

PROFESSIONAL STATEMENT

# UK commercial real estate agency

UK

1st edition, October 2016

Effective from 1 November 2016



Endorsed by:



The Office Agents Society

# UK COMMERCIAL REAL ESTATE AGENCY

RICS professional statement, UK

1st edition, October 2016

Effective from 1 November 2016



**Published by the Royal Institution of Chartered Surveyors (RICS)**

Parliament Square

London

SW1P 3AD

**[www.rics.org](http://www.rics.org)**

No responsibility for loss or damage caused to any person acting or refraining from action as a result of the material included in this publication can be accepted by the authors or RICS.

Produced by the Professional Groups of the RICS.

This professional statement was amended January 2022 to update references to the *RICS Rules of Conduct*.

ISBN 978 1 78321 165 4

© Royal Institution of Chartered Surveyors (RICS) October 2016. Copyright in all or part of this publication rests with RICS. Save where and to the extent expressly permitted within this document, no part of this work may be reproduced or used in any form or by any means including graphic, electronic, or mechanical, including photocopying, recording, taping or web distribution, without the written permission of the RICS or in line with the rules of an existing licence.

# Acknowledgements

RICS would like to thank for the following for their contributions to this professional statement:

**Lead author:**

Christina Hirst FRICS

**Working group:**

Tim Clement (JLL)

Ryan Dean MRICS (Knight Frank)

Tony Devlin (CBRE Ltd.)

Chris Hobbs MRICS (Bilfinger GVA)

Ben Tebbutt (Fisher Hargreaves Proctor Property Consultants)

Simon Wainwright FRICS (J Peiser Wainwright)

# Contents

Acknowledgements .....	ii
<b>RICS professional standards and guidance .....</b>	<b>1</b>
RICS professional statement .....	1
<b>1 Scope .....</b>	<b>3</b>
<b>2 Standards and ethics .....</b>	<b>5</b>
2.1 Standards and regulatory requirements .....	5
2.2 Introduction to ethics and professionalism .....	5
2.3 Ethics standard .....	5
2.4 Duty of care as a real estate agent.....	5
2.5 Conflicts of interest .....	6
2.6 Gifts, incentives and hospitality.....	7
2.7 Discrimination .....	7
2.8 Vulnerable customers .....	8
<b>3 Securing instructions.....</b>	<b>9</b>
3.1 Legal and regulatory requirements.....	9
3.2 Matters to deal with before taking instructions .....	9
3.3 Terms of engagement .....	12
3.4 Off-market transactions .....	19
<b>4 Disposals: marketing the property .....</b>	<b>20</b>
4.1 Legal and regulatory requirements.....	20
4.5 Market appraisal .....	21
4.6 Documentation about the property .....	22
4.7 Marketing the property .....	23
4.8 Online marketing .....	29
4.9 Advertisement signs and boards at the property .....	29
4.10 Viewings.....	30
4.11 Responding to questions from potential buyers .....	31
4.12 General principles.....	31
4.13 Keeping your client informed .....	31
<b>5 Implementing the disposal .....</b>	<b>32</b>
5.1 Legal and regulatory requirements.....	32
5.2 Methods of sale .....	32

5.3	Sale by tender .....	35
5.4	Lettings .....	35
5.5	After acceptance of an offer .....	38
<b>6</b>	<b>Acquisitions .....</b>	<b>39</b>
6.1	Legal and regulatory requirements.....	39
6.2	Property search: buying or leasing.....	39
6.3	Communication with clients.....	39
6.4	Dealing with conflicts of interest .....	40
6.5	Leasehold acquisitions.....	40
6.6	Progressing purchases.....	40
6.7	Holding clients' money.....	40
<b>7</b>	<b>Ending the instruction .....</b>	<b>41</b>
7.1	Legal and regulatory requirements.....	41
7.2	Written confirmation.....	41
7.3	Invoice .....	42
7.4	If completion of the transaction does not take place .....	42
7.5	Retention of records.....	43
	<b>Appendix A Glossary.....</b>	<b>44</b>

# RICS professional standards and guidance

## RICS professional statement

### Definition and scope

RICS professional statements set out the requirements of practice for RICS members and for firms that are regulated by RICS. A professional statement is a professional or personal standard for the purposes of *RICS Rules of Conduct*.

### Mandatory vs good practice provisions

Sections within professional statements that use the word 'must' set mandatory professional, behavioural, competence and/or technical requirements, from which members must not depart. Sections within professional statements that use the word 'should' constitute areas of good practice. RICS recognises that there may be exceptional circumstances in which it is appropriate for a member to depart from these provisions – in such situations RICS may require the member to justify their decisions and actions.

### Application of these provisions in legal or disciplinary proceedings

In regulatory or disciplinary proceedings, RICS will take into account relevant professional statements in deciding whether a member acted professionally, appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional requirements into account. RICS recognises that there may be legislative requirements or regional, national or international standards that have precedence over an RICS professional statement.

In some cases there may be existing national standards that take precedence over professional statements. These can be defined as professional standards that are prescribed in law or federal/local legislation, or are developed in collaboration with other relevant bodies. It is the duty of members to be aware which standards apply.

Members should be up to date and have knowledge of professional statements within a reasonable time of their coming into effect. It is the member's responsibility to be aware of changes in case law and legislation since the date of publication.

## Document status defined

The following table shows the categories of RICS professional content and their definitions.

### Publications status

Type of document	Definition
<i>RICS Rules of Conduct</i>	These Rules set out the standards of professional conduct and practice expected of members and firms registered for regulation by RICS.
International standard	High-level standard developed in collaboration with other relevant bodies.
RICS professional statement (PS)	Mandatory requirements for RICS members and RICS regulated firms.
RICS guidance note (GN)	A document that provides users with recommendations or an approach for accepted good practice as followed by competent and conscientious practitioners.
RICS code of practice (CoP)	A document developed in collaboration with other professional bodies and stakeholders that will have the status of a professional statement or guidance note.
RICS jurisdiction guide (JG)	This provides relevant local market information associated with an RICS international standard or RICS professional statement. This will include local legislation, associations and professional bodies as well as any other useful information that will help a user understand the local requirements connected with the standard or statement. This is not guidance or best practice material, but rather information to support adoption and implementation of the standard or statement locally.

# 1 Scope

With the increased focus on the need for ethical practice and transparency in the commercial property market, this professional statement sets out clearly the responsibilities of commercial property agents to ensure they are working to the highest ethical and professional standards.

This statement outlines the principles that shape the culture of fairness and transparency that underpin all activities undertaken by real estate agents within whichever country of practice. These principles are then developed for the UK market later in the document.

Note: Any mandatory content within this statement that the RICS regulates against is denoted with a emboldened **must**. Any content taken from *Real estate agency and brokerage professional statement* (3rd edition) is in a grey shaded box. All quotes are labelled 'REAB' with the relevant section referenced.

This professional statement supports the **RICS Rules of Conduct**. This statement applies to all RICS members involved with the sale, letting, leasing and management of real estate, whatever the form of tenure by which it is held or occupied. **Members must:**

- 1 Conduct business in an honest, fair, transparent and professional manner.
- 2 Carry out work with due skill, care and diligence, and ensure that any staff employed have the necessary skills to carry out their tasks.
- 3 Ensure that clients are provided with terms of engagement which are fair and clear. These should meet all legal requirements and relevant codes of practice including reference to complaints-handling procedures and, where it exists, an appropriate redress scheme.
- 4 Do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
- 5 Not discriminate unfairly in any dealings.
- 6 In all dealings with clients, ensure that all communications (both financial and non-financial subject matters) are fair, clear, timely and transparent.
- 7 Ensure that all advertising and marketing material is honest, decent and truthful.
- 8 Ensure that all client money is held separately from other monies in appropriately designated accounts and is covered by adequate insurance.
- 9 Have adequate and appropriate professional indemnity insurance or equivalent in place that complies with the RICS Rules of Conduct. Having proper cover is a key part of managing your risk.
- 10 Ensure that it is made clear to all parties with whom you are dealing the scope of your obligations to each party.



- 11** Where provided as part of the service, give a realistic assessment of the likely selling, buying or rental price, associated cost of occupancy or of the likely financial outcome of any issues, using best professional judgement.
- 12** Ensure that all meetings, inspections and viewings are carried out in accordance with the client's lawful and reasonable wishes, having due regard for the security and personal safety of all parties.

This professional statement is effective immediately upon publication.

# 2 Standards and ethics

## 2.1 Standards and regulatory requirements

You have a duty to comply with a number of standards, official codes, redress schemes and ethical codes. This includes the RICS *Real estate agency and brokerage* professional statement, 3rd edition (August 2016).

The specific standards or codes that apply to you will depend upon your professional body or any redress scheme membership.

You are also required to comply with relevant legislation including:

- *Bribery Act 2010*
- *Equality Act 2010*
- *Estate Agents Act 1979*
- *Consumer Protection from Unfair Trading Regulations 2008* (when dealing with consumers)
- *Business Protection from Misleading Marketing Regulations 2008* (when dealing with businesses).

## 2.2 Introduction to ethics and professionalism

The resolution of issues often involves a subjective decision based on your own personal ethical values and those ethical rules set out in professional codes of conduct and legislation.

Professional ethics and RICS' global professional statement *Real estate agency and brokerage* set out the standards of performance and service the general public can expect to receive from a professional real estate agent and will ensure that you act professionally at all times.

## 2.3 Ethics standard

You must comply with the RICS Rules of Conduct. Further information available at **Rules of Conduct**.

## 2.4 Duty of care as a real estate agent

### 2.4.1 Your general duty of care as a real estate agent

This professional statement requires that agents carry out work with due skill, care and diligence. This means that you should:

- use your best endeavours to achieve the best possible outcome for your client, within the limitations of the market conditions and the observation of ethical codes
- not release or misuse any information confidential to your client without their express permission, or unless legally required to do so

- not appoint a sub-agent without the express permission of your client (unless you are using a multiple listing system approach), and ensure that any sub-agent complies with this professional statement
- ensure that all staff are appropriately trained and supervised for the tasks assigned to them and
- not accept an instruction which is beyond your field of experience, unless you secure the assistance of a specialist in that particular field.

