

PROFESSIONAL STATEMENT

# UK residential real estate agency

UK

6th edition, September 2017

Effective from 11 September 2017



# UK RESIDENTIAL REAL ESTATE AGENCY

6th edition, September 2017

Effective from 11 September 2017

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# 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.

## 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.



# Real Estate Agency Code

## Introduction

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

Part 1 of this document 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.

Part 2 of this document develops these principles for the UK market.

## Effective date

Members should note that this is an active document and will be updated regularly. This professional statement is effective immediately. Members **must** ensure they review other relevant documents and legislation that are published subsequent to this date.

# Part 1

## Real estate agency and brokerage and real estate management: RICS professional statement

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

The Real Estate Agency Code comprises high level principles. This professional statement applies to the selling, buying and letting of residential real estate.

A number of the principles apply to agents' conduct towards the public generally, both clients and non-clients. However, while everybody who deals with agents is entitled to be treated properly, it is acknowledged that agents have particular duties and responsibilities towards their clients.

For the Code and the associated standards to operate effectively, both individual agents and companies who provide real estate agency services **must** take responsibility for compliance with the core principles. Senior managers of companies that provide agency services **must** ensure that internal systems and procedures are in place to support these principles.

This professional statement supports the **RICS Rules of conduct** and 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. Such members are required:

- 1 To conduct business in an honest, fair, transparent and professional manner.
- 2 To 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 To ensure that clients are provided with terms of engagement that 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 To do the utmost to avoid conflicts of interest and, where they do arise, to deal with them openly, fairly and promptly.
- 5 Not to discriminate unfairly in any dealings.

- 6** In all dealings with clients, to ensure that all communications (both financial and non-financial subject matters) are fair, clear, timely and transparent.
- 7** To ensure that all advertising and marketing material is honest, decent and truthful.
- 8** To ensure that all client money is held separately from other monies in appropriately designated accounts and is covered by adequate insurance.
- 9** To 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** To 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, to 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** To 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.

# Part 2

## 1 Standards and ethics

### 1.1 Standards and regulatory requirements

You have a duty to comply with a number of standards, official codes, redress schemes and ethical codes. These include:

- *Real estate management* (3rd edition), RICS professional statement
- *Real estate agency and brokerage* (3rd edition), RICS professional statement.

The specific standards or codes that apply to you depend on 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).

### 1.2 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' professional statements *Real estate agency and brokerage* and *Real estate management* set out the standards of performance and service that the public can expect to receive from a professional real estate agent and ensure that you act professionally at all times.

### 1.3 Ethics standard

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

You **must** also comply with any related RICS professional statements – global or UK. Further information can be found on the **RICS website**.

## 1.4 Duty of care as a real estate agent

The *Real estate agency and brokerage* RICS professional statement global and *Real estate management* RICS professional statement require that agents 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 subagent without the express permission of your client (unless you are using a multiple listing system approach), and ensure that any subagent complies with this [code]
- 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)

The **RICS Rules of Conduct** apply 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. The Rules include requirements that members and firms must be honest and act with integrity, ensure that work is carried out by competent individuals who have the necessary expertise, and provide a good quality diligent service to clients.

You **must** always act fairly in your dealings with consumers. You **must not**:

- give false or misleading information to consumers
- hide or fail to provide material information to consumers
- exert undue pressure on consumers
- act without the standard of care and skill that is in accordance with honest market practice and in good faith or
- engage in any of the specific practices banned by law (*Consumer Protection from Unfair Trading Regulations 2008*).

You **must** ensure that you understand the specific application of consumer protection to the consumers with whom you are dealing and the particular business context.

You **must** ensure that you do not engage in any unfair commercial practice by saying, doing or omitting to do something that causes, or is likely to cause, the average consumer to take a different transactional decision (*Consumer Protection from Unfair Trading Regulations 2008*).

You **must** ensure that all data and information is obtained, stored and managed in compliance with the *Data Protection Act 1998*.

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

Your duty of care exists throughout the period of your instruction [and extends through the conveyancing process to completion]. This includes exercising reasonable care and skill in advising on an appropriate asking price or rent for the property ... through employing the marketing strategy and your advice to your client on whether or not to accept a particular offer.

**(REAB 1.2.1)**

### 1.4.2 Duty of care when acting for the buyer or tenant

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)**

## 1.5 Dealing with conflicts of interest

As defined in the global professional statement *Conflicts of interest* (1st edition), a conflict of interest is:

- a** a situation in which the duty of an RICS member (working independently or within a non-regulated firm or within a regulated firm) or a regulated firm to act in the interests of a client or other party in a professional assignment conflicts with a duty owed to another client or party in relation to the same or a related professional assignment (a '**Party Conflict**')
- b** a situation in which the duty of an RICS member (working independently or within a non-regulated firm or within a regulated firm) or a regulated firm to act in the interests of a client in a professional assignment conflicts with the interests of that same RICS member/firm (or in the case of a regulated firm, the interests of any of the individuals within that regulated firm who are involved directly or indirectly in that or any related professional assignment) (an '**Own Interest Conflict**')
- c** a conflict between the duty of an RICS member (working independently or within a non-regulated firm or within a regulated firm) under paragraph 2.2 to provide material information to one client, and the duty of that RICS member (working independently or within a non-regulated firm) or of a regulated firm under paragraph 2.1 to another client to keep that same information confidential (a '**Confidential Information Conflict**').

RICS members and firms should be aware of the obligations set out in the global professional statement *Conflicts of interest* (1st edition), and *Conflicts of interest: UK commercial property market investment agency* (1st edition).

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)**

If you have a personal interest in a property or would acquire one if the proposed transaction takes place you **must not** enter into any negotiations regarding that property until full disclosure of the nature and extent of that agent's interest has been made.

If your firm is instructed to sell or let a property that you, an associate or someone else in, or connected to, the firm is intending to buy or lease, you **must** give all the relevant facts, in writing, to your client and your client's legal advisers before commencing negotiations. You **must** then take no further direct part in marketing that property. You **must** refer to the RICS guidance at [www.rics.org/regulation](http://www.rics.org/regulation) and RICS members and firms should be aware of the obligations set out in the global professional statement *Conflicts of interest* (1st edition) and *Conflicts of interest: UK commercial property market investment agency* (1st edition).

## 1.6 Understanding 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 **must** check the *Equality Act 2010* and the *Estate Agents Act 1979*.

You **must** comply with legal requirements regarding disabled people and not treat disabled people less favourably than others. You **must** make reasonable adjustments if requested by a disabled person (*Equality Act 2010*).

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

You could be liable for your staff's discrimination. Merely telling employees not to discriminate is insufficient, unless it is supported by appropriate documents and manuals, induction and training.

## 1.7 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)**

You should ensure that each individual is given all the relevant information necessary to make as informed a decision as possible in the circumstances.

Safeguards should include identification of vulnerable or forced sellers or landlords who are exceptionally dependent on you for advice. In such circumstances it is advisable to have more than one senior member of staff signing off the sale or letting. You should also consider making a written recommendation to the client and the client's legal advisers to obtain a valuation by an independent surveyor.

Except under exceptional circumstances, such as the need for a quick sale because of a vulnerable person's individual requirements, you should ensure that there is a minimum marketing period even if early offers are received. Ideally a senior member of staff should sign off the sale.

You **must** take reasonable steps to satisfy yourself that decisions have been made independently and based on correct information.

## 1.8 Providing information for consumers

You **must** provide material information for consumers and not mislead by omitting to provide such information. As part of your due diligence processes you should carry out the following:

- record and document all information known to you
- ask your client or third parties, such as legal advisers, for additional information if there are gaps in that information



- verify the accuracy of information you receive through other sources
- investigate further or challenge what you have been told if you are unhappy with information that you receive
- provide any material information that you have obtained or that has come to your attention to the consumer before he or she makes a transactional decision and
- disclose all information to the consumer at all stages of the process and in good time.

You should use your professional judgment to assess the credibility of information you receive and to determine whether it needs further corroboration before you decide whether to disclose it.

You should signpost consumers to publicly available information where this may help with their transactional decision making (Consumer Protection from Unfair Trading Regulations 2008).

## 1.9 Employment of staff

If you employ staff you may be responsible for their actions as well as your own. You should:

- a train staff initially, and on a continual basis, and keep records of that training and who received it
- b maintain awareness of the legislation and relevant codes of practice
- c supervise staff adequately
- d be careful about appointing subagents and/or co-agents to the extent that is possible when multiple listing systems are used and/or the co-operation of other agents is invited on a commission sharing arrangement
- e be aware of who your related parties are and satisfy yourself they are aware of any legal and ethical requirements and can be relied upon to comply with them and
- f ensure that there is documentary evidence showing that all staff have been given proper instructions and training about complying with relevant laws and the RICS global professional statements *Real estate agency and brokerage* and *Real estate management*.

You **must** comply with legal requirements regarding employment of staff. Guidance can be obtained from [www.gov.uk/browse/employing-people](http://www.gov.uk/browse/employing-people)

# 2 Before securing instructions

This chapter gives advice on general agency matters and dealing with matters before securing instructions from either a seller, a landlord or a buyer. It relates to sales, lettings and leasing. There is more specific guidance relating to securing instructions for lettings in chapter 6.

Prior to accepting an instruction (commencing work) you should clarify for whom you will be working and how you will be paid, thereby spelling out whose interests you will be representing.

The first part of this chapter provides general guidance regarding agency matters and the chapter is then divided into:

- a acting for sellers or landlords
- b acting for buyers or tenants.

## 2.1 General agency matters

### 2.1.1 The name of and information about your business

You **must** provide information about an agency business as set out in the *Provision of Services Regulations 2009*.

### 2.1.2 Advertising and marketing your services

Any marketing material should be honest and professional and you should not seek business by improper means.

All advertisements **must** be fair, decent, accurate and honest and meet the requirements of any relevant legislation. You **must** meet the requirements of trade description legislation and the Advertising Standards Authority (ASA) guidelines ([www.asa.org.uk](http://www.asa.org.uk)). Your advertising **must not** be misleading or make any misleading omissions (*Consumer Protection from Unfair Trading Regulations 2008*). If you make any sort of comparison with other businesses in advertising you **must** ensure such comparisons are suitable for comparison, not misleading, objective and substantiated (*Business Protection from Misleading Marketing Regulations 2008*).

### 2.1.3 Complaints

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

#### 2.1.3.1 Terms of engagement

You **must** belong to an approved redress scheme (*Consumers, Estate Agents and Redress Act 2007*). Details of membership of any scheme should be made available to all existing and potential clients and customers (this is not a legal requirement for letting agents in Northern Ireland).

### 2.1.3.2 Complaints-handling procedure

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 [complainant remains dissatisfied].

