature only whose preparation does not take into account the individual circumstances, objectives, financial situation or needs of the Principal. The Principal is advised to consult with their own independent financial and/or investment advisor.

Disclosure of information to tenants.

25. The Residential Tenancies Act requires that certain information be disclosed to the tenant before the tenant enters into a residential tenancy agreement. Please answer the following:

- Has the landlord prepared a contract for sale of the residential premises? ☐ Yes ☐ No
- Is there any proposal to sell the residential premises? ☐ Yes ☐ No
- Has a mortgagee commenced proceedings in a court to enforce a mortgage over the premises? ☐ Yes ☐ No
  – If yes, is a mortgagee taking action for possession of the premises? ☐ Yes ☐ No

Material Fact

26. i A landlord or landlord's agent must not induce a tenant to enter into a residential tenancy agreement by any statement, representation or promise that the landlord or agent knows to be false, misleading or deceptive or by knowingly concealing a material fact of a kind prescribed by the Residential Tenancies Regulations. Please answer the following:

a. Have the premises been subject to flooding or bush fire in the preceding 5 years? ☐ Yes ☐ No
☐ Details _____

b. Are the premises subject to significant health or safety risks that are not apparent to a reasonable person on inspection of the premises? ☐ Yes ☐ No
☐ Details _____

c. Have the premises been the scene of a serious violent crime within the preceding 5 years? ☐ Yes ☐ No
☐ Details _____

d. Will council waste services be provided to the tenant on a different basis than is generally applicable to premises within the area of the council? ☐ Yes ☐ No
☐ Details _____

e. Because of the zoning of the land, or other laws applying to development on the land, will the tenant not be able to obtain a residential parking permit (in an area where only paid parking is provided)? ☐ Yes ☐ No
☐ Details _____

f. Is there driveway or walkway on the premises which other persons are legally entitled to share with the tenant? ☐ Yes ☐ No
☐ Details _____

ii The Principal warrants that the Principal has supplied the Agent in writing with all the relevant details and information pertaining to all the material facts in respect of the Premises.

iii The Principal acknowledges that the Property, Stock and Business Agents Act 2002 and Residential Tenancies Act 2010 require the Agent to disclose all material facts to prospective tenants.

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iv The Principal directs the Agent to disclose all of the material facts provided in writing by the Principal to the Agent to all prospective tenants of the Premises.

v In this clause "material fact" has the same meaning as it has in Section 52 of the Property, Stock and Business Agents Act 2002 and Section 26 of the Residential Tenancies Act 2010.

Privacy Policy

27. The Agent uses personal information collected from or about the Principal to act as the Principal's Agent and to perform their obligations under this agreement.

The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients.

The Agent may disclose information to other parties including advisors, media organisations, property data service providers, on the internet, to potential tenants, or to clients of the Agent both existing and potential, as well as tradespeople, owners' corporations, valuers, government and statutory bodies, and to third parties as required by law.

The Agent will only disclose information to other parties as required to perform their duties under this agreement, to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.

If the Principal would like to access this information, they can do so by contacting the Agent at the address and contact numbers contained in this agreement. The Principal can also correct this information if it is inaccurate, incomplete or out-of-date.

Real estate and tax law requires some of this information to be collected. If the information is not provided, the Agent may not be able to act on the Principal's behalf effectively or at all.

Disclosure of Rebates, Discounts or Commissions in Respect of Expenses

28. In respect of any expenses to be incurred by the Principal or the Agent on behalf of the Principal pursuant to this agreement, the Agent discloses that the Agent may receive the following rebates, discounts or commissions from third parties.

Name of Third Party	Estimated Amount of Rebate, Discount or Commission
	$
	$

If no benefit, write in "nil".

Principal's Authority

29. The Principal warrants that the Principal has authority to enter into this agreement.

Premises Fit for Residence

30. The Principal warrants that there is no legal impediment to occupation of the Premises as a residence at the time of entering this agreement and will notify the Agent immediately if any legal impediment to the occupation of the Premises arises during the term of this agreement.

Smoke Alarms

31. Without limiting the generality of Clause 30, the Principal warrants that the Premises comply with the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006.

Water Efficiency Measures

32. Do the premises contain the water efficiency measures prescribed by the Residential Tenancies Act? ☐ Yes ☐ No ☐ Don't Know

Note: If the prescribed measures are not installed, the landlord may be prevented from recovering water usage charges from the tenant.

Acknowledgement

33. The Principal acknowledges being served with a copy of this agreement.

Signature of Principal	Date
	/ /
	/ /

Signature of Agent	Date
	/ /

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SCHEDULE

SCHEDULE

DISBURSEMENTS – PARTICULARS

Council Rates
Water/Sewerage Rates

INSURANCE

Company
Broker/Agent
Other Information

INSURANCE POLICIES

Name of Insurer	Policy Number	Date Due
Building		/ /
Contents		/ /
Landlords' Protection		/ /
Other		/ /

STRATA DETAILS

Strata Plan No. Lot No. Garage Lot No.
Strata Management Agent
Address
Postcode
Phone: Work Home
Mobile Fax
Email

STATEMENTS

Statement in name of
Forward to
Name
Address
Postcode
Email
Copy to
Name
Address
Postcode

Cheques payable to
OR Bank to the credit of
Account Number BSB /
Bank Branch

PRINCIPAL'S REPRESENTATIVE

Name
Address
Postcode
Phone: Work Home
Email Fax

PRINCIPAL'S SOLICITOR

Name
Address
Postcode
Phone: Work Home
Email Fax

SPECIAL INSTRUCTIONS

SIGNATURES

		Date
Principal		/ /
Agent		/ /

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