You **must** always ensure that you carry out all services with reasonable care and skill. What is 'reasonable' is measured by the standards of a reasonably competent and experienced member of the real estate agency profession. The duty of care and skill applies to every aspect of your services.

**[REAB 1.2]**

### 2.4.2 Your duty of care when acting for the seller

Your duty of care exists throughout the period of your instruction. This includes exercising reasonable care and skill in advising on an appropriate asking price or rent for the property (see section 3.1) through employing the marketing strategy, and to your advice to your client on whether or not to accept a particular offer.

**[REAB 1.2]**

### 2.4.3 Your duty of care when acting for the buyer

Again, your duty of care will exist throughout the period of your instruction. Where you are instructed by a potential buyer to seek a suitable property for them, you **must** take reasonable care to ensure that information which you pass on to your client is not misleading. The test of what is reasonable will be determined by the individual circumstances.

**[REAB 1.2]**

## 2.5 Conflicts of interest

A conflict of interest is anything that impedes your ability to focus on the best interests of the client. This is a matter for your judgment – not the client. You **must** make every attempt to avoid any conflict of interest that might not be in the best interest of a seller or a buyer for whom you are acting.

RICS' global professional statement *Real estate agency and brokerage* requires that you mitigate conflicts of interest and deal with them openly, fairly and immediately if they arise.

You **must** disclose any interest in the property promptly and in writing. You should have regard to the particular circumstances of the situation in which you are involved before deciding whether to disclose any interest.

In the event of multiple agency for one of the parties, you **must** pay equal respect to your clients' interests and also work in this situation with the highest possible degree of transparency. Conflicts of interest should be avoided but where this is impossible you should cease your activities for all clients involved.

In the interests of best practice you should disclose all interests but in all cases you should consult your client, take their instructions and keep a full note of the discussion and instructions in the file.

**[REAB 1.3]**

Conflicts of interest may apply to yourself, an associate or anyone else in or connected to your organisation. You **must** establish robust systems for identifying and managing possible connections and associates. For further advice on conflicts of interest see [www.rics.org/regulation](http://www.rics.org/regulation)

You **must** declare any potential or actual personal interest that exists or may be acquired and seek written consent from your client to continue. However, you should also consider whether it is appropriate to continue in the context of principles-based ethics and rules.

## 2.6 Gifts, incentives and hospitality

The *Bribery Act* 2010 sets specific legal requirements regarding the above.

You **must** adopt a principles-based approach and follow RICS' *Rules of Conduct*. You **must** ensure that neither you nor anyone you employ as an employee or a consultant accepts or offers anything that could be construed as a bribe or that could influence current or future professional judgment.

Accepting or providing genuine hospitality that is reasonable and proportionate is acceptable.

## 2.7 Discrimination

You **must** not discriminate against any existing or potential party to a transaction. You **must** not:

- discriminate on the basis of gender, age, race, creed, religion, disability, sexual orientation, or national origin or
- favour any party because they are likely to instruct you on other property matters, or use services offered by you or your related parties.

You **must** ensure that you do not discriminate unfairly against any party:

- in the terms on which a property is offered
- by refusing to sell or lease the property or
- in your treatment of persons in need of property for occupation or investment purposes.

**[REAB 1.4]**

You should refer to the *Equality Act* 2010 for further information.

Although the primary legal responsibility rests with the seller or landlord, identical liability is placed upon anyone who 'knowingly aids' another person to carry out an unlawful act. This would apply to an agent who has complied with a seller or landlord's instructions to discriminate against certain categories of potential buyer or tenant.

## 2.8 Vulnerable customers

Vulnerability can include anything that may have an impact on a person's ability to make a sound and reasoned decision.

You **must** ensure that you do not discriminate against vulnerable customers – either explicitly or implicitly – by your actions. Customers can include actual and potential buyers, sellers, landlords and tenants, as well as your client.

Assessing the potential vulnerability of a consumer can be a sensitive matter and may require you to make a judgment. Staff should understand their obligations in this area and, if you are a manager, you should have in place appropriate procedures and relevant training to deal with these matters.

You **must** be willing and able to offer appropriate advice about the transaction process to all potential and actual customers. You should not make assumptions about the degree of knowledge that a person has. Be prepared to set out all the necessary information, explain what you will do, and what others (e.g. legal advisers, surveyors, financial advisers, lenders) will do.

If, in your opinion, the customer may be vulnerable you should take this into account in any information or guidance you give to them – particularly if any decision they make is based solely on that information or advice.

If a customer makes a decision that may have legal connotations, you should explain that they should discuss this with their legal advisers. You might also consider speaking to the customer's legal advisers if you are concerned about any decisions that are being taken.

**[REAB 1.5]**

# 3 Securing instructions

## 3.1 Legal and regulatory requirements

You **must** comply with all relevant legislation regarding the securing of instructions, including:

- *Estate Agents Act 1979*
- *Money Laundering Regulations 2007*
- *Supply of Goods and Services Act 1982*
- *Unfair Contract Terms Act 1977*
- *Cancellation of Contracts made in a Consumers Home or Place of Work etc. Regulations 2008.*

## 3.2 Matters to deal with before taking instructions

### 3.2.1 Complaints-handling procedure

This section considers the way in which you should handle any complaints that are made to you or your organisation.

Real estate agents should operate a complaints-handling procedure and make this available to any buyer or seller, potential or actual. Your complaints-handling procedure should be in writing and should explain how to complain to your organisation (i.e. to a senior member of the firm or to the firm's designated complaints handler) and what to do if the client feels the complaint has not been dealt with adequately.

Whenever you issue terms of engagement these should make clear to the client that you operate a complaints-handling procedure.

Some complaints may initially be made verbally. You should draw the complainant's attention to your complaints-handling procedure which should firstly require formal complaints to be made in writing (by email, letter or fax). You should acknowledge all complaints in a timely manner. This should generally be within three working days.

#### **[REAB 8.2, 8.2.1 and 8.2.2]**

You can refer to the RICS *Complaints handling* guidance note, 1st edition, and the RICS guidance on complaints-handling procedures, found at [www.rics.org/regulation](http://www.rics.org/regulation)

A complaints-handling procedure should have two stages:

- 1 consideration of the complaint by a senior member of the firm or the firm's designated complaints handler and
- 2 if the complaint cannot be resolved, referral to an independent third party with the authority to award redress. Where this situation arises you should issue a deadlock letter in order to limit the period of time for which the redress scheme can accept a complaint (see the EU Directive on consumer Alternative Dispute Resolution).

You should also refer to the *Estate Agents Act 1979* and you provide advice to all clients on how to complain to any independent redress scheme (or ombudsman) of which you are a member.

### 3.2.2 Handling clients' money

Client money should be held separately from other monies and agents **must** be able to account immediately for all the funds held. No deductions should be made from clients' money without written permission from the client. You should also ensure that you obtain your client's consent at the time of any deduction or that you give your client sufficient notice prior to the deduction to object to it. You **must** be able to account immediately for any money that you hold on behalf of a client.

You should advise your clients in writing that you would not be liable to repay lost money through bank failure.

Money should only be withdrawn from a client account in the following cases:

- (a) where it is properly required for payment to, or on behalf of, the person entitled to ask for it
- (b) for payment of any remuneration or reimbursement of expenses in carrying out estate agency services to which the estate agent is entitled, with the agreement of the client. Such agreement should be evidenced in writing
- (c) in the exercise of any lien to which the agent is entitled
- (d) for transfer to another client account and
- (e) when non-client money was used to open or maintain the account.

Bank charges should not be debited from a client account. Bank charges should be debited from your office account.

In the case of a dedicated client bank account, it is common practice to debit bank charges; however, it is advisable to get the written permission of the client in advance and to take steps to ensure that the account does not go overdrawn as a result of the charges.

A client account should at all times be in credit. There should not be any 'borrowing' from one client's fund to pay another client or those entitled to receive money from the latter's account.

If you receive clients' money in the course of real estate agency work you **must** keep sufficient accounts and records to show that you have paid that money into a formal client account and to show and explain readily at any time all dealings with that money.

Appropriate accounts and records **must** be kept.

#### [REAB 8.3.2]

### 3.2.3 Safeguarding against money laundering

Money laundering is the way criminals conceal the origin and true ownership of the proceeds of their criminal activities so that it appears to have come from a legitimate source, thereby changing the proceeds from 'dirty' money to 'clean'.

It is extremely important that you have procedures in place to prevent and identify money laundering within your company. You should put in place anti-money laundering controls in order to anticipate and prevent your business being used by criminals to launder money or to fund terrorism.

You should refer to **[RICS Money laundering guidelines]** for further guidance.

#### [REAB 8.3.1]

You **must** appoint a nominated officer, or money laundering reporting officer (MLRO). Staff will report any suspicions of possible money laundering to the MLRO. You should refer to the HMRC guidance at [www.hmrc.gov.uk](http://www.hmrc.gov.uk) for further guidance.

You **must** refer to and comply with RICS guidance on handling client's money, found at <https://www.rics.org/uk/upholding-professional-standards/standards-of-conduct/client-money/client-money-handling-1st-edition/>

### 3.2.4 Information and confidentiality

You **must** have processes and procedures in place to deal with the holding and handling of information and data.

#### Confidentiality

You should maintain the confidentiality of matters with which you become acquainted during your instruction.

#### Data protection

You should be aware of the local legislative requirements regarding the holding and handling of information and data in your country of practice. As an overall guide you should ensure that any personal information is:

- fairly and lawfully processed
- processed for limited purposes
- adequate, relevant and not excessive
- accurate and up to date
- not kept for longer than is necessary
- processed in line with an individual's rights
- secure and
- not transferred to other countries without adequate protection.