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

#### (REAB 8.2.1)

You **must** refer to the RICS guidance on complaints-handling procedures: [www.rics.org/regulation](http://www.rics.org/regulation) and to the *Estate Agents Act 1979*.

### 2.1.4 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)

#### 2.1.4.1 Insurance

You **must** ensure that all clients' money held for any purpose is covered by adequate insurance. This is often included in your professional indemnity insurance (PII) cover, or could be covered by another form of insurance specifically for the protection of clients' money (*Estate Agents Act 1979* and RICS Rules of Conduct).

#### 2.1.4.2 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.

##### (REAB 8.3.1)

You **must** appoint an anti-money laundering reporting officer (MLRO) and deputy (*Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*). 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 *Protecting client's money*, see [www.rics.org/regulation](http://www.rics.org/regulation)

### 2.1.5 Insurance

#### 2.1.5.1 General insurance

You should ensure that you have all the necessary insurances for your business. The insurances you should consider depends on the country in which you practise. You should check relevant legislative requirements as some insurances are mandatory in certain countries.

When buying insurance you should ensure that your insurance adviser has FCA authorisation ([www.fca.org.uk](http://www.fca.org.uk)). If you are dealing directly with an insurer, check that the company is a member of the Association of British Insurers ([www.abi.org.uk](http://www.abi.org.uk)).

Insurances **must** include:

- employers' liability insurance (if you employ staff) (*Employers' Liability (Compulsory Insurance) Act 1969*)
- professional indemnity insurance (RICS Rules of Conduct)
- public liability insurance
- cover for clients' money (this could be part of your PII cover).

#### 2.1.5.2 Professional indemnity/errors and omissions insurance

If you are a self-employed agent or a senior manager of a company providing agency services you should ensure that all your professional work and that of your agency staff is covered by adequate and appropriate professional indemnity insurance. This insurance will protect you from the consequences of a liability to pay damages to a third party in respect of breaches of

professional duty committed in the course of professional activities. It will also protect your clients from suffering financial loss that you or your company are not able to meet.

**(REAB 8.5.1)**

You should refer to **professional indemnity insurance RICS guidance** for further advice.

## 2.1.6 Managing bribery risks

You **must** have 'adequate procedures' to prevent bribery (*Bribery Act 2010*).

You **must** comply with the requirements of the *Bribery Act 2010*, and refer to the current RICS guidance *Dealing with Referral Fees and Issues Relating to Bribery* [www.rics.org/uk/regulation1/compliance1/ethics--professional-standards/gifts-and-hospitality/](http://www.rics.org/uk/regulation1/compliance1/ethics--professional-standards/gifts-and-hospitality/)

## 2.1.7 Keeping up to date

You should be an expert in your sphere of activity and in the real estate market and should keep up to date on all issues that impact on your work.

**(REAB 8.6)**

## 2.1.8 Employing staff

### 2.1.8.1 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** comply with the requirements of the *Health and Safety at Work etc. Act 1974* and associated regulations (or for Northern Ireland, *Health and Safety at Work (Amendment) (Northern Ireland) Order 1998*). Guidance can be obtained from the Health and Safety Executive ([www.hse.gov.uk](http://www.hse.gov.uk)).

### 2.1.8.2 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)**

You should provide guidance to staff on lone working and have procedures in place to protect staff working alone. Guidance can be obtained from the Health and Safety Executive ([www.hse.gov.uk](http://www.hse.gov.uk)).

## 2.1.9 Information and confidentiality

### 2.1.9.1 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 7.2)**

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 should also refer to *ISO/IEC 27001: 2013 Information security management* ([www.bsigroup.com/en-GB/iso-27001-information-security/](http://www.bsigroup.com/en-GB/iso-27001-information-security/)).

## 2.2 Before taking instructions

### 2.2.1 Conflicts of interest checks

Before taking instructions from a client you **must** check that you will not have any conflict of interest.

#### **(REAB 2.2.1)**

RICS members and firms should be aware of the obligations set out in RICS global professional statement *Conflicts of interest* (1st edition), and *Conflicts of interest: UK commercial property market investment agency* (1st edition).

You can read more about conflicts of interest and personal interests in section 1.5.

## 2.2.2 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 [the RICS website] for further guidance.

**(REAB 2.2.2)**

## 2.3 Sharing information with potential clients

### 2.3.1 Terms of engagement and fees, charges and taxes

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. You should also have regard to sections 1.4 and 1.5 [in REAB] of this professional statement to ensure you do not discriminate and that you recognise the needs of vulnerable customers.

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)**

Your terms **must** comply with legal requirements and **must** be fair (*Consumer Rights Act 2015*). Where written valuation advice is to be provided to a client, the requirements of VPS1 Minimum terms of engagement, of the current edition of the *RICS Valuation – Global Standards* (the Red Book) **must** be met.

You should refer to Section 2.3.7 in this professional statement regarding cooling-off periods.

You should provide full and clear written details of your fees and expenses to your potential client as stated in section 2.3.1 [in REAB]. 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)**

### 2.3.2 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.'

*UK commercial and real estate agency (1st edition),  
section 3.3.4.*

Where such expenditure is involved, you **must** identify each item to the client at the outset, together with the actual or estimated charge for it.

This **must** then be itemised in the final account.

Unless the client agrees otherwise, a trade discount obtained by an agent belongs to the client and **must** be passed on. If you wish to retain any discounts your right to do so **must** be reserved in your terms of engagement.

Certain categories of expenditure may be impossible to itemise at the beginning of your working relationship with a client. While the cost, or likely cost, of each service **must** be quoted where possible, there will be cases where it may be appropriate to agree with the client at the outset the total estimate of expenditure in each item. An estimate of the likely cost of providing these services is permissible in these circumstances. However, it is suggested that you give clients accurate costs for each item as soon as it is available.

Although an estimate is not the same as firm particulars of the amount to be charged, if the estimated figure might be exceeded you **must** immediately give the clients the revised estimates. In addition, if you anticipate exceeding the previously agreed overall marketing budget, you **must** draw this to the clients' attention, in writing, and seek their agreement for any further expenditure before it is incurred.

You may, of course, incur costs that cannot be predicted or quantified and that may be peripheral to the main purpose of selling the property. Your client's approval **must** be obtained before further expenditure is incurred.



Your entitlement to payment depends on the terms of the agreement between you and your client. In most cases, your payment will consist wholly or primarily of the commission, which is payable once the event stipulated in the agreement occurs. You **must** make clear whether your commission or fee is exclusive or inclusive of value added tax (VAT), and state that expenses are subject to VAT at the appropriate rate (*Estate Agents Act 1979, Consumer Rights Act 2015*).

### 2.3.3 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 a sole or joint sole agency or a sole selling rights basis (see section 2.4.1.1 and the Glossary for definitions)
- 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 (*Estate Agents Act 1979*).

### 2.3.4 Timings

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

#### (REAB 2.3.4)

In the UK, this is a requirement (*Estate Agents Act 1979*). Where it states that the commission or a fee is payable on completion of the sale or purchase, this means the final transfer of the property and payment of the balance of the price. If it states that payment is triggered on exchange of contracts, the commission or fee is payable even if the transaction does not proceed to completion. In this event, it is irrelevant which party is guilty of a breach of contract in failing to complete the sale or purchase. Your terms of engagement may also identify the trigger for payment on the introduction of a ready, willing and able purchaser.

### 2.3.5 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)

Estate agents' invoices, in respect of commission or fees, are generally payable on completion of the transfer of the property. You **must** state in your terms of engagement what payment will be required if contracts are exchanged but the transaction fails to complete.

### 2.3.6 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)

This legal right can be exercised within 14 days of signing, if that signature is obtained anywhere other than at your firm's premises (*Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013*).

In your terms of engagement, you **must** clearly state the client's right to cancel the contract within the first 14 days. You **must** also include provision that allows you to start marketing the property (or start your property search) immediately. A statement **must** be included that the client will be liable for costs incurred from the date of the agreement, even if it is cancelled within the 14-day cooling-off period. Your client **must** agree to these terms in writing.

Alternatively, you could insist that all agency contracts/terms of engagement are signed in your office and are therefore not covered by the 14-day cooling-off period. Another option is to agree with your client, in writing, to delay any marketing or promotion of the property until the 14-day period has expired.

## 2.4 Acting for sellers or landlords

### 2.4.1 Terms of engagement

In addition to the items set out in section 2.3 [in REAB], when acting for a seller [or landlord] you should also provide written particulars of any services you or anyone else connected with you or your firm may intend to offer the prospective buyer or tenant.

#### (REAB 2.4)

Further details on the requirements relating to providing services to other parties in the UK are in section 2.4.1.4.

You **must** also provide written particulars of the services that you know a 'connected person' (e.g. an employee or associate) intends to offer to any prospective purchaser.

Where your commission will be payable on the introduction of a 'ready, willing and able purchaser' you **must** supply a definition of this, in writing, to your client. It **must** be given when communication commences between you and the client, or as soon as is reasonably practicable thereafter, but before the client enters into the contract.

This definition **must** be delivered prominently, clearly and legibly and given the same prominence as all other definitions, terms or information you provide to your client. The explanation **must** cover the intention and effect of this term and **must** be given in the prescribed form (*Estate Agents (Provision of Information) Regulations 1991*). There is a definition in the Glossary in Appendix A.

Your terms of engagement **must** clearly set out the agreement you have with your client concerning commission.

You **must** advise your client in writing if you intend to offer services to buyers or tenants and what these services would be (*Estate Agents Act 1979*).

#### 2.4.1.1 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 of:

- sole selling rights
- sole agency
- joint agency or
- multiple agency

in the Glossary **must** be used for this purpose, without material alterations or additions to the text, in a document setting out the terms of the contract. 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 (*Estate Agents Act 1979*).

If you wish to appoint a subagent you should first obtain your client's authorisation. You should ensure that any subagent holds adequate and relevant insurances.

Where an estate agent appoints a subagent with the specific authorisation of the client, the main agent is responsible for the subagent's actions. The client's responsibility for payment of fees is to the main agent alone, and the latter is, in turn, responsible for payment of the subagent's fees.

#### 2.4.1.2 Finalising terms of engagement

As stated in section 2.3.1 [in REAB] 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)**

Some of the terms you should include are:

- property address
- full names and contact details of client (with legal right to sell property)
- type of agency (definitions in section 2.4.1.1 and in the Glossary)
- subagents
- deposits
- commission
- method of payment and trigger for payment
- expenses
- marketing programme
- sale or letting boards
- sales or letting particulars

- personal interest
- services to prospective purchasers or tenants
- unoccupied premises
- Energy Performance Certificate (EPC)
- complaints handling
- retention of documents
- right to cancel
- confidential information and the *Data Protection Act 1998*
- electronic communication
- additional services and advice and
- acceptance of terms.

