



# Submission for Consideration

by Alan Liddle (for ADL Software)  
(on behalf of the Real Estate Industry of Qld)

## Review of the *Property Occupations Bill 2013*

16<sup>th</sup> January 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Dear Sirs/Madams,

Further to your letter dated 28<sup>th</sup> November 2013, calling for submissions in respect to the following Bills:

- Property Occupations Bill 2013
- Motor Dealers and Chattel Auctioneers Bill 2013
- Debt Collectors (Field Agents and Collection Agents) Bill 2013
- Agents Financial Administration Bill 2013
- Fair Trading Inspectors Bill 2013

I wish to make submission, on behalf of the real estate industry of Qld, in respect to the Property Occupations Bill 2013.

### **Background**

ADL Software provides legal forms services to the Real Estate industry in Australia, with in excess of 1,700 client real estate offices in Qld alone.

As part of our services to the industry we provide news and articles on legislation, court rulings and precedence that affect the industry and also lobby relevant government bodies on the industry's behalf to affect changes to improve the overall status of the industry.

Given our industry services, we have not only become highly respected as legal forms providers to the industry, but also an instrument of industry opinion, information provision and influence.

In a great many cases, clients will approach our organisation as a de facto industry representative association.

As a result we have a number of issues that we are able to bring to the attention of the review committee. These issues are, we believe, reflective of the feelings of the majority of real estate agents throughout Qld who all believe that addressing these issues will resolve many day-to-day problems for the industry without diminishing consumer protection.

## **Issues for Consideration**

(Not necessarily in order of importance)

### **1. Approved Forms**

s104 of the Bill (General content of appointment) outlines what statements MUST be included in an Agency Appointment. It also specifies that they must be included in the 'approved form'. s103(2)(a) also outlines the requirement to give a notice to the client, 'in the approved form, that provides information about sole and exclusive agency appointments'. I assume that this notice will also form part of the Agency Appointment.

Under current legislation agency appointments are 'approved' forms. The purpose of these forms in general is not a matter of contention. Unfortunately the design of these forms can cause issues with their everyday practical usage leading to possible unintentional incorrect completion.

The problems that are associated with the current forms are as follows:

- a. **Clients' Name** - The Client's name must be entered as 'First Name' and 'Last Name':

Part 1—Client details	
Please provide details of the client name and their full address.	First names ..... Last name .....
	Company name (if applicable) .....

Apart from servicing no apparent purpose this can lead to unintentional error on behalf of the real estate agent or client. Consider the following:

- i. Many properties are owned by more than one person and, in some cases, as many as four or five.
- ii. By having two fields the amount of room available to enter clients' names is greatly reduced.
- iii. Forms services like ADLForms and Realworks (REIQ) allow merging of data from CMS databases, which generally store client names in a single data field.

Both ADL and the REIQ have had to published versions of 'approved' agency authorities that do NOT have two fields (ie. 'First Name' & 'Last name') but have only one field titled 'Name'. Refer Clients' Name Fields in the ADL version of Part1 – Client Details below:

Part 1—Client details	
Please provide details of the client name and their full address.	Name .....
	Company name (if applicable) .....



b. **License Expiry Date** - The agent's License Expiry Date field is a Boxed field:

Licence number ..... Licence expiry   /   /

This is an issue in that it is a requirement that both the Real Estate Agent's License Number and Expiry Date associated with ALL agents named on the appointment MUST appear on the appointment.

Multiple license numbers are required on forms when:

- i. A real estate office is owned by more than one registered real estate agent
- ii. An appointment is made in conjunction with another agency

Both ADL & the REIQ currently publish versions of the 'approved form' where the 'Licence expiry' field is NOT boxed and can accept multiple dates. Refer example done on an ADL appointment below:

Licence number **654321 & 123456** ..... Licence expiry **31/12/2015 & 31/12/2014** .....

c. **BLOCK Letters** - It is a requirement to complete forms in BLOCK Letters:

### Instructions

Please complete in **BLOCK** letters. Attach extra pages if needed. All references completing this form, please contact the Office of Fair Trading on 13 13 04.

While this requirement is preferable when completed by hand to ensure legibility, it is not practical when completed by electronic forms software such as ADLForms or RealWorks (REIQ).