As a real estate agent you should particularly consider the potential damage that could be caused to clients by the careless or unauthorised disclosure of their personal data and information. For example, the disclosure of details about times when a client's property is vacant or the failure to implement adequate security measures to prevent the unauthorised access to this information could not only result in a breach of the security principle but could also trigger an action for compensation by the affected client.

You should also bear in mind that other issues of client confidentiality may apply to particular types of personal data, including that provided by a client. This will mean that not everyone within the firm is entitled to access the data and it should not be made available to other prospective client buyers or sellers.

#### [REAB 7.1 and 7.2]

You **must** take account of the requirements of the *Data Protection Act 1998*, the *Freedom of Information Act 2000*, the *Privacy and Electronic Communications (EC Directive) Regulations 2003* and the *Human Rights Act 1998*. You can read more about this legislation at [www.legislation.gov.uk/](http://www.legislation.gov.uk/)



You should also refer to ISO/IEC 27001 Information Security Management. You can find more details of this standard at

[www.iso.org/iso/home/standards/management-standards/iso27001.htm](http://www.iso.org/iso/home/standards/management-standards/iso27001.htm)

### 3.2.5 Health and safety

You should at all times respect the local legal requirements concerning health and safety valid in the country of practice.

Health and safety means sensible, proportionate actions to protect people.

Not taking the necessary actions to protect people from avoidable dangers in the workplace could be a legal offence.

Employers and employees also may owe a duty of care to anyone who may be affected by their actions, where effects of their actions are reasonably foreseeable.

#### [REAB 7.3]

You **must** be aware of the detailed requirements of:

- *Health and Safety at Work etc. Act 1974 and associated Regulations* (or for Northern Ireland, the *Health and Safety at Work (Amendment) (Northern Ireland) Order 1998*)
- *Control of Substances Hazardous to Health Regulations 2002* (COSHH)
- *Workplace (Health, Safety and Welfare) Regulations 1992* and
- *Health Act 2006*.

## 3.3 Terms of engagement

You should give written confirmation to your client of their instructions for you to buy, sell or let a property on their behalf. This should include details of your fees and expenses, of your business terms and the duration of your instructions. You should give your client these details before they are committed or have any liability towards you. Terms of engagement should clearly state the scope of the business you will carry out and specify what activities are not included, for example formal valuations, building surveys, technical surveys.

Terms of engagement can include a single document or a number of documents, which are to be read in conjunction with each other. You should ensure that your terms are fair and the documentation is written in plain, intelligible language. [...]

If you use standard terms of engagement you should ensure that you give clients an opportunity to negotiate individual terms.

Your terms of engagement should state that a copy of your complaints-handling procedure is available on request.

You should sign and date your terms of engagement before they are given to your client. You should also ask your client to sign a copy and provide them with a copy for their records. You should take all reasonable steps to satisfy yourself that your client is entitled to instruct you. Any future changes to your terms of engagement should be agreed with your client and promptly confirmed in writing and signed by yourself and your client.

#### [REAB 2.3.1]

You **must** take account of the requirements of the *Unfair Contract Terms Act 1977* and contract terms **must** be fair and reasonable.

### 3.3.1 Prior to agreement

#### Conflict of interest checks

Before taking instructions from a client you **must** check that you will not have any conflict of interest. [...] You should declare any other possible conflict of interest and gain the potential client's written permission for you to act for them in these circumstances.

In jurisdictions where dual agency is accepted this should be only as an exception to the rule, and only if both contracting parties have given their express consent.

As a general rule you should not undertake dual agency.

#### [REAB 2.2.1]

#### Confirming the identity of your client

Money laundering is an international concern and individual countries have implemented regional and international regulations in slightly different ways. You should refer to the specific legislation for your country. However, as general guidance, you should use every reasonable effort to confirm the identity of your client before accepting instructions. You should refer to **[RICS Money laundering guidelines]** for further guidance.

#### [REAB 2.2.2]

### 3.3.2 Lettings

Before formalising instructions from, and commencing any work for, the client you should provide some general advice on lettings, the implications of decisions required and issues regarding the property. This is particularly important for clients that are new to letting property. You should also consider aspects of the property that may have an impact on its lettability, or the need for any licences or other actions to be taken prior to letting.

You should consider providing advice on:

- types of service offered (e.g. let only, full property management)
- the legislative framework around leases
- tenant demand and types of tenant
- lettings procedure
- accounting procedure
- lease terms
- service charges – you should refer to the *RICS Code of Practice Service Charges in Commercial Property*
- tenant sourcing and vetting
- safety checks, gas, electricity, and fixtures and fittings
- required consents including any head lessee, insurance and, if applicable, the freeholder
- inventories and schedule of condition
- landlords' insurance

- measurement standards and terms – see *RICS property measurement*
- procuring an EPC or other related certificate and
- implications of head lease terms (where appropriate).

You should refer your client to the above matters as necessary and to their legal or financial advisers for advice concerning any taxation issues regarding the letting. You should also refer your client to the *Code for Leasing Business Premises* found at

leasingbusinesspremises.co.uk.

You should provide advice and explanations to help your client make appropriate informed decisions for the circumstances of both the client and tenant. It is good practice to offer the same level of service to all your clients, regardless of their level of experience.

Where you are instructed to let a property with no ongoing management role, you should refer to REAB 2.3.1 for further guidance on terms of engagement, as they will be similar to those of a selling agent. If there is more than one legal owner, you should ensure that all relevant parties sign your terms of engagement.

The terms of engagement **must** be fair, reasonable and written in plain language.

### 3.3.3 Fees, charges and taxes

You should provide full and clear written details of your fees and expenses to your potential client [...]. This should include:

- a) details of the circumstances in which the client will become liable to pay you a fee or commission
- b) details of the amount of your fee
- c) particulars of any payments which do not form part of your payment for carrying out estate agency work but which will, or may in certain circumstances, be payable by the client to you or any other person, and particulars of the circumstances in which these payments will become payable (e.g. marketing expenditure, travel expenses or a fee payable if the client withdraws the property from the market) and
- d) particulars of the amount of any payment falling within (c) above or, if you do not know the amount at the time the information is given, an estimate of that amount together with details of how it will be calculated.

You should make clear reference to whether your commission or fee and/or any expenses are exclusive or inclusive of any relevant taxes.

**[REAB 2.3.2]**

### 3.3.4 Itemised costs

If you intend to charge a client anything over and above the basic fee you **must** provide the client with details of those charges. The figure will be based on either the actual cost of providing each service as it occurs, or the average cost of providing each service on a regular basis.

Where it is not possible to give an exact cost in the terms of engagement an estimate of the likely cost of providing these services can be provided.

### 3.3.5 Dual fee liability

Where a property has been marketed with another agent or a buyer or tenant client has used another agent you should make clear any circumstances where they may be required to pay a fee to both yourself and to any other agent and advise of this in writing.

#### [REAB 2.3.3]

You **must** give your client written notice that there may be a dual fee liability if:

- your client has previously instructed another agent to sell or let the same property on the basis of sole or joint sole agency, or sole selling rights
- your client instructs another agent during or after the period of your sole agency or sole selling rights or
- your potential buyer or tenant client has been using another agent on a sole or joint sole agency basis.

If fees are to be paid on the basis of the result of the effective sale you should make this clear in your terms of engagement. The trigger for fee payments or cost reimbursements **must** be clearly stated.

### 3.3.6 Timings

You should specify in your terms of engagement the point at which your entitlement to your commission or fee is to be triggered, for example, on completion of the sale, purchase or lease.

#### [REAB 2.3.4]

### 3.3.7 Penalties

You may have a legal right to interest on late payment.

You should check relevant legislation to determine this and include the relevant information in your terms of engagement.

#### [REAB 2.3.5]

### 3.3.8 Cooling off period

A client may have a legal right to cancel an agency contract within a certain period of signing. If this is a legal right in your country, this should be clearly stated in your terms of engagement or any contract document that you ask your client to sign.

#### [REAB 2.3.6]

You should refer to the *Cancellation of Contracts Made in a Consumers Home or Place of Work etc. Regulations 2008* for further guidance.

### 3.3.9 Receiverships

You should refer to the RICS and Insolvency Practitioners Association Fixed Charge Receivership Scheme guidance, which can be found at:

[www.insolvency-practitioners.org.uk/fixed-charge-receivers/fixed-charge-receivers](http://www.insolvency-practitioners.org.uk/fixed-charge-receivers/fixed-charge-receivers)

### 3.3.10 Types of agency

There may be different types of agency agreement that you are able to enter into with a client. This may depend upon whether you are the only agent acting for the client or whether others will also be working on the same assignment for the client. You should clearly identify and define the nature of the agency agreement within your terms of engagement.

#### [REAB 2.5]

The type of agency **must** be clearly explained to the client in writing. The definitions below **must** be used for this purpose without material alterations or additions to the text.

The wording **must** be clear, legible, prominent and no less so than any other information in the document, other than the heading, trade names, names of the parties and numbers or lettering subsequently inserted in handwriting or in type.

#### Sole selling rights

If your agreement refers to 'sole selling rights', the definition you **must** use is from the *Estate Agents (Provision of Information) Regulations 1991* and is given as follows:

'You will be liable to pay remuneration to us, in addition to any other costs or charges agreed, in each of the following circumstances:

- if [unconditional contracts for the sale of the property are exchanged or, in Scotland, substitute with unconditional missives for the sale of the property are concluded] in the period during which we have sole selling rights, even if the purchaser was not found by us but by another agent or by any other person, including yourself and
- if [unconditional contracts for the sale of the property are exchanged or, in Scotland, substitute with unconditional missives for the sale of the property are concluded] after the expiry of the period during which we have sole selling rights, but to a purchaser who was introduced to you during that period or with whom we had negotiations about the property during that period.

You may be appointed as a sole agent with sole selling rights, or a joint agent with sole selling rights.'

