



Real Estate Agents (Duties of Licensees) Regulations 2009

Rt Hon Sir Peter Blanchard, Administrator of the Government

Order in Council

At Wellington this 28th day of September 2009

Present:

His Excellency the Administrator of the Government in Council

Pursuant to section 156 of the Real Estate Agents Act 2008, His Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Agency agreement must contain statement by agent relating to rebates, discounts, and commissions	2
5 Client consent under section 134 of Act must be in form 2 of Schedule	2
Schedule Forms	3

Regulations

1 Title

These regulations are the Real Estate Agents (Duties of Licensees) Regulations 2009.

2 Commencement

These regulations come into force on 17 November 2009.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires, **Act** means the Real Estate Agents Act 2008.
- (2) Unless the context otherwise requires, terms used in these regulations have the same meaning as in the Act.

4 Agency agreement must contain statement by agent relating to rebates, discounts, and commissions

- (1) An agency agreement must contain a statement by the agent relating to rebates, discounts, and commissions.
- (2) The statement described in subclause (1) must be in form 1 of the Schedule.

5 Client consent under section 134 of Act must be in form 2 of Schedule

- (1) A client's consent given for the purposes of section 134 of the Act must be in form 2 of the Schedule.
- (2) The notes under the heading "**Important information for clients**" on the front page of form 2, and the heading itself, must—
 - (a) appear in a prominent position on the form; and
 - (b) be in a font and font size that is easily readable.

Schedule

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Forms**Form 1**

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**Agent's statement relating to rebates, discounts,
and commissions***Section 128, Real Estate Agents Act 2008***Note:** This form must be included in every agency agreement.

1 I, the agent, confirm that, in relation to any expenses for or in connection with any real estate agency work carried out by me for the client(s) in connection with the transaction covered by this agency agreement,—

*(a) I will not receive, and am not entitled to receive, any rebates, discounts, or commissions.

*(b) I will receive, or am entitled to receive, the rebates, discounts, and commissions specified below.

*Select the paragraph that applies.

2 *Omit this paragraph if you selected paragraph 1(a) above. If you selected paragraph 1(b) above, provide the specified details for each rebate, discount, or commission.*

Expenses to be incurred	Provider of rebate, discount, or commission	Amount of rebate, discount, or commission
<i>[specify goods or services to which rebate, discount, or commission relates]</i>	<i>[specify name of person or organisation]</i>	<i>[\$[specify actual or estimated amount* (including GST)]</i>

*Estimates must be clearly marked as such.

Date:

Signature:

(agent)

Note

Expenses means any sum or reimbursement for expenses or charges incurred in connection with services provided by an agent in the capacity of agent.

Form 2
Client consent for licensee to acquire interest
in property
Section 134, Real Estate Agents Act 2008

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(Front page)

Important information for clients

- 1 This form has legally binding consequences. You may wish to seek legal advice before signing it.
- 2 This form is required by the Real Estate Agents Act 2008. The licensee must ask for your consent, using this form, if any of the following people want to acquire an interest in your land* or business:
 - (a) an agent[†], branch manager, or salesperson (**licensee**) who is working for you; or
 - (b) a person related to that licensee (**related person**[‡]).

*Note that land is defined in section 4 of the Real Estate Agents Act 2008 to include a number of different types of property and interests in property—including, for example, your house.

[†]Note that an agent includes, if the agent is a company, every officer and shareholder of that company.

[‡]For the definition of related person, see below.

- 3 The licensee must give you this form **before** you agree to grant, sell, or otherwise dispose of your land or business, or an interest in your land or business, to the licensee or related person. If the licensee gives you this form **after** that, do not sign it.
- 4 The licensee must give you a valuation* of the land or business at his or her own expense. The licensee must give you the valuation either—
 - (a) before seeking your consent; or
 - (b) with your agreement, within 14 days after obtaining your consent.

If the valuation provided under paragraph (b) turns out to be higher than the provisional valuation specified in this consent form, you are entitled to cancel the contract for the grant, sale, or other disposal of the land or business.

Form 2—*continued*

*Note that a valuation of land (which includes, for example, your house) must be made by an independent registered valuer, and a valuation of a business must be made by an independent chartered accountant.

- 5 If you have **not** given your consent by signing this form, or you did **not** receive a valuation, you are entitled to—
- (a) cancel the contract for the grant, sale, or other disposal of the land or business; and
 - (b) recover any commission you may have paid to the agent.

Meaning of related person

A **related person** is defined in section 137 of the Real Estate Agents Act 2008 to mean any 1 of the following:

- (a) a partner of the licensee under a partnership agreement;
- (b) an employee of the licensee;
- (c) a branch manager or salesperson engaged by the licensee;
- (d) the licensee's spouse or civil union partner;
- (e) the licensee's de facto partner;
- (f) a child, grandchild, brother, sister, nephew, or niece of the licensee or of any person referred to in paragraph (d) or (e);
- (g) any other child who is being, or is to be, cared for on a continuous basis by the licensee or any person referred to in paragraph (d) or (e);
- (h) any parent of the licensee or of any person referred to in paragraph (d) or (e);
- (i) an entity that has an interest in the licensee or an entity (not being an entity listed on the New Zealand Stock Exchange) in which the licensee has an interest.

Form 2—*continued*

(Back page)

- 1 I/We*, [full name(s), address(es)], the client(s), signed the agency agreement with [full name, address], the agent, in respect of a transaction relating to the following land†/business*: [address and/or legal description of land or business to which agency agreement relates].

*Select one.

†Note that land is defined in section 4 of the Real Estate Agents Act 2008 to include a number of different types of property and interests in property—including, for example, your house.

- 2 I/We* consent to [full name(s)], the licensee(s)/related person(s)*, acquiring, directly or indirectly, the following interest(s) in the land/business* described above: [nature of interest(s) to be acquired].

*Select one.

- 3 For this paragraph select the statement that applies.

Statement A (consent based on valuation)

I/We* confirm that, before signing this form, I was/we were* provided, at the licensee's expense, with—

- †(a) a valuation of the land described above, made by an independent registered valuer:
†(b) a valuation of the business described above, made by an independent chartered accountant.

*Select one.

†Select the subparagraph that applies.

Statement B (consent based on provisional valuation)

I confirm that—

- (a) the licensee has informed me/us* that the land/business* described above is provisionally valued at \$[provisional value]; and

*Select one.

- (b) I/we* have given my/our* agreement to the licensee providing to me/us*, within 14 days after the date of this consent,—

Form 2—*continued*

- †(i) a valuation of the land described above, made at the licensee's expense by an independent registered valuer:
- †(ii) a valuation of the business described above, made at the licensee's expense by an independent chartered accountant.

*Select one.

†Select the subparagraph that applies.

Date:

Signature(s):
(client(s))

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 17 November 2009, prescribe 2 forms for the purposes of the Real Estate Agents Act 2008 (the **Act**). An agent's statement of disclosure for the purposes of section 128 of the Act must be in *form 1* of the *Schedule*. A client's consent for a licensee or related person to acquire the client's property must be in *form 2* of the *Schedule*.

The Act, which also comes fully into force on 17 November 2009, replaces the Real Estate Agents Act 1976 and introduces a new regulatory regime for the real estate industry. In addition to these regulations, the following 3 instruments form part of that regulatory regime:

- the Real Estate Agents (Audit) Regulations 2009:

**Real Estate Agents (Duties of Licensees)
Regulations 2009**

2009/281

- the Real Estate Agents (Complaints and Discipline) Regulations 2009:
- the Real Estate Agents (Licensing) Regulations 2009.

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These regulations are administered by the Ministry of Justice.