#### 2.4.1.3 Commissioning other documentation

When marketing a property there may be specific legislative requirements regarding documentation that **must** be provided at the point of marketing or during the marketing process. There may not be any defined form of procurement for these documents but you should make it clear how these will be produced in your terms of engagement, whether this is in-house or externally. You should, of course, satisfy yourself that any external provider can meet the necessary timescales. The way in which payment should be made for these documents should also be clearly set out.

##### a) Energy Performance Certificates

When marketing a property, you **must** ensure it has an Energy Performance Certificate (EPC) (*Energy Performance of Buildings (England and Wales) Regulations 2012*).

An EPC and its recommendation report is valid for ten years from the date of issue.

The EPC **must** be provided by a domestic energy assessor (DEA) who is a member of a government-approved accreditation scheme and is therefore qualified to carry out inspections ([www.epcregister.com/](http://www.epcregister.com/)). DEAs are responsible for the accuracy of EPCs and recommendation reports. They **must** log the EPC on the national online register of EPCs against the property's address.

You should draw your client's attention to the recommendations in the EPC suggesting that they take steps to address these before marketing.

##### England and Wales

Further information can be found at [www.gov.uk/buy-sell-your-home/energy-performance-certificates](http://www.gov.uk/buy-sell-your-home/energy-performance-certificates)

##### Scotland

The EPC will be included in the Home Report for which the prescribed (statutory) documents (including the EPC) **must** be no older than three months at commencement of marketing. Further information about EPCs in Scotland can be obtained from the Building Standards Division of the Scottish government ([www.scotland.gov.uk](http://www.scotland.gov.uk)).

## Northern Ireland

Accredited DEAs can be found at [www.epbniregister.com](http://www.epbniregister.com) and an accredited on-construction energy assessor at [www.epbniregisternd.com](http://www.epbniregisternd.com). Properties that are for sale or newly built in Northern Ireland and do not have an EPC are under the responsibility of the local authority building control for enforcement action. Further information regarding EPCs in Northern Ireland is available on the Department of Finance and Personnel website ([www.dfpni.gov.uk](http://www.dfpni.gov.uk)).

### b) Home Reports for properties in Scotland

If you are marketing a property in Scotland you **must** ensure that a Home Report is provided. Further information about the Home Report can be found on the Scottish government website [www.homereportscotland.gov.uk](http://www.homereportscotland.gov.uk)

#### 2.4.1.4 Offering services to other parties

You should advise your client in writing if you intend to offer services to buyers [or tenants] and what these services would be. The term 'services' can mean 'any services that could be offered to a prospective buyer [or tenant] 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 (see section 1.3 [in REAB]) 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** comply with the rules of the recognised self-regulating organisation (*Financial Services and Markets Act 2000*) that regulates the conduct of any other business you may operate.

The term 'services' can include the provision of banking and insurance services, or financial assistance. It can also include securing the disposal for a buyer of an interest in land, if that disposal is one that **must** be made for the buyer to be able to make the proposed acquisition, or is one that occurs as a result of that acquisition.

You should refer to section 2.1.6 regarding referral fees.

### 2.4.2 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)

## 2.5 Acting for buyers or tenants

### 2.5.1 Securing instructions

This section relates to the situation where you are acting for a buyer seeking a property. The same general principles apply when securing terms of engagement with a buyer to those when acting for a seller. You should confirm your terms in writing.

Before confirming terms you should communicate with the client and discuss their requirements and the reasons for these in reasonable detail.

You should act within the limit of your experience, knowledge and competence to meet your client's requirements.

You should agree with your client the level of feedback they wish to receive and whether they would like to receive details of all properties that you consider or a shortlist. You should also consider whether they wish to view properties with you and, if not, how you will present information to them (e.g. online videos and photographs).

You should also confirm the details of your fee and the details of the service you will provide (e.g. from property search to completion of the purchase). This might include both a commission based on the purchase price and any time-related retainer.

You should clearly state whether any time-related retainer, should it exist, is refundable and, if so, under what conditions. An example might be where the buyer does not decide to buy a property within a specified time limit (typically three months to a year) or on successful completion of the transaction (i.e. when your transaction fee is paid). You should also clearly state whether expenses are to be charged and if so how these are calculated.

Transaction fees should be agreed in a way that will provide transparent evidence that you will negotiate the best deal for your client. Transaction fees based on a percentage of the agreed purchase price may not give this evidence. An alternative structure could be an agreed percentage of the eventual purchase price or an agreed percentage of the discount that you are able to achieve through negotiation – whichever is the greater.

#### **(REAB 2.7)**

You **must not** act for both buyer and seller in a transaction. Your instruction letter should include confirmation of the property the buyer is seeking (*Estate Agents Act 1979*).

### 2.5.2 Dealing with conflicts of interest

There is more detail about conflicts of interest in section 1.5. This section provides specific guidance relating to issues that may arise when acting for more than one buyer. It may be that your clients are interested in similar properties, which can then create a potential conflict of interest for you. RICS members and firms should be aware of the obligations set out in RICS global professional statement, *Conflicts of interest* (1st edition), and *Conflicts of interest: UK commercial property market investment agency* (1st edition). Please refer to section 3.

### 2.5.3 Terms of engagement with buyers or tenants

The terms of engagement with buyers should follow the guidance discussed in this section.

The following terms should be included:

- a** client details, i.e. name and contact information

- b** confirmation of the property search criteria
- c** type of acquisition rights, e.g. sole acquisition rights
- d** subagents
- e** deposits
- f** commission or fee
- g** method of payment
- h** expenses
- i** timescales
- j** personal interest
- k** services to prospective sellers
- l** complaints handling
- m** retention of documents
- n** right to cancel
- o** data protection (*Data Protection Act 1998*)
- p** electronic communication
- q** additional services and advice and
- r** acceptance of terms.

# 3 Acting for the seller or landlord: marketing the property

This chapter provides guidance on advising the seller on the marketing of the property. It follows the sequence of events from undertaking a market assessment to agreeing a price or rent with a buyer.

## 3.1 Advising on the property price or rent for marketing

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)

You may provide an assessment of both the likely selling price or rent and a recommended asking price or rent, but you **must** clearly explain these and the difference between them to your client. You **must never** deliberately misrepresent the potential price of a property (*Estate Agents Act 1979*).

You **must** exercise reasonable care and skill in advising on an appropriate asking price or rent for the property. It should be neither so high that potential purchasers may be put off, nor so low that the client may be induced to sell or let at below the true market value. This advice, which is sometimes described as a 'market appraisal', is not a valuation of the property (see Glossary for definitions) and you **must** make this clear to the seller. Failure to do so may mean that in the event of a negligence claim, your performance will be judged by the standards of a reasonably competent and professionally qualified valuer and with the requirements of the current edition of the *RICS Valuation – Global Standards*, rather than those of a reasonably competent estate agent.

## 3.2 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 [letting] details should indicate the method of



measurement used (e.g. net useable area; gross external area; heated floor area; net lettable area)

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

**(REAB 3.2)**

You **must** refer to the current edition of the RICS professional statement – *RICS property measurement*, for further guidance regarding measurement.

You should also confirm the tenure of the property and the length of any lease and check a plan of the property to clarify boundaries.

You should ask the client questions to establish:

- if there is more than one legal owner, whether all the parties are in agreement about the proposed sale or letting
- how serious the client is about selling or letting
- why the client is selling or letting and how quickly the property needs to be sold or let
- information regarding the property's facilities, including car parking, established uses, rights of way and relevant consents
- whether the sale or letting is dependent on other factors (e.g. job move, finding another property)
- whether there are any other factors that could impede the sale or letting (e.g. awaiting grant of probate) and
- whether any other agent has been, or is likely to be, appointed.

Evidence of actual sales or lettings should be used and not prices or rents of properties on the market, as these only reflect seller's or landlord's expectations although can be useful as market indicators. Every property is, of course, unique and requires your experience, sensitivity and knowledge of the area and the local market in establishing the asking price.

### 3.3 Reporting 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 (discussed in section 3.6.1 [in REAB]). 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)

There is no prescribed format for the report, but it should refer to your opinion of the marketability of the property. If you have set your price or rent for a quick sale or letting, you **must** advise the client of this and of the selling price or rent that you would recommend if you were marketing the property in a less restrictive timescale.

### 3.4 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)

Records should be kept for at least six years (*Limitation Act 1980*).

### 3.5 Methods of sale

There may be a number of different methods of sale that can be adopted for the sale of a property. You should undertake careful consideration of the most appropriate method and your recommendation to the seller should depend upon the circumstances of the property, the market and your client.

You should obtain legal and/or tax advice where appropriate.

#### (REAB 3.5)

You should consider sale by private treaty, auction, formal or informal tender. If selling by auction you should refer to the current edition of the RICS guidance note *Auctioneers selling real estate*. The current edition of the RICS publication *Common auction conditions: for auctions of real estate in England and Wales*, ([www.rics.org/uk/knowledge/guides-advice](http://www.rics.org/uk/knowledge/guides-advice)) provides further advice.

### 3.6 Marketing properties

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)

### 3.6.1 Agreeing 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)

You should include the following in your marketing strategy:

- the method of sale or letting, with reasons for this choice
- your recommended selling price (and asking price if you wish to provide this) or rent
- your analysis of the current market (local and national)
- your opinion of the likely timescale for the transaction from marketing to completion
- your recommended approach to marketing
- the approach you have agreed with the client regarding viewings (whether you will accompany potential buyers or tenants on viewings, or the client will show buyers around)
- arrangements for holding keys and
- the mechanism for reviewing the marketing strategy with your client, which could include:
  - periods for reviews
  - regular scheduled meetings with the client and
  - reasons why changes may be needed.

### 3.6.2 Providing relevant documentation

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)

Sellers and landlords can provide additional information to buyers and tenants if they wish. However, in England, Wales and Northern Ireland, an EPC **must** be requested before the property is marketed and **must** be provided for all properties advertised for sale or let. Similarly in Scotland, the Home Report **must** be available before any marketing can commence and should be made available, on request, to prospective buyers. Where a Home Report is not required an EPC is still needed unless an exemption applies (*Housing (Scotland) Act 2006*).

You **must** make available, free of charge, a valid EPC to any prospective buyer or tenant:

- 1 at the earliest opportunity and
- 2 in any event, no later than whichever is earlier:
  - a in the case of someone who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to that person or

- b** in the case of someone who makes a request to view the building, the time at which that person views the building.  
(*Energy Performance of Buildings (England and Wales) Regulations 2012*)

If the property has a Green Deal, the EPC will explain what improvements have been made and how much buyers are obliged to repay. The Green Deal provider can give further information ([www.gov.uk/green-deal-energy-saving-measures/overview](http://www.gov.uk/green-deal-energy-saving-measures/overview)).