#### Sole agency

If your agreement refers to 'sole agency', the definition **must** read:

'You will be liable to pay remuneration to us, in addition to any other costs or charges agreed, if at any time [unconditional contracts for the sale of the property are exchanged or, in Scotland, substitute with unconditional missives for the sale of the property are concluded]:

- with a purchaser introduced by us during the period of our sole agency, or with whom we had negotiations about the property during that period or
- with a purchaser introduced by another agent during that period.'

*Crown copyright material is reproduced under the Open Government Licence v3.0 for public sector information: [www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/)*

## Joint agency

You could be acting as a joint agent with sole selling rights, or as a joint agent on a sole agency basis and you should, therefore, refer to the appropriate definition above.

## Introductory fee arrangement (non-retained agent)

Where your client agrees to pay you a fee on the introduction of a prospective buyer or seller you should agree terms in writing and make clear in your agreement that the mere introduction, if taken up, will entitle you to commission and the amount of such commission.

### 3.3.11 Finalising terms of engagement

Your terms of engagement should be signed by both yourself and your client. You may choose to include matters such as agreed marketing expenditure and commission rates in a separate letter, together with general marketing advice.

It is your decision which individual clauses are included in your terms of engagement, other than those prescribed by relevant legislation.

#### [REAB 2.5.1]

Where your client wishes to delegate authority for certain activities to you under a contract or framework agreement you should ensure you receive written approval from your client setting out the extent of the authority under which you can act and the properties to which the delegation applies.

Some of the terms you should include are:

- property address
- full name and contact details of the client (with legal right to sell property)
- type of agency with definitions
- sub-agents
- type of disposal (e.g. sale, assignment, letting, surrender, assignment)
- deposits
- commission
- method of, and trigger for, payment
- expenses/abortive fees
- marketing programme
- viewing arrangements
- sales boards
- sale or leasing particulars
- basis for reporting floor areas (in accordance with the RICS professional statement, *RICS property measurement*)
- Energy Performance Certificate (EPC)
- personal interest

- methods of reporting offers
- services to prospective purchasers
- unoccupied premises
- complaints handling
- retention of documents
- right to cancel
- *Data Protection Act 1998*
- electronic communication
- withdrawal
- late payment of fees
- *Bribery Act 2010*
- cessation of instruction without penalty in the event of money laundering
- additional services and advice and
- acceptance of terms.

### 3.3.12 Offering services to other parties

You should advise your client in writing if you intend to offer services to buyers and what these services would be. The term 'services' can mean 'any services that could be offered to a prospective buyer in connection with an acquisition of real estate'. You should be mindful of any specific legislation regarding offering services to other parties.

You should notify your client in writing at the time when communication commences between you and the client or as soon as is reasonably practicable. This should be before the client enters into a contract with you if you, or any connected person [...] wishes at any stage to offer services to prospective buyers of a property you are selling for a client. You should also gain your client's written agreement.

#### [REAB 2.5.3]

You **must not** carry out a 'regulated activity', as set out in the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001*. Exceptions are if you are authorised by the Financial Conduct Authority (FCA), or the regulated activity is incidental to your estate agency work and you are acting within the rules of a designated professional body (i.e. RICS) or advising on or arranging the sale of a body corporate. A breach of this provision is a criminal offence punishable by up to two years' imprisonment and/or an unlimited fine. The legislation is complex and you should seek legal advice if you are uncertain whether your business carries out such 'regulated activities'.

### 3.3.13 Special types of sale or lease

If you receive instructions to deal with a sale or lease you should ensure that your client has the right to dispose of an interest in the property.

This can be particularly relevant for the sale of a deceased person's real estate or following a repossession by a lender.

If there is reason for doubt you should ensure that you have sight of relevant paperwork confirming your client has this right.

[REAB 2.6]

### 3.4 Off-market transactions

If you are instructed to deal with an off-market transaction without open marketing of the property you should advise your client in writing of the risks related to this and the lack of exposure to the market. You should seek written acceptance of this advice from your client before commencing negotiations.



# 4 Disposals: marketing the property

## 4.1 Legal and regulatory requirements

You **must** comply with all legislation relating to the marketing of property including the following:

- *Data Protection Act 1998*
- *Estate Agents Act 1979*
- *Landlord and Tenants (Covenants) Act 1995*
- *Misrepresentation Act 1967*
- *Consumer Protection from Unfair Trading Regulations 2008* and *Consumer Rights Act 2015* (when dealing with consumers)
- *Business Protection from Misleading Marketing Regulations 2008* (when dealing with businesses)
- *Auctions (Bidding Agreements) Acts 1927 and 1969.*

## 4.2 Existing lease arrangements

Before commencing work on the implementation of a leasehold disposal, you should undertake specific checks to ensure that the planned disposal will comply with any existing legal arrangements.

Before undertaking work on an assignment or subletting, you should check the terms of the lease to ensure that the proposed disposal method is allowed and under what terms. You should also check any side agreements or concessions that may apply to the tenant's successors and recommend that your client seeks legal advice on these issues.

You should also check any lease terms to determine restrictions regarding the use of the property and any other specific terms that could influence the market for the leasehold interest. You should also check any licences that exist for the property.

Other lease terms to consider are any service charge provisions and how they are allocated, covenants regarding alterations and repair provisions.

You should not provide legal advice for your client, but should draw attention to relevant issues and recommend they seek detailed advice from legal advisers.

## 4.3 Inspection

On receipt of any agency instruction a visit to the property should be arranged and an external and internal inspection undertaken. Only where there are special circumstances should a property be placed on the market without an inspection.

If not inspected, this should be agreed with your client and any sale or leasing particulars or correspondence issued to applicants or prospective interested parties **must** refer to this fact.

## 4.4 Measurement

When taking measurements you **must** adopt the current edition of the RICS professional statement *RICS property measurement*, and refer to this in any report to your client.

The current edition of *RICS property measurement* can be found at:

[www.rics.org/uk/knowledge/professional-guidance/professional-statements](http://www.rics.org/uk/knowledge/professional-guidance/professional-statements)

## 4.5 Market appraisal

### 4.5.1 Advising on the property price or rent for marketing purposes

You should provide realistic and justifiable advice in regard to the likely selling price or rent based on your best professional judgment. Any figure you provide should be given in good faith and should reflect current market conditions. When advising on rent you should take into account the likely lease terms that would be acceptable to the market. You should be able to support any figure you provide with comparables of similar properties in similar situations.

This advice is not a formal valuation of the property. It is important that you make clear to the seller that you are providing an estimate of anticipated market price or rent and not a valuation or appraisal. If required by the client, you may instruct a formal valuation on your client's behalf. You should only provide advice on an appropriate price or rent if you have a thorough knowledge of the market.

[REAB 3.1]

### 4.5.2 Providing market advice

Before you provide advice on the likely selling price or rent you will need to:

- inspect the whole property inside and out
- where measurements are taken you should take all reasonable steps to ensure that these are accurate using the basis of measurement generally adopted in the markets in which the property will be offered. Sales or leasing details should indicate the method of measurement used [...]
- review the general condition of the property (although you are not undertaking a condition survey it is important to gauge the general condition) and
- ask the client questions to establish that they are the legal owner and any relevant issues that may impact on the marketing strategy you adopt.

When advising on a suitable asking price or rent for a property you should obtain comparable data, details of sales or lettings of other similar properties in the area.

You should also take account of the current market and whether prices or rents have been falling or rising since the comparable sale or letting and by how much in order to be able to adjust the comparable data you have collected accordingly. You should also try to establish as many facts about the comparable transactions as possible in order to ensure that it was an open market agreement and not one that was influenced by any special factors, for example, a special purchaser (one with a personal motivation to purchase that particular property), a seller

needing to sell very quickly, issues about the condition of the property and any other factors that could have influenced the sale price. You should also take full account of any requirements of your professional body or legislation.

#### [REAB 3.2]

You **must** never deliberately misrepresent the potential price of a property. This advice may be more a 'market appraisal' than a valuation of the property (see Appendix A for definitions). When this is the case it is important that you make this clear to the seller.

When advising on a suitable price for a lease assignment you should take full account of all relevant lease terms.

Providing an indication of price is professional advice and should be supported by full reasoning.

### 4.5.3 Reporting your advice to the client

You should always confirm your recommended selling price or rent to the seller in writing even if you have discussed this with them verbally. Where the property is to be leased this should include your recommended lease terms.

This should form part of your marketing strategy and advice[...]. The report shall be clear, fair and contain transparent information with a reference to the current market conditions. It should also identify the estimated period to complete the sale or lease.

#### [REAB 3.3]

### 4.5.4 Keeping records

You should keep full and detailed records of all of the evidence you used to reach your opinion of an appropriate price or rent.

This should include all the comparative data you have used, the adjustments you made to this and the reasons for these adjustments and the sources of the data you have collected. A full report of your inspection of the property and the measurements you took should also be kept. Records should be kept for an appropriate period of time relating to limitation periods in your area of practice.

#### [REAB 3.4]

You **must** never deliberately misrepresent the size of a property. Records of floor areas **must** clearly state the basis upon which the property was measured. You **must** refer to the current edition of *RICS property measurement*.

## 4.6 Documentation about the property

You should ensure that any documentation that should be available when marketing a property has been obtained prior to commencement of marketing. This may include information on the energy performance of the property.

#### [REAB 3.6.2]

When seeking to establish that your client is the legal owner you should use your best endeavours, which would include checking with the Land Registry and reviewing the title documents (possibly through your legal advisers).

#### 4.6.1 Energy Performance Certificate (EPC)

You **must** supply one or more free EPCs – with their relevant recommendation reports – to prospective buyers.

The EPC **must** be requested before the property is marketed. You **must** make reasonable efforts for the EPC to be provided within seven days of the commencement of marketing and the EPC **must** be obtained within the period of 21 days following the expiry of the seven day period. In other words you **must** obtain the EPC within 28 days of the property going on the market.

EPCs and their recommendation reports are valid for ten years from the date of issue, however, an EPC should be no older than 12 months at commencement of marketing.

