

Recent changes to **the Form 6 and Form 8**

On 1 October 2015, the Office of Fair Trading (**OFT**) released new versions of the Property Occupations Form 6 – Appointment and reappointment of a property agent, resident letting agent or property auctioneer, and the Property Occupations Form 8 – Disclosure to prospective buyer forms.



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The alterations which have been made to these forms do not introduce any new statutory obligations for agents. Rather, these new versions correct numerous issues identified with the earlier forms and better align the wording of the forms with the Property Occupations Act 2014 Qld (the Act).

Agents should be aware that all new appointments entered into on or after 1 October 2015 must be effected using the updated forms. All existing appointments, entered into prior to 1 October 2015, remain valid.

It is important that agents acquaint themselves with the changes which

have been made to the Form 6 and Form 8, as a failure to correctly complete the documents could result in the forms being invalid. Accordingly, in this article we will detail the alterations which have been made to both forms and demonstrate how these amendments affect both sales and property management appointments.

FORM 6 – APPOINTMENT AND REAPPOINTMENT OF PROPERTY AGENT, RESIDENT LETTING AGENT OR PROPERTY AUCTIONEER (THE FORM 6)

Sales appointments

The most significant amendments that have been made to the Form 6 concern sales appointments. In particular, there have been significant alterations to the Part 5 – Termination of appointment and Part 6 – Property sales sections of the Form 6.

Part 5 of the Form 6 has been updated to properly align with section 114 of the Act regarding the revocation of appointments. It is now clearly noted that open listings can be terminated in writing at any time, while sole or exclusive appointments must be terminated in writing, giving 30 days notice, unless the parties mutually agree to an earlier date. Part 5 also provides that the notice procedures

for terminating sole or exclusive appointments which extend over a 60 day period, namely that either party can end the appointment by giving 30 days written notice, however, the appointment must run for at least 60 days unless the parties agree to an earlier date.

In regards to Part 6, the layout has been entirely rearranged and the explanatory notes amended. The improved layout ensures that both the client and agent are fully conversant with the circumstances in which the agent will be entitled to commission.

Part 6 now separates under clear headings “*When you must pay the agent*” and “*When you don’t have to pay the agent*” for an open listing and sole agency. Mirroring the wording of sections 20 and 23(3) of the Act, the agent will have no entitlement to commission under these appointments if the client sells the property privately and the agent is not the effective cause of sale.

Part 6 also clarifies that with an exclusive agency, as provided for in section 23(2) of the Act, the client will pay the agent commission on the sale if the property sells (whether by the agent, another agent or other person, including the client) during the term of the appointment.

It also notes that if the client sells the property, the exclusive appointment expires and if the agent was the effective cause of sale, the agent may be entitled to commission.

In addition to this, a check box has been inserted at the bottom of Part 6 for the parties to agree/disagree that the sole or exclusive appointment will continue as an open listing at the end of the appointment term.

Finally, in order to ensure that agents appointed under a sole or exclusive agency comply with their obligations pursuant to section 103 of the Act, an acknowledgement has been included at the end of Part 6 for the client to confirm that the agent has provided sufficient information about sole and exclusive agency appointments.

Property management appointments

Some of the amendments which have been made to the Form 6 also concern property management appointments. Under Part 4 – Appointment of Property Agent, the client can now appoint the agent to perform leasing services as a commercial agent.

In addition, Part 5 has been updated to include provision that continuing

appointments may be terminated by the parties giving 30 days notice, or less if both parties are agreeable. Further, it is noted that other fixed term appointments (excluding residential property sales) may be terminated before the end of term by mutual agreement.

New inclusions

While the most significant amendments to the Form 6 affect Parts 5 and 6, there are some additional, more minor changes which agents need to be aware of. Relevantly, new fields have been introduced for the client to insert an ACN/ABN number if appropriate and nominate whether they are registered for GST.

In addition, the Form 6 now states that it is mandatory for the agent to express the commission as a percentage or dollar amount in Part 7, and list the authorised amount for advertising or marketing fees and expenses in Section 1 of Part 8. On their face, these amendments may seem insignificant, however, agents must ensure that proper regard is given to the new inclusions to the Form 6, as a failure to correctly complete all mandatory fields could invalidate it.



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FORM 8 – DISCLOSURE TO PROSPECTIVE BUYER

Pursuant to section 157 of the Act, it is mandatory for a sales agent to make disclosure to prospective buyers, of any relationship that the agent has with a 'referred entity' and any benefit the agent derives or expects to derive from a referred entity in relation to a sales transaction.

The Form 8 assists by making the disclosure process straightforward for the agent. The amendments which have been made to the Form 8 reflect the government's intention to clarify the wording of the Act in relation to what 'benefits' require disclosure.

Significantly, the previous "*Warning to buyers*" has been removed from

the top of the new Form 8. Instead, there is an acknowledgement for the buyer, inserted at the end of the document, which effectively now places an onus on the buyer to confirm that the form has been explained to them and that they have understood all disclosures made by the agent and the effect (if any) of those disclosures on any contract of sale subsequently entered into.

A new Form 8 - Notes document has been created, which will assist agents in completing the Form 8. This explanatory note clearly details what constitutes a 'relationship', what needs to be disclosed as a 'benefit' and what the agent needs to disclose and does not need to disclose.

CONCLUSION

It is imperative that agents acquaint themselves with the updated versions of the Form 6 and Form 8 to ensure proper consideration is given to all relevant changes. While the statutory obligations of agents and property managers have not been altered following the introduction of the new forms, there may be consequences for agents if the forms are not completed correctly, including the forms being rendered invalid.

If agents are in any in any doubt about what their obligations are, they should refer to the relevant legislation and, if necessary, seek advice from the REIQ Agency Advisory Service, which can be contacted on 3249 7347.