### 3.6.3 Describing the property

You should take reasonable steps to ensure that all statements made about a property whether oral, pictorial or written are correct and not misleading.

#### (REAB 3.6.3)

You **must** comply with the *Consumer Protection from Unfair Trading Regulations 2008*. You **must not** omit material information if its absence might cause the customer to take a different decision. You **must not** engage in any misleading action nor make any misleading omissions. You therefore need to assess what constitutes material information and what therefore **must** be disclosed. If in doubt, you should disclose the information (*Consumer Protection from Unfair Trading Regulations 2008*).

When marketing to business customers your advertising **must not** mislead the target businesses in 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 to which it is addressed (*Business Protection from Misleading Marketing Regulations 2008*).

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.

Information can include not only words (printed, written or spoken), but also visuals, such as illustrations, photographs, plans and models, such as a show house.

#### 3.6.3.1 Preparing property particulars

A member of staff who has personally inspected the property should draft sales or [letting] 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)

When drafting property particulars you should not rely on old particulars. Particularly when acting on a joint or a subagency you should understand that if you use information provided by another agent that omits material information you are committing an offence. The property particulars **must** include a numerical indicator from the EPC. This may be the A-G rating and the numerical Standard Assessment Procedure (SAP) score or the graph. (*Energy Performance of Buildings Regulations 2012*)

You **must** ensure that photographs clearly show which property is for sale or for let, possibly by way of annotation.

### 3.6.3.2 What to consider in property particulars

The following provides guidance on matters to consider when preparing property particulars. You **must** provide all material information (*Consumer Protection from Unfair Trading Regulations 2008*).

#### 1 Location or address

Check that the postal address is correct.

#### 2 Aspect, view, outlook or environment

Ensure that mentioning one issue does not cause a material omission in not mentioning another.

#### 3 Availability and nature of services, facilities or amenities

Ensure 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.

Avoid superfluous adjectives, e.g. 'modern' kitchen, 'solid oak' fittings, 'hardwood' skirtings. Do not use the terms 'full central heating' or 'fully double glazed' unless every room has a radiator or every window is double glazed. Otherwise use: 'partial central heating', 'double glazing', or similar terms.

#### 4 Proximity to services, places, facilities or amenities

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

#### 5 Accommodation, measurements or sizes

You should measure rooms carefully, and areas of buildings and land should generally be stated as approximations. Expectations as to accuracy may vary from court to court, but a general expectation of accuracy of residential room measurements is to be within plus or minus 0.1m (just under 4 inches). For gardens, a five per cent accuracy for a regular-shaped piece of land is reasonable. For irregular-shaped plots and large estates, use Ordnance Survey plans. You **must** adopt and state the use of **RICS property measurement**.

If a space is described as a garage, you should ensure it is large enough to accommodate an average family car. Before stating that a property has a parking space, check if the kerb has been lowered. While this is not conclusive proof of consent for vehicular access, its absence indicates that you should enquire further. In either case, it is best to highlight the need for the purchaser to check that the vehicular access has the appropriate consents.

Rooms should be described based on their use at the time of inspection, or what they could be used for instead. However, you **must not** describe an accommodation in a manner not allowed under Building Regulations or other statutory restrictions.

Check and calibrate your measuring equipment periodically against a known, measured length, and keep records of those checks.

#### 6 Fixtures and fittings

You should confirm with the client those fixtures and fittings to be included in the sale or

letting, and that they are in working order, although mentioning a fitting does not imply that it is in working order. Listing an item in particulars implies that it is included in the selling price or rent. If a photograph is provided that could indicate that a fixture or fitting is included with the property, then you should add a qualifying statement if it is not.

Advise the seller or landlord not to remove any fixture or fitting mentioned in the property particulars. If a buyer and a seller or landlord and tenant subsequently agree on a different basis of sale or letting, this does not create an offence retrospectively.

Take great care with show houses. If fittings are not repeated in the development, you **must** provide a clear notice to this effect.

You should carry out obvious checks during the inspection, such as checking the radiators for warmth, looking for pipework and establishing where the boiler is. You should also check that there is a cable and socket for the immersion heater.

When a property for sale has been vacant for some time and the central heating system has been drained down, you should draw this to the attention of potential buyers and explain that the system may not be in working order. If the property is to be let, the landlord should arrange for the system to be refilled and checked.

## **7 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)'.

Check the accuracy of the developer's statement on completion of the development.

## **8 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 sales particulars and advertising material.

For a house that is, or was, recently used as a normal home, you should assume (unless you have reason to believe otherwise) that it is fit for this purpose. If the property cannot be used for its stated purpose without requiring major modifications, remedial work and/or planning consent, then you **must** include a statement to this effect in the sales particulars.

## **9 Treatments, processes, repairs or improvements**

Do not refer 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.

## **10 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 a specified number of months or years, not as a '20-year' guarantee.

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

You should identify periods and dates and if these differ for different parts of the property you should make this clear.



## **12 The length of time during which land 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 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 (*Consumer Protection from Unfair Trading Regulations 2008*).

## **13 Price**

You **must** be careful not to mislead potential buyers with regard to the previous price or rent of a property if you advertise that this has been reduced. See *Guidance for Traders on Pricing Practices* (Chartered Trading Standards Institute) for further guidance.

## **14 Tenure**

Confirm the tenure supplied by the seller and exercise due diligence. You should also see a copy of the lease for a leasehold property and any related documents, such as a deed of variation or licence to alter. You should state the remaining length of any lease. You should also include details of any service charge, ground rent, the length of lease remaining and any known special conditions regarding leasehold property.

You should check that there are no sitting tenants in a property that is to be sold with vacant possession.

## **15 Occupational leases and licences, liability for service and maintenance 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, e.g. rent reviews.

## **16 Tariffs**

Where there are solar photovoltaic panels or other renewable energy installations the ownership of any Feed-in Tariff or other incentive should be stated.

## **17 Council tax and rates**

Actual council tax and rates payable vary according to personal circumstances. The information provided to prospective buyers should be limited to the council tax band or rateable value. You should state the source of the information.

Take care where a property has an annexe capable of separate occupation, as it may be, or may need to be, separately assessed.

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

You should not state the existence of any planning consent 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 garages and extensions, unless it seems unlikely that consent would have been granted.

You should also check that there is no agricultural restriction on occupancy of a post-war

residence in a rural location and whether a granny flat can be occupied separately from a main residence.

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

You **must not** describe accommodation or other features in a manner that would not have been allowed under Building Regulations or other statutory restrictions at the time the work was carried out. Where there is any doubt, check with the local authority or relevant statutory organisation.

### 20 Restrictive covenants, easements and rights of way

Where you are aware of legal matters restricting the use of land, you **must** declare their existence (e.g. 'subject to restrictive covenants') and/or make copies available for inspection at your office.

You should avoid making statements, such as 'hard standing, suitable for caravan' without knowing the details of the title. Where the situation is complex or where there is doubt, you should arrange for the seller to explain matters directly to the potential buyer.

#### 3.6.3.3 Properties with physical problems

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

You may also wish to advise your clients on possible investigations to be carried out before putting the property on the market.

#### 3.6.3.4 Confirming details with clients

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)**

You **must not** make any misleading omissions.

Property particulars should first be compared against the original inspection notes by the person who inspected the property. They should then be sent to the seller or landlord for approval.

When confirming approval, you should ask the client to sign and return a validation certificate, which should either be a separate sheet or be stamped onto the draft particulars. A follow-up system should be implemented to ensure that this document is returned and that draft particulars are not sent out prior to its receipt. Check the validity of any proposed amendments, and keep the returned validation certificate on file.

If, during the marketing process, the particulars are found to be inaccurate, or the facts on which they are based alter, then you **must** amend them accordingly. An alteration process



should be completed in accordance with a defined review system, and any changes should be recorded on an alterations sheet. One copy of the particulars should be retained on file, crossed through as 'superseded' and marked with the date of withdrawal. All other copies should be destroyed. A new date code should be entered on each page of the revised particulars.

Any potential buyer or tenant inspecting or making an offer for the property after the date of the change **must** be given the correct particulars. At an auction, the auctioneer should make an announcement prior to offering the lot, or circulate amendment slips in the auction room.

### 3.7 Marketing principles

Whether you are marketing properties online, using social media or traditionally, you **must** ensure:

- a** transparency in the estate agency operation as a business (see section 2.1)
- 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.

If you are using a property portal you should ensure that your marketing still complies with these principles. In addition, if your website accepts payment for goods or services it should conform and be accredited to a recognised web accreditation service.

### 3.8 Advertisement signs and boards at the property

'For sale', 'To let' or similar signs and boards can be an excellent marketing tool for real estate agents. You **must** only erect 'For sale' or 'To let' boards on properties that you have received written instructions to sell. Where the boards relate only to part of a building you **must** clearly indicate which part it relates to.

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. Following exchange of contracts (unless the client has instructed you not to do this) boards should state 'Sale/letting agreed', or 'Sold/let subject to contract'.

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

The board should be regularly checked to ascertain that it has not been moved, fallen down and is not causing a nuisance or danger to anyone.

### 3.8.1 Owner's permission

Before erecting a sign or board you should obtain your client's written permission to do so. You should advise the [client] of the size and design and agree the location with the [client].

**(REAB 3.8.1)**

You **must** also comply with legal requirements.

### 3.8.2 Legal consents

You should check with the relevant statutory authority to find out whether you will need consent to erect a 'For Sale' or 'To Let' board and whether there are any local regulations which you will need to consider.

**(REAB 3.8.2)**

The majority of 'For sale' or 'To let' boards benefit from 'deemed consent' under planning regulations and do not, therefore, require planning consent. You should refer to the government's Planning Portal for more guidance ([www.planningportal.co.uk](http://www.planningportal.co.uk)) and to <https://beta.gov.scot/> for Scotland and to the Department of the Environment's Planning Service [www.planningni.gov.uk](http://www.planningni.gov.uk) for Northern Ireland.

## 3.9 Viewings

### 3.9.1 Communicating with clients

You should agree the approach to viewings with your client when agreeing your marketing strategy (see section 3.6.1 [in REAB]). 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 3.9.1)**

Accompanied viewings should be carried out when:

- you hold the keys to a property (unless you agree otherwise, in writing, with the client)
- the property is empty
- the seller or landlord is, or may feel, vulnerable (see section 1.7) or
- you feel this will increase the prospect of a sale or letting.