Property advertisements **must** include the EPC rating and sale or leasing particulars **must** have the first page of the EPC report attached. The existence of any Green Deal **must** be advised to potential buyers or tenants.

You should discuss the recommendations to improve the energy performance of the building with your client prior to marketing.

#### 4.6.2 Leases

Where you are dealing with the sale of an investment property, a copy of any leases should be provided. Service charge statements and relevant invoices (e.g. rates) should also be made available. A copy of the lease should also be provided when dealing with an assignment.

#### 4.6.3 Floor plans

Floor plans should be provided, particularly for multi-let properties, and should clearly identify the demise of individual lettings.

#### 4.6.4 Asbestos risk register

You should enquire as to whether there is an asbestos risk register for the property prior to marketing.

#### 4.6.5 Access statement

You should ask to see the access statement to ensure the premises are compliant with the *Equality Act 2010*.

### 4.7 Marketing the property

You should not put any property on the market without your client's permission and you should ensure that your client is the person with the legal right to dispose of an interest in the property.  
[REAB 3.6]

#### 4.7.1 The marketing strategy

You should agree an appropriate marketing strategy with your client and review this regularly with them.

Your adopted marketing strategy should be property and country specific. You should explain clearly to your client the reasons for the strategy that you recommend.

**[REAB 3.6.1]**

The following should be included in your marketing strategy:

- your analysis of the current market (local and national)
- your recommended method of sale with reasons for this choice
- marketing materials
- budget
- documents to be provided
- your recommended asking price and likely selling price
- your opinion of the likely timescale for the sale from marketing to completion
- approach to viewings
- arrangements for holding keys
- use of data rooms including security arrangements, data protection, copyright, availability and use and
- the mechanism for reviewing the marketing strategy with your client, which could include:
  - periods for reviews
  - meetings with seller and
  - reasons why changes may be needed.

#### 4.7.2 Sale or leasing particulars

A member of staff who has personally inspected the property should draft sales or leasing particulars and/or enter relevant and accurate information in a suitable multiple listing system. It may be useful to adopt a pro forma (either hard copy or electronic) for inspections, to ensure consistency of approach and this should be completed during the inspection and not afterwards.

You should disclose any material facts about the property including issues such as contamination or other issues that will clearly be of significance for potential buyers.

**[REAB 3.6.3.1]**

Sale or leasing particulars should be clearly dated and, if placed on the internet, should be converted to a file that cannot be amended. Absolute clarity is to be given as to the property being marketed. You should gain your client's written approval of the particulars unless your client has delegated authority to you for this in your terms of engagement (see section 2.3.1 of the REABs document).

You should take account of the following when preparing sale or leasing particulars:

**1** Location or address

The correct postal address should be used. Occasionally, a local or traditional description may be more appropriate. You should ensure that the description is accurate.

**2** Availability and nature of services, facilities or amenities

You should ask your client to confirm that services are connected and working. If in doubt, you should ask to see the property's utility bills. If a property is vacant and the services are disconnected, you should draw this to the attention of potential buyers and underline the possibility that these items may not be in working order.

### 3 Proximity to any services, places, facilities or amenities

If you give travelling times, you should be specific as to the mode of transport you are using and provide distances stating the start and end locations.

### 4 Accommodation and sizes

You **must** measure rooms carefully, and areas of buildings and land should generally be stated as approximations.

You **must** adopt and state the use of the current edition of the RICS professional statement *RICS property measurement* found at: [www.rics.org/uk/knowledge/professional-guidance/professional-statements](http://www.rics.org/uk/knowledge/professional-guidance/professional-statements).

Reference to floor areas **must** clearly state the basis upon which the property has been measured, adopting dual reporting if appropriate to make clear to clients and potential buyers the difference between measurements under the International Property Measurement Standards and any other basis used. Measuring equipment should be calibrated and checked periodically against a known, measured length, and records of checking should be retained. For help in calibration, you may want to contact your local trading standards department.

### 5 Fixtures and fittings

You should confirm with the seller those fixtures and fittings to be included in the sale and that they are in working order.

### 6 Physical or structural characteristics, form of construction or condition

You should not make any representations as to condition. If you do describe construction, you **must** be certain of the accuracy of your statement.

Where a property is under development, you should obtain written confirmation of the proposed finishes from the developer and state on the particulars that 'the developer advises us that [insert the written advice the developer has given you]'. The accuracy of the developer's statement should be checked on completion of the development.

### 7 Fitness for any purpose or strength of any buildings or other structures on land or of land itself

If a property is not suitable for immediate use, you should explain this and the reasons for it in the sale or leasing particulars and advertising material.

If, in your opinion, the property cannot be used for its stated purpose without requiring major modifications, remedial work and/or planning consent, you should consider the need for further survey work.

### 8 Treatments, processes, repairs or improvements or their effects

No reference should be made to treatments or repairs unless original documentary proof is provided. You should retain copies of these documents on file and check that the guarantees have not expired. In some circumstances, it may be better if the seller talks directly to potential buyers. It is important to avoid drawing conclusions regarding the condition of property as a result of particular types of treatment, repair or improvement.

**9** Conformity or compliance with any scheme, standard, test or regulations, or the existence of any guarantee

You should obtain documentary proof of compliance with any scheme, standard, test or regulations, or any guarantees. Guarantees should be stated as running from a particular date for specified number of months or years.

**10** Survey, inspection, investigation, valuation or appraisal by any person, or the results

You should not disclose the findings of any document unless you have seen it and have the authority to do so. If there is a serious adverse finding in an existing survey or valuation, you should discuss how such findings can be addressed with your client prior to marketing, but not make any misleading omissions.

**11** The grant or giving of any award or prize for design or construction

You **must** see documentary proof of any award or prize before stating this on particulars.

**12** History, including the age, ownership or use of land, or any building or fixture and the date of any alterations thereto

The whole of a property may not date from a particular period, but parts of it may. If applicable, you should identify periods and dates of different parts.

**13** Person by whom any building (or part of any building), fixture or component was designed, constructed, built, produced, treated, processed, repaired, reconditioned or tested

You **must** see documentary proof that a particular person was involved in any part of the design, building or other work relating to the property before stating this on the particulars.

**14** The length of time during which the property has been available for sale either generally, or by or through a particular person

Where a property has previously been on the market with another agent, you should not advertise it as new to the market, but instead as a new instruction. A property may be advertised as new to the market, or as a new instruction, for a maximum of four weeks from the date of placement on the market, or engagement of the new agent.

**15** Price

Statements about price or rent **must** be correct at the time when the information is given. You **must** ensure that notes are made at once of any changes (up or down) in price by your client, and that these notes are retained safely. The changes should be recorded and procedures followed to ensure that all necessary documents are updated. Provided you are following a client's instructions, different agents can advertise a property at different prices without making a false or misleading statement.

Where a property is advertised in a trade paper distributed freely to the general public, some asking prices may be out of date by the distribution date. The publication date should be marked, together with the date at which the information was correct, and an indication should be given as to when the next issue will be available. Where there will be a significant delay before the next issue a warning should also be provided, for example:

'The prices and particulars regarding properties are correct at the time of going to press, but as prices can be altered by the seller at any time, interested potential buyers should check the latest position with the agent before viewing.'

## **16** Freehold and leasehold title (and feuhold in Scotland)

You should confirm information on tenure supplied by the client and exercise due diligence. Reasonable steps include:

- asking for, and looking over, documentary evidence
- checking with the local authority and
- checking against local trends and local information.

If you have any doubt as to the accuracy of the information provided by the seller, you should qualify the particulars with a statement that the tenure details 'are believed to be [the information provided by the seller] but have not been confirmed', and that steps are being taken to obtain confirmation. You should then take such steps, for example seek written confirmation from the seller's legal advisers.

If you have taken all reasonable steps to verify the information but have been unable to do so, you should qualify the particulars with a statement that 'it has not proved possible to verify the information provided by the seller' and recommend that the matter be checked by the buyer's legal advisers. You may also wish to make a copy of any lease available for inspection at your offices.

You should check that there will be no ongoing leases or occupiers for a property that is to be sold with vacant possession.

## **17** Leases and licences, liability for service charges and common repairs

Wherever possible you should examine documentation or, if this is not possible, state the source of the information. If you have any reason to doubt the accuracy of the information you should not make any statement. You should state any variations from the original lease document in the particulars (e.g. rent reviews) and provide a summary of the lease terms when dealing with an assignment of a lease. This should include the length of lease, rent passing, rent reviews, user provisions and any other key terms.

## **18** Business rates

The information provided to prospective buyers should be limited to the rateable value and the rates payable for a defined rates year. You should state the source of the information.

Care should also be taken where a property has any area capable of separate occupation, as it may need to be assessed separately.



## 19 Existence and nature of any planning permission or proposals for development, construction or change of use

The existence of any planning consent should not be stated unless it has been inspected, and preferably copied and retained on file. You should check that the consent is still valid. If the seller does not have the consent, a copy should be available from the local authority. If the consent is subject to conditions, this should be stated and/or a copy attached or made available for inspection at your office.

There is no need to obtain copy consents for existing extensions unless it seems unlikely that consent would have been granted.

## 20 Matters relating to Building Regulations and statutory restrictions on use, preservation and maintenance of land

You **must** exercise care that you do not describe accommodation or other features in a manner that would not be allowed under Building Regulations or other statutory restrictions. Where there is any doubt, suitable checks with the local authority or relevant statutory organisation should be undertaken.

## 21 Restrictive covenants, easements and rights of way

Where you are aware of legal matters restricting the use of land, you should declare their existence (e.g. 'subject to restrictive covenants') and/or make copies available for inspection at your office. Where the situation is complex or where there is doubt, you should arrange for the seller to explain matters directly to the potential buyer.

## 22 Properties with physical problems

Where you are aware or have reason to believe that a property has physical problems, you should inform potential buyers of these problems.

Potential physical problems can be wide ranging, but particular issues to consider are:

- **Contaminated land:** the RICS guidance note, *Contamination, the environment and sustainability: implications for chartered surveyors and their clients*, 3rd edition (2010), gives detailed guidance on how environmental and sustainability issues impact all aspects of land, property and construction.
- **Properties at risk of flooding:** the Environment Agency ([www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)) is a useful source to find out whether a property is at risk of flooding. In Scotland, see the Scottish Environment Protection Agency ([www.sepa.org.uk](http://www.sepa.org.uk)) and in Northern Ireland, see the NI Direct website ([www.nidirect.gov.uk](http://www.nidirect.gov.uk)) for further information.
- **Properties that may include asbestos:** you can find out more about asbestos in the RICS guidance note, *Asbestos and its implications for members and their clients*, 3rd edition (2011). In Northern Ireland, more details can be found through the Belfast City Council ([www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)).

You should ask the seller to sign and return a previously prepared validation certificate. The validity of any proposed amendments should be checked, and the returned validation certificate should be kept on file.

Details may also be confirmed by email, a copy of which **must** be kept on file.

### 4.7.3 Confirming details with your client

You should ensure that marketing particulars are checked. Before marketing, draft particulars should be sent to your client for approval and verification of accuracy.

If, during the marketing process, the facts on which the particulars are based alter, then you should amend them accordingly.

You should ensure that any previously interested parties and any potential buyer, inspecting or making an offer for the property after the date of the change, is given corrected and up-to-date marketing particulars and information.

[REAB 3.6.3.2]

## 4.8 Online marketing

There is increasing use of the internet for the marketing and promotion of properties for sale. When using online marketing you should ensure – as far as practicable – that you adopt the same standards of promotion and marketing as set out in section 3.6 [of the REAB document].

[REAB 3.7]

When using online marketing, you should ensure:

- a** transparency in the estate agency operation as a business
- b** honesty in obtaining property details (e.g. by only advertising those properties on which you have been instructed)
- c** quality in the conduct of your business
- d** accuracy of property information and
- e** respect for the privacy and security of agents' property and other users' data.

You should have processes in place to ensure appropriate use of social media.

## 4.9 Advertisement signs and boards at the property

'For sale' or 'To let' or similar signs and boards can be an excellent marketing tool for you as a real estate agent although they are used more in some countries than others.

[REAB 3.8]

You should encourage sellers to use 'for sale/to let' boards, subject to planning permission.

You **must** only erect 'for sale' boards on properties where you have received written instructions to sell. Where the boards relate to buildings in multiple occupation, you **must** clearly indicate the part of the building to which they relate.

In addition to the agent's details, boards should only have displayed on them 'for sale' or 'to let' for general marketing of the property. When an offer has been accepted (unless the client has instructed you not to do this), boards should still have 'for sale', but with the added statement of 'sale agreed', or 'sold subject to contract' (in Scotland 'under offer' is commonly used for the latter).

You **must not** replace another agent's board with your own, or remove another agent's board without the seller's permission. Boards **must** only be used in accordance with the seller's wishes and local by-laws. You **must** also remove your board as soon as possible after the sale has been concluded (or according to the seller's instructions).

The board should be regularly checked to ascertain that it has not been moved, has not fallen down and is not causing a nuisance or danger to anyone. If the property is on the market for a long time and the board begins to fade or fall into disrepair, it should be replaced.

## 4.10 Viewings

### 4.10.1 Communicating with your client

You should agree the approach to viewings with your client when agreeing your marketing strategy (see section 3.6.1). Some clients may like to show potential customers around their property but others prefer you to do this by way of accompanied viewings.

Accompanied viewings can be very useful in helping you to 'qualify' buyers by finding out details of their personal and financial circumstances. This will be useful when advising your client regarding offers received and may be easier to obtain than in a discussion over the telephone.

If you are arranging a viewing of a property occupied by someone other than your client, you should agree the arrangements with the occupier beforehand, wherever possible.

[REAB 3.9]

### 4.10.2 Keys

You should make sure that all the keys you have are coded and kept secure. You should maintain records of when you issue keys and to whom, and when they are returned. These records should be kept secure and separate from the actual keys and you should only give keys to people providing you with satisfactory identification. You should take care to ensure that, after any visit you have made, the property is left secure or at least as secure as it was prior to the visit.

[REAB 3.9.2]

### 4.10.3 Keeping records

You should keep records of all viewings of a property.

You should advise your client of the details of viewings and, in particular, feedback received, within a reasonable time. This would generally be within three working days of the viewing.

Once you have followed up on all property viewings you should advise your client of reasons why potential customers did not make offers.

[REAB 3.9.3]

### 4.10.4 Personal safety

Working as a real estate agent introduces a range of potential areas of risk to personal safety due to the fact that you will be visiting properties, meeting people you may not know, travelling between visits and keeping your own personal diary of meetings and arrangements. It is critical that you take all necessary precautions to ensure both your own personal safety and the personal safety of anyone in your charge.

As with general health and safety at work, you should undertake a risk assessment when you are going to be working away from the office – either at a different office, your home, or visiting properties or undertaking viewings.

[REAB 7.4]

## 4.11 Responding to questions from potential buyers

When responding to questions from potential buyers you should ensure that you advise them of all relevant issues and do not make any material omissions from the information you provide.

You should seek to ensure that only staff with personal knowledge of the property provide information beyond that stated on the written particulars.

[REAB 3.10]

Material omissions would include issues that you are either aware of, or should reasonably be aware of, that would or could influence the buyer's decision. All questions need to be answered truthfully.

## 4.12 General principles

When dealing with consumers you **must not** engage in any misleading action nor make any misleading omissions. You will need to make an assessment of what constitutes material information but, if in doubt, you should disclose the information.

When marketing to business customers your advertising **must not** mislead the target businesses in such a way that is likely to affect their economic behaviour or injure a competitor. An advertisement is misleading if it deceives or is likely to deceive the business it is addressing. If you make any sort of comparison with other businesses in your advertising you **must** ensure such comparisons are suitable, objective and substantiated and not misleading.

You should ensure that all descriptions have evidence to support your claims. Use of words such as 'approximate' or 'subject to survey' may not be sufficient to prevent information being misleading.

## 4.13 Keeping your client informed

You should keep your client informed of any changes whilst a property is on the market and if you come across any significant information that might reasonably affect your client's instructions you should disclose that information promptly to your client.

[REAB 3.11]

# 5 Implementing the disposal

## 5.1 Legal and regulatory requirements

You **must** comply with all legislation relating to the implementation of a disposal of property including the following:

- *Data Protection Act 1998*
- *Estate Agents Act 1979*
- *Landlord and Tenants (Covenants) Act 1995*
- *Misrepresentation Act 1967*
- *Consumer Protection from Unfair Trading Regulations 2008* (when dealing with consumers)
- *Business Protection from Misleading Marketing Regulations 2008* (when dealing with businesses)
- *Auctions (Bidding Agreements) Acts 1927 and 1969*
- *Equality Act 2010*.

## 5.2 Methods of sale

Before agreement of the method of disposal you **must** discuss all the options available to the seller, making clear the differences between them and the risks of each approach. Specific issues that **must** be clearly set out for your client include:

- who will have the liability for the fee
- your recommended method and any appropriate alternatives risks, advantages and disadvantages of each approach and
- the costs for both buyer and seller, and implications for stamp duty.

### 5.2.1 Sale by auction

Chartered surveyors acting as auctioneers are assuming duties to both sellers and buyers that are in addition to the usual agency role. They are acting as agent for the seller and have the power to exchange contracts at the auction such that the seller and buyer are bound by the contract. Before undertaking sales by auction members should take their own legal advice and refer to the current edition of the *Auctioneers selling real estate* guidance note.

*Auctioneers selling real estate* gives best practice guidance. It provides an introduction to the RICS Common Auction Conditions, which members are recommended to adopt as they regulate the conduct of the parties at auction, and the contract between the seller and the buyer. If a member adopts the RICS Common Auction Conditions, the best practice guidance contained within the guidance should be followed.

The guidance note also covers the auctioneer's relationship with the selling client, including special terms of appointment and the disclosure by the seller and the seller's solicitor of material factors affecting the sale property that may have a bearing on the decisions of a bidder.

It also sets out key areas relating to the relationship the auctioneer has with potential bidders, the bidders themselves and the buyer.

## 5.2.2 Sale by private treaty

### Offers

You should take reasonable steps to find out from the prospective buyer his or her source and availability of the funds for buying or renting the property and other information that may affect his or her ability to buy or lease the property and pass this information to your client.

You should keep appropriate records of all offers you receive.

### Communicating with your client

You should advise your client of all offers received as soon as reasonably possible. This confirmation should be in writing.

The details given should be sufficient to allow your client to make a fully informed judgment of all offers received (with your assistance) and each offer's respective strengths and weaknesses. You should bear in mind the seller's circumstances when providing them with information.

### [REAB 4.1 and 4.2]

Written confirmation of the buyer's details should be sent to your client as soon as is reasonably possible. You **must not** discriminate, or threaten to discriminate, against prospective buyers of your client's property for any reason, by:

- failing to inform the client of an offer to buy the property
- informing the client of an offer less quickly than other offers you have received
- misrepresenting the nature of the offer, or that of rival offers
- giving details of properties for sale first to those buyers who have indicated they are prepared to let you provide services to them and
- making it a condition that the potential buyer of the property **must** use any other service, such as financial advice, provided by you or anyone else.

The professional statement in this section is only directly relevant in England, Wales and Northern Ireland. In Scotland, a 'closing date' will be fixed for formal legal offers. These offers should largely deal with the matters in the template shown in the following section.

Each offer should be confirmed in writing to your client within at least one working day of receipt, or very exceptionally within no more than two working days of receipt of the offer. This includes any 'notes of interest' for properties in Scotland and offers that do not fully comply with the seller's requirements. The only exception is where the seller has given specific instructions to the contrary in writing. You should include:

- the time and date of the offer
- the amount of the offer
- any conditions attached
- the source and availability of funds (including whether finance is needed and what stage this is at)
- any services offered by you to the buyer and
- any other factors that may influence the purchase.