You should offer to carry out as many viewings as possible as it is generally believed that more sales and lettings result from accompanied viewings than those with sellers or landlords.

Viewings should always be carried out by appointment to enable you to arrange this with the client and to arrange one-to-one time with buyers or tenants. If the property is to be sold by auction you may wish to organise open day viewings to allow a number of people to view the property at the same time. However, to safeguard against theft, open days are not suitable for furnished and unoccupied properties.

You should advise clients of the details (time and date) of all viewings arranged for their property. You **must** gain the client's express prior permission to any viewing where you (or another member of your agency) will not be present.

### 3.9.2 Keys

Lock boxes are used extensively in the US residential market. You should ensure that these have appropriate security measures for the seller.

If you are not using a lock box 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 who provide 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)**

### 3.9.3 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)**

Your records should include:

- the date and time of the viewing
- the duration of the viewing
- the name of the estate agent who accompanied the potential buyer or tenant on the viewing
- the buyer's or tenant's circumstances (e.g. personal, financial)
- any feedback provided by the buyer or tenant
- whether you or another agent accompanied the buyer or tenant on the viewing and
- whether the key was released to the buyer or tenant (or anyone else).

## 3.10 Questions from potential buyers or tenants

When responding to questions from potential buyers [or tenants] 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)**

You **must not** make material omissions. These include issues that you are either aware of, or should reasonably be aware of, and that would or could influence the buyer's or tenant's

decision. You should answer all questions truthfully. (*Consumer Protection from Unfair Trading Regulations 2008*)

### 3.11 Keeping clients informed

You should keep your client informed of any changes while 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)**

### 3.12 Property clearance

Real estate agents who arrange for property clearance should have regard to any relevant environmental requirements such as those relating to the disposal or control of waste.

**(REAB 3.12)**

You **must** take account of the provisions of the *Protection from Eviction Act 1977* regarding unlawful eviction.

# 4 Acting for the seller: implementing the sale or lease

This chapter provides guidance on agreeing the sale when acting for the seller. Following this guidance will help you to meet the principles in the RICS professional statement *Real estate agency and brokerage* (3rd edition).

## 4.1 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.

### (REAB 4.1)

You **must** tell clients about all offers as soon as is reasonably possible until contracts have been exchanged (or, in Scotland, until missives have been concluded) or tenancy agreements signed. If the client does not wish to receive details of offers below a certain level or in other circumstances, this **must** be confirmed in writing.

You **must not** discriminate, or threaten to discriminate, against prospective buyers or tenants of your client's property for any reason, by:

- failing to inform the client of an offer to buy or rent 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 or
- giving details of properties for sale first to those buyers or tenants who have indicated they are prepared to let you provide services to them, and making it a condition that the potential buyer or tenant of the property uses any other service, such as financial advice, provided by you or anyone else.

## 4.2 Best and final offer or best bid procedure

Where a number of potential buyers show interest in a property, or, especially where offers have been made in excess of a guide price, following agreement with the seller you may invite all interested parties to submit their 'best and final offer' or 'best bid'. This system allows all interested parties an equal opportunity to make their best offers.

You should ask potential buyers to provide the following information by a specified date and time, in a sealed envelope, to a stated address:

- name and address of legal advisers with contact details
- confirmation of funds

- the period within which the buyer can exchange contracts
- any conditions on which the offer is made
- any fixtures, fittings or furnishings included in the offer.

You should clearly state that offers should be made subject to contract and that the seller reserves the right not to accept the highest offer or any offer made.

You should also enclose 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
- have the address or identification of the property already applied.

The 'best bids' procedure is not legally binding, so either the buyer or the seller can withdraw at any point up to contract.

### 4.3 Carrying out viewings after an offer has been accepted

When an offer for a sale or letting has been accepted subject to contract, you **must** obtain the client's instructions as to whether you withdraw the property from the market, or continue to market it. If the client decides to continue to market the property, you **must** advise the potential buyer or tenant (who made the offer) of this in writing. You **must** ensure that you have your client's instructions before carrying out any further viewings once an offer has been accepted. If the seller subsequently accepts another offer, this **must** be communicated to the original potential buyer or tenant in writing. You **must** inform potential buyers or tenants if you are aware that the client has instructed legal advisers to send a contract of sale to another buyer or a tenancy agreement to another tenant.

### 4.4 Keeping records

You should keep records of all offers you receive, which should include the following information:

- the time and date of the offer
- full names (title, first name and surname) of all buyers (those whose names will appear on the contract)
- full addresses of all buyers, including postcodes
- correspondence address of all buyers (if different to the above)
- day and evening telephone numbers of all buyers
- amount of the offers
- any conditions attached
- the anticipated completion date
- whether the buyer has a property to sell
- whether the buyer's purchase is dependent on selling a property, and if so:
  - is it on the market and with which agency?
  - how long has it been on the market?

- is the sale or letting agreed/subject to contract?
- whether a mortgage is needed and what stage it is at
- the name and address of the buyer's or tenant's legal advisers
- any other factors that may influence the purchase or letting
- any services offered by you to the buyer or tenant
- confirmation that you have advised the client and the client's response.

Where the property has a Green Deal, you need written confirmation that the buyer understands that they are liable to pay any Green Deal plan and instalments and is bound by the terms of any Green Deal Plan.

## 4.5 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 4.2)

Offers should be related to your client within no more than one working day of receipt. 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 clients have given specific instructions, in writing, to the contrary. 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 a mortgage is needed and what stage this is at)
- whether the buyer has a property to sell and whether the purchase is dependent on this sale
- any services offered by you to the buyer or tenant and
- any other factors that may influence the purchase.

Your information **must** be unbiased. Each offer **must** be confirmed in writing to the client as soon as reasonably possible, normally within one working day and very exceptionally within no more than two working days of receipt of the offer.

You should recommend to clients that they arrange for their legal advisers to provide draft legal documentation to prospective purchasers or the latter's legal advisers as soon as possible after receipt of an offer.

## 4.6 Communicating with buyers or tenants

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)**

You should advise the original potential buyer or tenant if an additional offer has been made without disclosing the amount or any other aspect 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 or tenants who make offers that it is your practice to seek your client's consent to provide details of offers to other buyers or tenants. If you disclose any offer to a prospective buyer or tenant then the offer should also be immediately disclosed to all prospective buyers or tenants with a current interest in negotiations for the property.

Confirmation can initially be made by phone but should be confirmed in writing including the amount of the offer and any conditions attached. Where a 'note of interest' is received from a buyer for a property in Scotland, you should advise the buyer of any formal closing date for offers.

You should ensure that clients, or their legal advisers, respond promptly to requests for information and formal enquiries from the buyer. Potential buyers or tenants **must** also be informed if clients have instructed their legal advisers to send a contract of sale or tenancy agreement to another buyer or tenant.

## 4.7 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)**

## 4.8 Managing acceptance of offers

### 4.8.1 Negotiation

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

**(REAB 4.5.1)**

You should not allow yourself to be rushed by a buyer or a tenant to pressurise the client, as you have a duty of care to the client regarding your advice on the offers received. Where property is sold for less than its true market value as a result of negligence, you may be liable to the client for the difference.



## 4.8.2 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.

### (REAB 4.5.2)

If an exclusivity or lock-out agreement is made, you **must not** offer the property elsewhere until the agreed period expires, unless the buyer has first withdrawn from the transaction.

## 4.8.3 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.

### (REAB 4.5.3)

### 4.8.3.1 Deposits for sales

You **must** pay any deposit, without delay, into a statutory client account (*Estate Agents Act 1979*).

If you have a personal interest in a property, you **must not** take either a contract or pre-contract deposit in respect of that property. Pre-contract deposits may not be sought or accepted in Scotland.

You **must** determine in what capacity you hold a deposit, and you **must** record that capacity. It may affect the question of who is entitled to the money, and whether or not interest is payable and to whom. In the case of a contract deposit, the capacity in which you hold this will depend on the terms of the contract of sale. If this states that you hold the deposit 'as agent for the seller', then the seller is the 'person entitled' to it and it is held on trust for the seller.

If the contract states that the deposit is to be held 'as stakeholder', then neither seller nor buyer is immediately entitled to the money, for the duty of a stakeholder is to retain the money 'between the parties', pending the outcome of a particular event. In effect, this means that the seller will be entitled to the money if:

- either the sale is completed or
- the buyer defaults

and conversely the buyer will be entitled to the money if:

- the seller defaults.

You should not hand over a deposit held 'as stakeholder' to either party until you are satisfied that one party is entitled to it, preferably with confirmation from both parties' legal advisers.

Unless otherwise agreed, you **must** return a pre-contract deposit to the buyer on demand. It is therefore the buyer who is the 'person entitled' to this money. Nevertheless, if a buyer requests the return of a pre-contract deposit after legal advisers have been instructed in the sale, the deposit should not be returned without confirmation from the seller or the seller's legal advisers that no enforceable contract exists.

A pre-contract deposit is therefore held by you, on behalf of the buyer, unless:

- either the seller specifically authorises you to hold the deposit 'as agent' or
- there is a specific agreement between the buyer and the seller that it should be held as stakeholder.

Neither of these arrangements is common in practice, although some new home builders occasionally seek to have pre-contract deposits held 'as agent'. (*Estate Agents Act 1979*)

#### 4.8.3.2 Tenancy deposits

Tenancy Deposit Protection Schemes require that for certain types of tenancy the deposit **must** be protected and prescribed information given to tenants. Details of how each scheme operates, the requirements of the various schemes and the penalties for non-compliance are published on [www.gov.uk/tenancy-deposit-protection/overview](http://www.gov.uk/tenancy-deposit-protection/overview) and by the devolved authorities.

#### England and Wales

*The Housing (Tenancy Deposits Scheme) Order 2007* as amended (England and Wales) by the *Deregulation Act 2015*.

#### Northern Ireland

Tenancy deposit protection was introduced in Northern Ireland through the *Housing (Amendment) Act (Northern Ireland) 2011*, and was introduced in April 2013 for new tenancies.

There is more information on the Northern Ireland scheme on the government services website: [www.nidirect.gov.uk/information-and-services/private-renting/tenancy-deposit-scheme](http://www.nidirect.gov.uk/information-and-services/private-renting/tenancy-deposit-scheme)

#### Scotland

In Scotland, deposits taken for residential tenancy are required to be secured in a tenancy deposit scheme approved by Scottish ministers under the *Tenancy Deposit Schemes (Scotland) Regulations 2011*. There is more information on this on the Scottish government website: <https://rentingscotland.org/tenants-guide/tenancy-deposits>

### 4.8.4 Monitoring progress

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

#### (REAB 4.5.4)

It should include monitoring the buyer's or tenant's progress in obtaining relevant information, as well as achieving the funds required, and tracking the progress of any related sales.

If a buyer receives an adverse survey report, you should make your client aware of this as soon as possible.

### 4.8.5 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)

# 5 Acting for the buyer

This chapter provides guidance for agents acting for buyers. This does not include offering additional services to buyers through an agency when acting for a seller. In this chapter it is assumed that you have no contract with, or instructions from, the seller. You will be acting as a property search agent.

You should ensure that you solely represent the interests of the buyer in this situation.

## 5.1 Property search

You should be mindful of the main reasons why buyers use property search agents. You should ensure that you use your local knowledge and networks to meet clients' expectations.

### **(REAB 5.1)**

Your viewings should be managed in a way that makes the most cost-effective use of your time, such as arranging viewings for properties in the same area on the same day. This is particularly important if the buyer is accompanying you to the viewings.

## 5.2 Communicating with clients

You should update your clients regularly on your progress in finding a property for them. You should include fairly detailed reports.

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 it will assist in successful negotiations.

### **(REAB 5.2)**

You should, if appropriate, provide a full report setting out the properties you have:

- considered
- viewed
- discounted (and the reasons why).

Where you have carried out viewings, either with or without the buyer, you should provide detailed written feedback on how you felt the property met the buyer's criteria as well as your own view of the property.

Offers should usually be made to the seller or the seller's agent as soon as possible, ideally within one working day. You should then follow this up within two working days to find out the response to the offer and report this to your client within a reasonable time (one working day).

### 5.3 Properties with physical problems

You should inform the client of any potential physical problems with a property without undue delay.

**(REAB 5.3)**

### 5.4 Dealing with conflicts of interest

RICS members and firms should be aware of the obligations set out in the global RICS professional statement, *Conflicts of interest* (1st edition), and *Conflicts of interest: UK commercial property market investment agency* (1st edition).

### 5.5 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)**

### 5.6 Holding clients' money

If you hold money for your buyer clients you should refer to section 2.1.4 for guidance.

# 6 Acting for the landlord: letting the property

This chapter provides further guidance on marketing a rental property for landlords from the securing of instructions to finalising the tenancy agreement and **must** be read in addition to chapters 1, 2, 3 and 4, which give general guidance on sales and lettings.

This section complements the *Private Rented Sector Code of Practice* (1st edition), (for England).

## 6.1 Before taking instructions

You **must** refer to and apply the obligatory requirements of the *Private Rented Sector Code of Practice* (1st edition), and chapter 2 of this professional statement. The following sections provide additional specific advice relating to instructions for lettings.

### 6.1.1 Lettings advice

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 lettable and the need for any licences or other actions that need to be taken prior to letting.

Depending on your potential client's existing knowledge of letting property, you should consider providing advice on the following matters:

- types of service offered (e.g. let only, rent collect or full management)
- the legislative framework
- tenant demand and types of tenant
- planning and licensing of a house in multiple occupation (HMO)
- lettings procedure
- accounting procedure
- tenant sourcing and vetting
- safety checks, gas, electricity and furnishings
- requirements for smoke and carbon monoxide alarms
- discuss leasehold obligations and restrictions such as keeping pets, clothes drying and garden maintenance
- required consents including that from any mortgage lender, insurance provider and, if applicable, the freeholder
- recommendations on furnishing
- inventories and schedule of condition
- professional cleaning

- deposit protection
- taxation (particularly if going overseas)
- landlords' insurance.

In addition, you should advise your potential clients of the procedure for termination and subsequent possession, and ensure that they fully understand the implications of their chosen letting decision. You should also establish whether the property is to be let furnished, unfurnished or partially furnished.

You should advise your client of the need to obtain any necessary consents (e.g. joint owners, mortgage lender, local authority, superior landlord or freeholder). Your client should also be made aware of the need to comply with the obligations and requirements of the various safety legislation, standards and regulations that apply to rented property. Any obvious repairs or maintenance issues that might influence the potential letting should be addressed at this stage.

You **must** provide truthful, accurate and unbiased advice to your clients and explanations to help them make informed decisions that are appropriate for both your clients and the tenants. It is good practice to offer the same level of service to all your clients regardless of their level of experience.

### 6.1.2 Landlord registration

You **must** advise your clients of any requirement to register as a landlord and/or agent or obtain a licence. Landlords in Scotland, Wales and Northern Ireland are legally required to be registered, and in some cases, licensed. The rules differ depending in which jurisdiction the property is located.

You **must** familiarise yourself with the following legislation and should study the associated guidance issued on the subject by each of the devolved administrations:

- *Housing (Wales) Act 2014*
- *Housing (Scotland) Act 2014*
- *Landlord Registration Scheme Regulations (Northern Ireland) 2012.*

You should check whether any licensing scheme applies and **must** ensure adherence to the requirements of any schemes that are applicable to where the property is located.

### 6.1.3 Health and safety

You and your client have a common law duty to ensure the property you provide is safe. You should refer to, and comply with, RICS *Health and Safety for residential property managers* (1st edition), RICS guidance note.

#### a) England and Wales

For England and Wales, the Housing Health and Safety Rating System (HHSRS) is used to assess conditions in all private properties, including those that are owner-occupied or rented to single people and families, and HMOs.

Landlords **must** ensure a safe and healthy environment for tenants and act on demands for improvements by the local housing authority.

You should refer to the *Housing health and safety rating system (HHSRS) guidance for landlords and property-related professionals*, see [www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals](http://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals) for further information.

#### **b) Scotland**

You should refer to the Repairing Standard in the *Housing (Scotland) Act 2006*, see [www.gov.scot/Topics/Built-Environment/Housing/privaterent/landlords/repairing-standard](http://www.gov.scot/Topics/Built-Environment/Housing/privaterent/landlords/repairing-standard) for further guidance.

#### **c) Northern Ireland**

The minimum standard for rented properties in Northern Ireland is the Fitness Standard. All properties **must** meet this minimum standard. The Fitness Standard for private rented housing in Northern Ireland is set out in the *Housing (Northern Ireland) Order 1981* and was amended in 1992.

For further guidance refer to the Fitness Standard for private rented housing [www.housingadviceni.org/advice-private-tenants/fitness-standard-and-fitness-inspections](http://www.housingadviceni.org/advice-private-tenants/fitness-standard-and-fitness-inspections)

### **6.1.4 Houses in multiple occupation (HMOs)**

You should advise potential clients of the need to consider whether any letting will create multiple occupation. You should refer to:

- *Town and Country Planning (Use Classes) Order 1987* (relating to England only)
- licensing under the *Housing Act 2004* (relating to England and Wales)
- *Civic Government (Scotland) Act 1982*
- *Civic Government (Scotland) Act 1982, Licensing of Houses in Multiple Occupation) Order 2000* (as amended in 2002 and 2003)
- *Housing (Scotland) Act 2006*
- *Private Rented Housing (Scotland) Act 2011*
- *Housing (Northern Ireland) Order 2003* and
- *Housing (Amendment) Act (Northern Ireland) 2011*.

You should also refer to the national standards set by the various UK governments:

- England and Wales: [www.gov.uk/private-renting/houses-in-multiple-occupation](http://www.gov.uk/private-renting/houses-in-multiple-occupation)
- Northern Ireland: [www.housingadviceni.org/advice-landlords/houses-multiple-occupation-hmo](http://www.housingadviceni.org/advice-landlords/houses-multiple-occupation-hmo)
- Scotland: [www.gov.scot/Topics/Built-Environment/Housing/privaterent/landlords/hmo](http://www.gov.scot/Topics/Built-Environment/Housing/privaterent/landlords/hmo)

You should be aware of the local private rented sector licensing requirements in the property's local authority area. This may include additional licensing, selective licensing and mandatory HMO licensing, as well as planning consent requirements.

You should check the *Town and Country Planning (Use Classes) Order 1987* as it applies to shared dwellings and have regard to Use Classes C3, C4 and sui generis use.



You should also ensure that the type of letting proposed (whether HMO or not) is not going to prejudice the value of the client's property and inform them if this could be the case. You should also ensure that you understand the difference between the requirement of any licensing scheme and any requirements for planning consent and can explain this clearly to your clients. The *Housing Act 2004* defines HMOs.

### 6.1.5 Duty of care

You should refer to chapter 1 for general guidance on ethics and your duty of care to your client. When instructed to act on behalf of a landlord, you **must** perform your work with the skill and care to be expected from a reasonably competent estate agent. In addition, you owe a more limited duty of care to tenants. This includes the following:

- Ensuring tenants' safety: you **must** ensure compliance with all safety regulations for gas, electricity, fire, carbon monoxide, furniture and consumer products (among others) and should ensure that there are no known or obvious dangers at the property that could cause harm to a tenant, an occupier or a visitor.
- Advising tenants to take independent legal advice: this should be recommended to an applicant prior to entering into the tenancy agreement.
- Advising tenants regarding insurance: you should advise tenants of the prudence of taking out contents' insurance to cover their belongings in case of loss, damage or theft. They should be made aware that some policies can include insurance for accidental damage to the property, which might help protect their deposit. An explanation of what building insurance cover will be in place and a summary of the policy should also be given to tenants.

## 6.2 Terms of engagement

Where you are instructed to let a property with no ongoing management role, you **must** refer to sections 2.4 and 2.5 for further guidance on terms of engagement. You **must** also refer to and apply the requirements of the *Private Rented Sector Code of Practice* (1st edition), RICS code of practice.

## 6.3 Commissioning other documentation

You **must** follow legislative requirements about documentation to be provided:

- at the point of marketing
- during the marketing process or
- on completion.

This **must** include an Energy Performance Certificate (EPC) and, where gas is provided at the property, a current Gas Safety Certificate (CP12). Section 2.4.1.3 provides further guidance regarding EPCs.

## 6.4 Marketing

You **must** refer to and apply chapter 3 of this professional statement and the requirements of the *Private Rented Sector Code of Practice* (revised July 2015).



Before letting, you **must** obtain any consent needed – for example, joint owner, lender, insurance company, superior landlord, freeholder and local authority. You **must** also comply with the obligations and requirements of the various safety legislation, standards and regulations that apply to rented property.

You should also ensure that the landlord has the legal right to let the property, although for portfolio landlords it may be impractical to hold individual instructions for each property to be let. In the latter case, you should ensure that you hold a satisfactory letter of authority from your client to place additional properties on the market for let.

If asked to let a leasehold property, you **must** ask the leaseholder for full details of all covenants or obligations that may apply to the tenant and that **must** be incorporated in any tenancy agreement. You **must** draw these to the attention of potential tenants at the earliest appropriate opportunity and before they make a transactional decision.