Care should be taken to be unbiased and provide your clients with all relevant information about the buyer's circumstances.

Confirmation of an offer can be sent by a typed or handwritten letter, email or fax, or, where appropriate, in Braille. You **must not** misrepresent offers or provide any false offers.

### Communicating with the buyer

You should confirm to the potential buyer that you have notified your client of their offer as soon as reasonably possible. This should be confirmed in writing with confirmation of the amount of the offer and any conditions attached. If other offers are made you should advise the original potential buyer that an additional offer has been made without disclosing the amount or any other aspects of the offer unless you have your client's consent and consent of the person making the offer to do so. You should advise buyers who make offers that it is your practice to seek your client's consent to provide details of offers to other buyers. If you disclose any offer to a prospective buyer then the offer should also be immediately disclosed to all prospective buyers with a current interest in negotiations for the property.

#### [REAB 4.3]

Where it is in the interests of your client, you may give some indication to buyers regarding other offers, such as stating, 'offers received so far are in excess of the asking price', or 'your offer is well below other offers received'. You **must not** make up offers as covered by the *Fraud Act 2006* and an action can be brought under the Act even if the sale does not proceed.

### Avoiding misrepresentation

You should not misrepresent the details or existence of any offer or the status of any potential buyer to your seller client. Any statement made by an estate agent in the course of marketing a property may, if it is false or misleading, result in legal liability for either the agent or the client, or both.

#### [REAB 4.4]

### Managing acceptance of offers

#### Negotiation

You should keep your client informed of your negotiations and continuously seek their instructions and submit all amended and additional offers to them.

#### Binding contracts

The legal system for buying and leasing property clearly differs significantly between countries. You should make sure that contracts are drawn up and agreed as appropriate and the property taken off the market when required.

#### Accepting an offer

When your client agrees to accept an offer and any related conditions you should record these details accurately and inform the buyer. This should be confirmed in writing to both parties. You should also advise the legal advisers of the details of the terms of the sale.

#### Monitoring progress

You should maintain regular contact with the buyer throughout the process. This progress should be regularly reported to your client.

### Offering additional services

If the buyer applies for any additional services from you, you should promptly provide your client with an accurate written list of the services applied for. This should be given at all stages before contracts for the disposal of the interest in the property has been completed.

[REAB 4.5]

## 5.3 Sale by tender

When inviting bids by tender you **must** clearly identify any fee liability for buyers on sale or leasing particulars and other forms of marketing. All offers **must** be advised to your client unless the offer is an amount or type that the seller has specifically instructed you, in writing, not to pass on.

You should provide an envelope that potential buyers should use to send their bids. This envelope should be marked 'not to be opened before [date and time]', and should have the address or identification of the property already applied.

You **must** clearly inform potential buyers whether the tender is formal or informal.

## 5.4 Lettings

You should ensure that before making any offer, potential tenants are aware of:

- the length of the term and any break provisions
- whether tenants will have security of tenure
- the rent review arrangements
- rights to assign, sublet or otherwise share the property
- repairing obligations and
- VAT status of the premises.

You should encourage your client to promote flexibility, such as stating whether alternative lease terms are available and proposing rents for different lease terms if requested by prospective tenants. You should refer to the current edition of the *Code for Leasing Business Premises*. While the code does not apply directly in Northern Ireland or Scotland, it should be adopted as a best practice guide. You should also encourage your client to embed sustainability principles into the lease terms and encourage good environmental management by tenants.

### 5.4.1 Tenant checks

You **must** check the identity of tenants.

### 5.4.2 Inventory

On receiving appropriate instructions from your client and prior to the commencement of the tenancy, an inventory and schedule of condition of sufficient detail should be prepared. You should ensure that photographs are taken to support any inventory. The extent of items to be included in the inventory should be made clear immediately to the potential tenant. You should consider using an independent inventory clerk to ensure transparency.



The inventory, with a schedule of condition as to that of the décor, fixtures, equipment and effects, should be prepared to ensure that the prospective tenant knows what is to be included before commencement of the tenancy agreement. Ideally, this should be checked with the tenant, who should then sign the document at the time of checking.

If this is not possible, you should provide the tenant with a copy to report any alterations and subsequent adjustments as appropriate, which should be returned within a reasonable period after commencement of the tenancy. It will be difficult for a landlord to prove any claim against the tenant's deposit without a reliable inventory and schedule of condition taken at both the start and end of the lease.

### 5.4.3 Formal agreement

#### Agreement for lease

Many leases are granted without a prior agreement. However, this is needed if there is to be a period between entry into the agreement and the lease (e.g. the building is under construction), or if the landlord or the tenant is to carry out works before the lease is granted.

Note that for stamp duty land tax purposes, an agreement for lease is treated as a notional lease if the agreement is 'substantially performed', which occurs where the tenant goes into occupation (even to fit out), or pays a first instalment of rent or a substantial amount (normally 90 per cent or more) of any premium payable.

#### Heads of terms

After appropriate consultation with your client, you should send a 'subject to contract' letter to the prospective tenant detailing the full heads of terms. Heads of terms should consider matters such as (this list is not definitive):

- all the tenancy terms
- property address
- landlord
- tenant
- rent
- rent-free period (and other incentives)
- type of lease
- landlord's initial works (including timing)
- tenant's initial works (including timing)
- guarantor/rent deposits, including the identity of guarantor and rent deposit (if any)
- lease length, breaks, extensions and rights, including notice periods and any associated payments
- lease length and start date
- break clauses or renewal rights
- security of tenure under Part II of the *Landlord and Tenant Act 1954*, or in Northern Ireland, under the *Business Tenancies (Northern Ireland) Order 1996*

- rent reviews, including type, e.g. market rent (with any disregards or assumptions), fixed increase, links to an index and frequency, and method of dealing with dispute (e.g. arbitration, independent expert)
- assignment and subletting
- services and service charge, including method of apportionment. You should refer to the current edition of the RICS Code of Practice – *Service charges in commercial property*
- environmental obligations (green terms)
- repairing obligations
- FRI and schedule of condition
- collateral warranties
- alterations use
- permitted use
- insurance
- dilapidations
- rates and utilities
- legal costs
- conditions (e.g. consents or board approvals required)
- landlord's solicitors
- tenant's solicitors and
- timing and other matters.

### The lease

The lease should be prepared by your client's legal advisers and should be based on the heads of terms. The prospective tenant and its legal advisers should be given adequate time to read the lease prior to signing, and should have the opportunity to raise queries in order to clarify its rights and obligations under the lease.

The tenant should also be given a copy of the EPC (if it has been not previously provided). Generally, two counterpart copies of the lease are signed by the landlord and the tenant, and then exchanged. The two counterparts together form the executed lease. An appropriate method of payment should be set up for rent payments.

The lease **must** be signed by the landlord, or its representative, and the counterpart **must** be signed by all the tenants and guarantors. Once both parties have signed the counterparts, the legal advisers 'complete' the transaction and dated the lease to effect execution.

Any appropriate notices should be issued prior to execution of the agreement, and care should be taken to comply with the contracting-out procedure under the *Landlord and Tenant Act 1954*, where applicable.

You should arrange for any inventory and condition reports to be signed and should provide the tenant(s) with a notification of the landlord's name and address for serving notices. You should provide the tenant with at least one complete set of keys and include a record of the keys in the inventory.

Your client's legal advisers should give the tenant's legal advisers the lease duly signed.

#### Lease terms

You should advise your client that the lease should comply with the current edition of the *Code for Leasing Business Premises in England and Wales* ([www.leasingbusinesspremises.co.uk](http://www.leasingbusinesspremises.co.uk)). The code does not apply directly in Northern Ireland or Scotland, but nevertheless should be adopted as a best practice guide.

## 5.5 After acceptance of an offer

When an offer has been accepted subject to contract you **must** obtain your client's instructions as to whether you are to withdraw the property from the market, or depict it as 'reserved'. If your client does decide to continue to market the property, you **must** advise the potential buyer (who made the offer) of this in writing.

If you are instructed to continue marketing and your client subsequently accepts another offer, this **must** be communicated in writing to the original potential buyer. You **must** inform potential buyers if you are aware that the seller has instructed legal advisers to send a contract of sale to another buyer.

If your client instructs you to deal with more than one buyer and to introduce a contracts race, you should immediately inform all buyers involved.

# 6 Acquisitions

## 6.1 Legal and regulatory requirements

You **must** comply with all legislation relating to the acquisition of property, including the following:

- *Data Protection Act 1998*
- *Estate Agents Act 1979*
- *Landlord and Tenants (Covenants) Act 1995*
- *Consumer Protection from Unfair Trading Regulations 2008* (when dealing with consumers)
- *Business Protection from Misleading Marketing Regulations 2008* (when dealing with businesses)
- *Equality Act 2010*
- *Landlord and Tenant Act 1954 Part II.*

## 6.2 Property search: buying or leasing

You should be mindful of the main reasons why buyers use property search agents.

You should make sure that you use your local knowledge and networks to meet your client's expectations.

[REAB 5.1]

You should agree a detailed brief with your client in writing, along with your terms of engagement.

## 6.3 Communication with clients

You should provide your client with regular updates of your progress in finding a property for them. This should include reports in reasonable detail delivered with reasonable frequency. When your client wishes you to make an offer on their behalf you should communicate this to the seller or their agent within a reasonable time. You should confirm any offer in writing to the seller and send a copy to your client. The offer should state any conditions that your client wishes to place on the offer. You should confirm any further offers in writing to the seller in the same way with a copy to your client. You should include in the offer evidence that you are acting on behalf of the buyer.

You should obtain your client's consent before releasing any information regarding their personal or financial circumstances to the seller. You should only recommend that these details are provided to the seller if you feel that this will assist in successful negotiations.