You should explain all the possible tenancy options to the prospective landlord and tenant, including any potential for longer term lets. You should also explain that longer agreements may include rent review clauses to allow for changes in rent during longer fixed-term tenancies. If the agreement is for a fixed term of three years or more, the agreement **must** be executed as a deed. If you know that the property is only available in the short term, you should advise prospective tenants of this at the earliest opportunity, preferably before viewing.

## 6.5 Tenants' liabilities for charges

### Local property taxes

The lease should define who is responsible for local property tax, but this should be drawn to the prospective tenants' attention to enable them to include it in their calculations.

### England and Wales

Where a property is being let to a tenant who has a tenancy for only part of a building, the primary liability for council tax falls to the landlord, even if the tenancy agreement specifies that it is to be paid by the tenant. (The exception is where a building has been specifically designed or adapted to be let as multiple dwellings.) The landlord can, of course, seek reimbursement from the tenant provided the tenancy agreement allows for this.

## 6.6 Agreeing the letting

You **must** refer to and apply the requirements and guidance of chapter 4. The following sections relate specifically to lettings.

### 6.6.1 Right-to-rent checks

You could be liable to a penalty if you do not follow the correct procedures. You **must** therefore ensure you are familiar with the legislation and the associated government guidance regarding the scheme:

- *Immigration Act 2014*
- [www.gov.uk/check-tenant-right-to-rent-documents](http://www.gov.uk/check-tenant-right-to-rent-documents)

- [www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice](http://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice)

### 6.6.2 References and credit checks

References should be obtained in writing, by letter or email, from individual referees. You should inform your client of the outcome of the references. As the contents of an agent's files belong to the landlord, this also applies to tenants' references. To comply with the *Data Protection Act 1998*, tenants should be advised in writing that the landlord may see their references.

You should also ask tenants to agree to a credit check. The checking of an individual's credit record is controlled under the *Consumer Credit Act 1974*. If you cannot fully reference potential tenants because, for example, they have just started working, you should consider:

- asking for six months' rent in advance, although this may have other legal implications
- seeking a higher deposit
- granting a six-month tenancy only and then re-referencing at its expiry or
- seeking a guarantor for whom you should also take up references. Seek legal advice when choosing this course.

The ultimate decision should be left to the landlord. You should provide all references so that the landlord can make an informed decision. If you use a credit checking service you have the ultimate responsibility for deciding whether to recommend the tenant as suitable.

### 6.6.3 Inventory

To avoid issues at the end of the tenancy, you should obtain instructions from your client to prepare, prior to the commencement of the tenancy, an inventory and schedule of condition of sufficient detail. Make clear immediately to the potential tenant the extent of items to be included in the inventory. You should consider using an independent inventory clerk to ensure transparency, but appropriately trained in-house inventory clerks are acceptable so long as you make clear to the client that the inventory is being carried out in-house.

The inventory, with a schedule of condition for the décor, fixtures, furniture, equipment and effects, should be prepared to ensure that prospective tenants know what is included and the condition and cleanliness of the property. Ideally, this should be checked with the tenant, who should 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 is difficult for a landlord to prove any claim against the tenant's deposit without a reliable inventory and schedule of condition taken at the start and end of the tenancy.

You can find further guidance on inventories in *A Guide to Best Practice for Inventory Providers* ([www.rics.org/uk/knowledge/guides-advice](http://www.rics.org/uk/knowledge/guides-advice)) published jointly by RICS, ARLA and others.

## 6.7 Formal agreement

### 6.7.1 Types of tenancy

There are a number of different types of tenancy agreement available that may be appropriate, depending on the specific requirements of your landlord client and the potential tenant. These include:

- assured shorthold tenancy (AST) (SAT in Scotland)
- assured tenancy and
- protected tenancy (Northern Ireland).

Further information on tenancies for England and Wales is at: [www.gov.uk/tenancy-agreements-a-guide-for-landlords/tenancy-types](http://www.gov.uk/tenancy-agreements-a-guide-for-landlords/tenancy-types).

For Scotland, see <https://beta.gov.scot/policies/private-renting/>

For Northern Ireland, go to the Housing Executive website [www.nihe.gov.uk](http://www.nihe.gov.uk) or the Department for Social Development website [www.dsdni.gov.uk/housing](http://www.dsdni.gov.uk/housing)

Further guidance can also be obtained from:

- *How to rent* guide: [www.gov.uk/government/publications/how-to-rent](http://www.gov.uk/government/publications/how-to-rent)
- *Model agreement for a shorthold assured tenancy* [www.gov.uk/government/publications/model-agreement-for-a-shorthold-assured-tenancy](http://www.gov.uk/government/publications/model-agreement-for-a-shorthold-assured-tenancy)

### 6.7.2 Heads of terms

After appropriate consultation with the client, you should provide the prospective tenant with the tenancy terms in writing.

Generally, heads of terms letters should be marked 'Subject to contract'. You should establish with clients whether their legal advisers are to prepare the agreement or, if not, what form the tenancy agreement should take. You should also confirm whether clients are to sign the tenancy agreement personally or, if not, who is to sign on their behalf. In the latter case, a power of attorney or written authorisation is required. It may be appropriate for you to sign but, if you do, you may become the supplier for the purposes of some legislation.

You should agree with your clients how and when the rent is to be received from the tenant and passed to the client. Clients should be advised to consult an accountant with regard to income tax, particularly if the client is an overseas resident, as special rules apply in this situation.

### 6.7.3 The tenancy agreement

The tenancy agreement should be prepared well in advance of the letting. Prospective tenants should be given adequate time to read the agreement before signing and should also be given a copy of the *How to Rent Guide* ([www.gov.uk/government/publications/how-to-rent](http://www.gov.uk/government/publications/how-to-rent)), prescribed information relating to the tenancy deposit scheme, the gas safety record, the EPC (if not previously provided) and the amount of any Green Deal liability. You should also ensure that the tenants have the opportunity to raise queries to clarify the rights and obligations set out under the tenancy agreement. If the tenant is visually impaired the tenancy agreement should be

written in a format they can use, for example, in large print or Braille. You should provide access to interpretation and translation services for tenants whose first language is not English.

If the landlord is signing the agreement but will not be present when the tenant signs it, then two counterpart copies should be signed by the tenant and the original signed by the landlord and exchanged. A standing order, direct debit or other appropriate payment method should be set up at this time for the rent payments.

You should provide the tenant with a notification of the landlord's name and address for serving notices. Any appropriate notices **must** be issued before execution of the agreement. The tenancy agreement **must** be signed by the landlord or his or her representative. The counterpart tenancy agreement **must** be signed by all the tenants and dated to effect execution. You should give the tenant the tenancy agreement duly signed. If you are to manage the property, you should retain a copy; otherwise give it to the landlord. The tenants will be liable for stamp duty land tax (if appropriate). Further details can be found on the HMRC website ([www.hmrc.gov.uk](http://www.hmrc.gov.uk)).

In Scotland, under the *Private Rented Housing (Scotland) Act 2011* landlords **must** provide a Tenant Information Pack (TIP) containing essential information.

In Northern Ireland landlords **must** also provide a rent book and inventory.

You should arrange for the inventory to be signed (see section 6.6.3) and provide tenants with at least one complete set of keys that is recorded in that inventory. For a managed property, you should hold a set of keys in the office for emergencies. However, you should be aware of any possible insurance implications of this and should also explain to the tenants any circumstances in which any keys you hold may be used.

#### 6.7.4 Completion

You should ensure cleared funds are in place. On completion of the transaction all monies should be banked as soon as possible, and you should account to your client for the latter's monies in accordance with the terms of the agency agreement.

## 6.8 Tenancies outside the Housing Act 1988

### 6.8.1 Company lets

Where residential properties are let to a company rather than an individual, the company is responsible for all the tenant's obligations under the terms of the lease in the same way as an individual tenant would be.

Whatever arrangement is made by the company with its employee you should always ensure that the company tenant is liable for any default of payments or any costs.

ASTs should not be used for company lets. Company lets have their own tenancy agreements and, in many cases, the company has its own form of agreement. The agreement **must** be a common law letting agreement, which allows company employees to occupy the premises as a licensee only. You should reserve the right for your client to review and propose amendments to any standard agreement, or should provide your own agreement approved by your legal advisers.

You should ensure that the company does not allow a business to be carried out from the premises, as this could in effect become a business tenancy and could, therefore, provide security of tenure under the *Landlord and Tenant Act 1954*. A reasonable amount of home working by the employee is, however, permissible.

The tenancy agreement should include a clause making clear that money paid by the licensee toward the rent will be paid as an agent on behalf of the company and does not give the licensee rights as a company tenant. The tenancy agreement should also make clear that the company tenant provides the landlord with vacant possession of the property at the end of the tenancy. You should request sufficient information to legally identify the company, such as the company's registration number.

The tenancy agreement **must** clearly set out the frequency for rent payments, details of break clauses, rent reviews and other terms. Either you or your client should be informed of the identity of the licensee of the company tenant, and the tenancy agreement should allow the property to be occupied by the 'permitted occupier together with his or her family'. It is common practice to reserve the right to replace one licensee with another company employee, but you should try to negotiate a clause that states that the landlord has the right to approve any replacement licensee. Remember that if the property is occupied by a number of individuals who do not form a single family, it may then become an HMO and the provisions relating to that legislation will apply. You should therefore ensure that the company does not, without consent, replace a family with a group of sharers.

You should ideally seek a security deposit, but where this is not a requirement of the tenancy agreement you should request a letter of indemnity confirming that in the event of unpaid bills, the company tenant will be liable for the agreed amount. If a cash deposit is paid this should be held by a stakeholder, independent of both parties, who will only release the funds on approval by both parties. The security deposit does not require protection. As with individual lettings you should arrange a formal inventory check at the start and end of the lease.

### 6.8.2 Tenancies with annual rent in excess of £100,000

As with company lets (see 6.8.1 above), an assured shorthold tenancy (AST) cannot be used for tenancies with a rent in excess of £100,000. The tenancy agreement should be approved by your client's legal advisers, bearing in mind you will not be able to rely on any of the statutory provisions you would in an AST.

### 6.8.3 Rent Act 1977 tenancies

There are still a few tenancies that were granted prior to the *Housing Act 1988* coming into force, which are known as regulated tenancies. They were the default tenancy type prior to 15 January 1989, so there may or may not have been any formal tenancy agreement. There are few grounds for gaining possession of the property and you should seek legal advice before taking any action. As well as security of tenure, there are limits on the rent that can be charged and certain rights of succession. See [www.gov.uk/government/publications/regulated-tenancies](http://www.gov.uk/government/publications/regulated-tenancies)

### 6.8.3 Other types of tenancy

There are other types of residential and partly residential tenancies that are outside the scope of this document. These include:

- agricultural dwellings
- farms
- business premises
- public houses
- holiday lets
- student housing
- social housing.

# 7 Ending the instruction

This chapter provides guidance on ending the instruction with your clients. You or your clients can end the instruction, either at the end of the work or at any other time.

## 7.1 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)

You should give appropriate notice of the termination of your instructions. You should also avoid prejudicing the client's position by ceasing to act for the client at a critical moment. It may be appropriate to state that you will no longer act for the client save for the completion of the time-sensitive item.

You **must** explain any circumstances where there may be more than one commission fee. 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 your instruction ended)
- there may be a dual fee liability (see section 2.3.3)
- the tenant's deposit will continue to be protected.

You should send your client the names of all the potential buyers/tenants who viewed the property during the period of your instruction. An invoice should be sent with the written confirmation.

The limitation that can exist for claiming a fee for any later sale is emphasised in *Foxtons Ltd v Pelkey Bicknell and Anor* [2008] EWCA Civ 41.

## 7.2 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 you monies. 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 the end of your instructions.

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 [in REAB]).

### **(REAB 6.2)**

You should send a final receipt to your client when the invoice is paid. This should confirm the final amount received. It is likely that you will have agreed with your client (and confirmed this in your terms of engagement) that when contracts are exchanged you will submit your invoice to your client's legal advisers. Payment will then be made from the completion monies when the sale completes. Your invoice should clearly state the name of your client and the address 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 your instructions. 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 where 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 stated in your terms of engagement that interest will be charged. 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 clients know when interest will start being charged. You should also advise your clients if interest starts to accumulate.

The official dealing rates announced periodically by the Monetary Policy Committee of the Bank of England are used to calculate statutory interest. Alternatively, you could have set a contractual rate in your contract or terms of engagement that may be higher or lower than the statutory rate, in which case the statutory rate no longer applies.

## 7.3 Recovering outstanding debts

Direct deduction of fees from a client account or from sale proceeds by a lawyer is the easiest way to avoid payment problems. This **must not** be done without the prior authority of the client.

If you do not receive payment of a client's invoice in the time specified in your terms of engagement and on the invoice, your first step should be to send your client a written reminder that it is outstanding and to give them a further reasonable period in which to pay. If you intend to charge interest you should also refer to this in your letter.

If you still do not receive payment, follow it up with a telephone call, to ensure that the client has received the invoice and to agree when it will be paid. If you still do not receive payment you could consider taking legal advice. Alternatively, you could consider:

- negotiation – this might involve agreeing a phasing of the payment if your client is experiencing financial difficulties
- mediation
- conciliation or
- arbitration.



Whichever method you use to recover outstanding debts you should continue to seek payment by telephone and to maintain contact with your client. If you are aware that your client is in financial difficulties you should try to negotiate a payment plan. If you intend to take any legal action you should first seek advice from your legal advisers.

## 7.4 If no completion takes 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. However, where the agreement states that you will be entitled to commission on exchange of contracts this is still payable even if the transaction did not proceed to completion.

Your agreement may state that commission or your fee is payable on the introduction of a 'ready, willing and able purchaser' (section 2.4.1). In this case, it will become payable when a potential buyer, introduced by you, can be described as such.

## 7.5 Holding clients' money

You should refer to [www.rics.org/regulation](http://www.rics.org/regulation) for further guidance regarding circumstances where you have held client's money and the need to account for this on ending your instruction.

## 7.6 Client information

You should refer to the most up-to-date version of the RICS' publication *Whose files are they anyway?* See [www.rics.org/uk/knowledge/small-business-hub/setting-up-in-practice/statutory-requirements/](http://www.rics.org/uk/knowledge/small-business-hub/setting-up-in-practice/statutory-requirements/)

This contains advice about the ownership of documentation held by agents.

# Appendix A: Glossary

This Glossary provides the definitions of terms as they are used in RICS' *UK residential real estate agency* (6th edition). These may differ from strict legal definitions.

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 purchase an interest in land (full definition of 'estate agency work' is found in the <i>Estate Agents Act 1979</i> ). 'Estate agency' is the preferred term for guidance relating to the UK.
agent, real estate agent or estate agent	A company or individual employed to buy, sell or let residential property. This differs from the definition in the <i>Estate Agents Act 1979</i> , which does not include lettings. 'Estate agent' is the preferred term for guidance relating to the UK.
appraisal	A term used to define a valuation in some countries, but can also refer to a market appraisal (see 'market appraisal' and 'valuation' definitions). In this professional statement the term is used when referring to a market appraisal.
associate	An employee or principal of the agent's business, or a close friend or relation including: a spouse, civil partner, parent, child, sibling, uncle, aunt, nephew, niece, grandparent or grandchild (this list is not exhaustive). A full definition can be found in the <i>Estate Agents Act 1979</i> .
average consumer	A consumer who is reasonably well informed and reasonably circumspect, taking into account social, cultural and linguistic factors. Someone who takes reasonable care of their own interests. This definition can change depending on the target of a particular business or of a marketing campaign. The average consumer will then relate to an average member of that target group. ( <i>Consumer Protection from Unfair Trading Regulations 2008</i> )
chain of transactions	A sequence of property transactions that is dependent on each transaction to proceed to completion.
client	A person or organisation who has instructed you, or your organisation, to act on its behalf.
company let	When a company takes on a tenancy agreement as the 'tenant', rather than an individual. An employee of the company then occupies the premises as a licensee of the tenant.
conflict of interest	RICS members and firms should be aware of the obligations set out in the global RICS professional statement, <i>Conflicts of interest</i> (1st edition), and <i>Conflicts of interest: UK commercial property market investment agency</i> (1st edition).
customer	Any person who could be influenced, either directly or indirectly, by the services of a real estate agent. This would include a 'client' (see definition) and others.

exchange of contracts	The point when a transaction becomes legally binding, including the conclusion of missives in Scotland.
house in multiple occupation	<p>A residential property with at least three tenants forming more than one household who share toilet, bathroom or kitchen facilities.</p> <p>A household is either a single person or members of the same family who live together. A family includes people who are:</p> <ul style="list-style-type: none"> <li>• married or living together - including people in same-sex relationships</li> <li>• relatives or half-relatives, e.g. grandparents, aunts, uncles, siblings</li> <li>• step-parents and step-children.</li> </ul>
interest in land	A form of legal title in land, for example freehold, leasehold or commonhold interests (consult your legal adviser for definitions of these terms).
in writing, or written	Typed or handwritten text, email, fax or in Braille.
joint agency	At least two agents are appointed. Payment will be apportioned as agreed by you, the seller and the other joint agents within an agreed timescale. A joint sole agency will have at least two agents acting as sole agents. Your payment will be divided as agreed, no matter who sells the property, and the timescale for this should be agreed in advance.
leasehold	A lease originally granted for a period in excess of 21 years.
leaseholder	A tenant of a leasehold property who is liable to pay service charges and ground rent under the terms of the lease.
letting agent	A company or individual employed to let residential property.
lock-out agreement	An agreement to proceed with the sale of a property to one party and exclude other offers for an agreed period to allow that sale to be concluded without the risk of the prospective buyer being outbid.
market appraisal	An estimate of market price or rent based on market evidence and knowledge of the local market (see definition of 'appraisal').
material information	The information that the average consumer needs, according to the context, to take an informed transactional decision. ( <i>Consumer Protection from Unfair Trading Regulations 2008</i> )
misleading action	A commercial practice that contains false information, or in its overall presentation deceives, or is likely to deceive, average consumers, or creates confusion and causes, or is likely to cause, average consumers to take a transactional decision that they would not otherwise have taken. ( <i>Consumer Protection from Unfair Trading Regulations 2008</i> )
misleading omission	Omitting, hiding or otherwise disguising material information. ( <i>Consumer Protection from Unfair Trading Regulations 2008</i> )
multiple agency	Two or more agents are appointed and payment is paid to the agent who finds the buyer.

professional work	Valuation and/or survey advice on which a customer relies, and which could lead to a claim of financial loss if carried out negligently.
ready, willing and able purchaser	<p>A purchaser who is prepared and is able to (<i>exchange unconditional contracts for the purchase of your property</i> or, in Scotland, substitute with: <i>conclude unconditional missives for the purchase of your property</i>).</p> <p>You will be liable to pay remuneration to us, in addition to any other costs or charges agreed, if such a purchaser is introduced by us in accordance with your instructions. This <b>must</b> be paid even if you subsequently withdraw and (<i>unconditional contracts for sale are not exchanged</i> or, in Scotland, substitute with: <i>unconditional missives for sale are not concluded</i>), irrespective of your reasons.</p>
reasonable	An objective legal standard, which is judged based on the standard of conduct expected of a professional, experienced agent dealing with the same situation.
residential property	Property used as living accommodation.
sole agency	<p>The client will be liable to pay remuneration in addition to any other costs or charges agreed, if at any time (<i>unconditional contracts for the sale of the property are exchanged</i> or, in Scotland, substitute with: <i>unconditional missives for the sale of the property are concluded</i>):</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• with a purchaser introduced by another agent during that period.</li> </ul>
sole selling rights	<p>The client will be liable to pay remuneration, in addition to any other costs or charges agreed, in each of the following circumstances:</p> <p>if (<i>unconditional contracts for the sale of the property are exchanged</i> or, in Scotland, substitute with: <i>unconditional missives for the sale of the property are concluded</i>) 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</p> <p>if (<i>unconditional contracts for the sale of the property are exchanged</i> or, in Scotland, substitute with <i>unconditional missives for the sale of the property are concluded</i>) 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.</p>
statutory client account	A client bank account for the receipt of clients' monies to which the <i>Estate Agents Act 1979</i> applies and which <b>must</b> be operated in accordance with the requirements of that Act and the Regulations made under it.
subagency	Instruction of a separate or related firm to provide estate agency services to the seller on behalf of the principal agent.

surveyor	A member of the Royal Institution of Chartered Surveyors (RICS) who prepares an RICS Condition Report or other survey regarding the condition of the property.
tenant	A holder of a short lease (usually assured shorthold or assured tenancy or, in Scotland, short assured tenancy).
transactional decision	A decision taken by a consumer, whether it is to act or to refrain from doing something concerning: <ul style="list-style-type: none"> <li>a whether, how and on what terms, to purchase, make payment in whole or in part for, retain or dispose of goods (including an interest in land) or services or</li> <li>b whether, how and on what terms to exercise a contractual right in relation to goods or services.</li> </ul>
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 prepared in accordance with the current edition of the <i>RICS Valuation – Global Standards</i> (the Red Book).
vulnerable customers	Customers who agents could reasonably believe might 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.

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