[REAB 5.2]

You should provide a regular report detailing the properties you have considered, those you have discarded and the reasons why, and those you have viewed. Where you have undertaken viewings either with or without the buyer, you should provide detailed written feedback on how you felt the property met the buyer's criteria and your own views of the property.

Where you wish to invite your client to view a property, you should arrange this with the seller or its agent for a convenient time and place for your client and confirm these arrangements in writing by email or by letter.

Offers should usually be made to the seller or its agent within one working day of receiving instructions to submit the offer by your client. You should then follow this up within two working days for the response to the offer and report this to your client within a reasonable time, ideally one working day.

## 6.4 Dealing with conflicts of interest

If you are acting for a number of buyers seeking similar properties and have disclosed this and received agreements to continue (see section 1.3 [of the REAB document]) you should take all necessary steps to ensure that you are always acting in the best interests of each of your clients and that your actions for one client will not prejudice the actions of or outcomes for the other. You will need to ensure that you always take timely actions following requests from your clients and take these forward in accordance with the sequence of receipt of the requests.

[REAB 5.4]

If you are concerned that you will not be able to act independently for each client, you **must** not accept the instructions.

## 6.5 Leasehold acquisitions

You may be acting on a client's behalf for a leasehold acquisition of a new lease, an assignment or a sublease.

You should ensure that leases comply with the principles in section 5.4 and the current edition of the *Code for Leasing Business Premises in England and Wales*, which can be found at [www.leasingbusinesspremises.co.uk/](http://www.leasingbusinesspremises.co.uk/)

## 6.6 Progressing purchases

Once an offer has been accepted you should request that this is confirmed in writing to you and send a copy to your client.

Assuming you have your client's consent to do so, you should then confirm the details of your client and their legal advisers to the seller or their agent.

You should then monitor progress, assist where possible and report information that is helpful in concluding the transaction.

[REAB 5.5]

## 6.7 Holding clients' money

If you hold money for your buyer clients you should refer to section 8.3 for guidance [or REAB or section 3.2.2 of this document].

[REAB 5.6]

# 7 Ending the instruction

## 7.1 Legal and regulatory requirements

You **must** comply with all legislation relating to the closure of an instruction including the following:

- *Data Protection Act 1998*
- *Estate Agents Act 1979*
- *Landlord and Tenants (Covenants) Act 1995*
- *Consumer Protection from Unfair Trading Regulations 2008* (when dealing with consumers)
- *Business Protection from Misleading Marketing Regulations 2008* (when dealing with businesses)
- *Equality Act 2010*
- *Landlord and Tenant Act 1954 Part II*
- *Late Payment of Commercial Debts (Interest) Act 1998*.

## 7.2 Written confirmation

If you receive instructions from your client that they wish to terminate your instruction or if you decide that you wish to cease to act for them, you should confirm in writing that you are no longer acting for them, the actual date of termination and details of any fee or charges the client owes you or may owe you.

You should also explain any outstanding liability the client may have in terms of fees.

An invoice should be issued in accordance with the relevant local legislation.

[REAB 6.1]

These circumstances could include, where you have confirmed in your terms of engagement, that:

- you will be entitled to commission if the client terminates your instruction and goes on to sell/let the property to a buyer/tenant whom you introduced (general guidance suggests that this should be within six months of the date when your instruction ended but this needs to be stated in your terms of engagement) and/or
- there may be a dual fee liability.

You should send your client the names of all the potential buyers/tenants who viewed the property during the period of your instruction. This may support your right to a fee should one of these parties subsequently purchase/occupy the property. An invoice should be sent with the written confirmation of the end of instruction.

## 7.3 Invoice

Whether your instructions come to an end when you complete the work for your client or because either you or your client wish to terminate the instructions, your client may owe monies to you. You should submit an invoice clearly setting out all costs owing, including itemising the fee owing, any expenses (in accordance with your terms of engagement) and taxes.

This should be sent to your client within a reasonable time after your instructions come to an end.

If you intend to charge your client a fee for terminating the instruction, this should have been made clear in the written terms of engagement you agreed with them.

The terms should specify the amount of the fee and its purpose (see section 2.3.2 [of the REABs document]).

A final receipt should be sent to your client when the invoice is paid. This should confirm the final amount received.

[REAB 6.2]

When acting for a seller, it is likely that you will have agreed with your client (and confirmed this in your terms of engagement) that when contracts are exchanged (or in Scotland missives are concluded) you will submit your invoice to your client's legal advisers. Payment will then be made from the completion monies of the sale. Your invoice should clearly state the name of your client and the name of the property to which the invoice applies.

This same information, along with the client's correspondence address, should be included when you are invoicing for a termination of instructions. In such case, this should be sent to your client within a reasonable period of time after completion of the sale, or sent with the written confirmation of the termination of instruction. Another option is to send the invoice within a reasonable period after you have received confirmation that a sale has taken place for your client and you are entitled to a fee.

You may have a statutory right to claim interest on late payments and will also have a contractual right if you have stated that the interest will be charged in your terms of engagement. Interest should be charged on the outstanding gross amount inclusive of VAT, although no VAT is chargeable on the interest itself. Invoices should include an agreed payment date so that customers know when interest will start being charged. You should also advise your client if interest starts to accumulate.

Whether you decide to charge interest on late payments is up to you. It will most likely depend on your relationship with your client and the possible implications for future business.

A final receipt should be sent to your client with the invoice and should confirm the final amount received.

## 7.4 If completion of the transaction does not take place

If you have negotiated a transaction that does not finally result in legal completion you may still be entitled to your fee or commission or some alternative agreed amount of remuneration. You should check your terms of engagement and relevant legislation regarding this.

[REAB 6.3]

Where your agreement states that commission is payable on completion of the sale or letting, this means the final transfer of the property from the seller or landlord to the buyer or tenant and the relevant payment.

Your agreement may instead state that commission is payable on the introduction of a 'ready, willing and able purchaser'. In this case, it will become payable when a potential buyer introduced by you can be described as 'prepared and able to exchange unconditional contracts for the purchase of the property', even if negotiations subsequently fall through and contracts are never exchanged. Whether a potential buyer fulfils this description is a question of fact.

However, based on decided cases, the courts will usually require evidence that the potential buyer has the necessary finance in place and is in a position to exchange contracts as soon as the seller is ready.

Where an agency agreement states that a fee will become payable if the seller withdraws from negotiations after a ready, willing and able purchaser has been introduced, it will be a question of fact whether or not the potential buyer introduced by the agent satisfies that definition.

Similar to commission, your agreement may state that a fee becomes payable when a ready, willing and able purchaser has been introduced, even if the seller withdraws from negotiations afterwards.

## 7.5 Retention of records

The shortest time you should keep files is six years but the *Limitation Act* 1980 provides for a period of up to 15 years for a professional negligence claim. You should refer to the RICS publication *Whose files are they anyway* (2013) for further guidance.



# Appendix A Glossary

## **Acquisition**

Obtaining either a freehold or leasehold interest in property.

## **Agency, real estate agency or estate agency**

Any person who, in the course of a business (including a business in which he or she is employed), is instructed to dispose of or to acquire an interest in land, whether or not, an RICS member or regulated firm. See the *Estate Agents Act 1979* for a full definition. Agency is the preferred term in the UK.

## **Agent, real estate agent or estate agent**

A company or individual instructed to buy, sell or let commercial real estate, whether or not a member of RICS (see agency). Agent is the preferred term in the UK.

## **Appraisal**

A market appraisal (see definition).

## **Client**

A person or organisation using the services of an agent, real estate agent or estate agency.

## **Commercial real estate or commercial property**

Real estate or property solely or partially used for business purposes.

## **Comparable evidence**

Details of a comprehensive number of transactions with the same or similar characteristics, in the same or similar location, that have been sold within a reasonable time frame and were the result of arms-length transactions in the open market that are verifiable and consistent with local market practice.

## **Conclusion of sale**

When a valid contract for sale is completed (in Scotland, when missives are concluded).

## **Conflict of interest**

Where an agent acts for clients who have competing interests, or where an agent's personal interests conflict, or could conflict, with those of the client.

## **Customer**

Any person who either directly or indirectly could be influenced by the services of a real estate agent, including the client (see definition) and others.

## **Disposal**

Freehold or leasehold sales (and their equivalents in Scotland), assignments, lettings and surrenders of leases.

**Exchange of contracts**

The point when the transaction becomes legally binding, including the conclusion of missives in Scotland.

**Interest in land**

A form of legal title in land, e.g. freehold or leasehold.

**In writing or written**

Typed or handwritten text, email, fax or in Braille.

**Market appraisal**

An estimate of market price or rent based on market evidence and knowledge of the local market.

**Reasonable**

An objective legal standard that is judged based on the standard of conduct expected of a professional, experienced agent dealing with the same situation.

**Sale**

A freehold or leasehold disposal (and their equivalents in Scotland).

**Seller**

A person or organisation who is disposing of a property. This could include a tenant who is assigning their lease.

**Sub-agent**

A separate or related firm providing estate agency services to the seller on behalf of the principle agent.

**Valuation**

A valuer's opinion of the value of a specified interest(s) in a property, at the date of valuation, given in writing. Unless limitations are agreed in the terms of engagement this will be provided after an inspection and any further investigations and enquiries that are appropriate, having regard to the nature of the property and purpose of the valuation.

**Valuer**

An RICS member who is registered under the RICS Valuer Registration Scheme (VRS) and provides a written valuation report for lending or other purposes. Such a report is to be written in accordance with the current edition of the *RICS Valuation – Global Standards* (Red Book).

**Vulnerable customers**

Customers that agents could reasonably believe could require special consideration or an increased level of explanation as a result of age, physical, mental or emotional impairment, or for any other reason.

## Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

Americas, Europe, Middle East & Africa  
**[aemea@rics.org](mailto:aemea@rics.org)**

Asia Pacific  
**[apac@rics.org](mailto:apac@rics.org)**

United Kingdom & Ireland  
**[contactrics@rics.org](mailto:contactrics@rics.org)**



**[rics.org](https://www.rics.org)**