When this requirement first appeared on Qld Approved Agency Appointments, we forced agents to enter all details in Capital Block when using ADLForms. Feedback was immediate and consistent. Agents wanted the ability to enter details in Upper/Lowercase print, citing that with electronically printed forms, details are actually more readable when NOT in BLOCK Letters. Also, it was pointed out that more information could be entered into a field when typed in Upper/Lowercase.

Needless to say, we had to bow to our client's wishes and allow them to enter details in the format that suited them best.

A number of clients actually use a mix of Uppercase and Upper/Lowercase to clearly indicate the clients' names. Take for example the situation where the following people own the property:

- Peter Michael
- Mary Schubert

If their names are simply entered as PETER MICHAEL & MARY SCHUBERT, it might be incorrectly assumed that the clients' names are:

- Peter Michael Schubert; and
- Mary Schubert

To make positively clear who the clients are, the smarter agents will enter their names as Peter MICHAEL & Mary SCHUBERT.

If Peter's surname really was SCHUBERT then the clients' name would be entered as Peter Michael & Mary SCHUBERT.

In Summary forcing the use of BLOCK Letters on a form has the following issues:

- i. Information is harder to read
  - ii. Less information can be entered into form fields
  - iii. Client names can be inadvertently misread.
- d. **Commission** - On the PAMD Form 20a (Appointment of agent—Letting and property management) there is only room for one Commission when it is common practice to charge two separate forms of commission, each calculated differently:

The client and the agent agree that the commission payable for the service to be performed by the agent is:

You must express the commission in both formats	
Dollar amount	Percentage
Total commission \$ .....	..... %
GST \$ .....	..... %
Total payment \$ .....	.....
<b>To the client:</b> For collection of rent –	

The two forms of commission are:

- Letting Commission (Charged each time a new tenant is secured for the premises - Generally 100% of one week's rent)
- Rent Collection Commission (Charged on a monthly basis as a percentage of rent collected on behalf of the client – Generally between 7% and 12%)

To accommodate the dual commissions on a PAMD Form 20a, ADLForms defaults a reference to an attached schedule in the approved commission fields as follows:

The client and the agent agree that the commission payable for the service to be performed by the agent is:

You must express the commission in both formats	
Dollar amount	Percentage
Total commission \$ <b>REFER TO ITEM SCHEDULE ITEM B</b> .....	..... %
GST \$ <b>REFER TO ITEM SCHEDULE ITEM B</b> .....	..... %
Total payment \$ <b>REFER TO ITEM SCHEDULE ITEM B</b> .....	.....
<b>To the client:</b> For collection of rent –	



The relevant fields in the attached Item Schedule Item B (referred to above) look like:

B. COMMISSION (Payable in accordance with PAMD Form 20a Part (5))		Clauses 2.2, 4(1), 4(2), 5 & 6
YOU MUST EXPRESS THE COMMISSION IN BOTH FORMATS		
Rent Collection:	(Refer to Property Agents and Motor Dealers Regulation 2001, Schedule 1A, Sections 3(1)(a) and 3(1)(b))	
	DOLLAR AMOUNT	PERCENTAGE
COMMISSION:	.....	.....
GST:	.....	.....
TOTAL PAYABLE:	.....	.....
COMMENTS:		
Letting:	(Refer to Property Agents and Motor Dealers Regulation 2001, Schedule 1A, Sections 2(1)(a) and 2(1)(b))	
COMMISSION:	.....	.....
GST:	.....	.....
TOTAL PAYABLE:	.....	.....
COMMENTS:		

This solution provides, we believe, the best possible way to allow an agent to declare two commissions within the requirements of the law.

- e. **Insufficient Room** – On the current approved Agency Appointments there is insufficient room to fully outline the responsibilities of both the Agent and the Client. The approved forms tend to deal only with required legislative content and in themselves are generally not suitable or adequate to be used as complete contractual agreements between parties.

The ‘approved form’ of appointment should only form part of an overall agreement that incorporates a more comprehensive schedule of items, terms and conditions (for example the standard ADL version of the PAMD 20a [Appointment of agent—Letting and property management] has an additional 8 pages of items, terms and conditions – refer attached sample).

Whilst the approved form allows for the attachment of a schedule, where a schedule is attached, proper referencing between the approved portion of the form and the attached schedule must be accurate and consistent. The slightest error in this process may invalidate the appointment and result in the loss of commission by the agent.

This has been more than apparent when completing the item ‘Performance of Service’ in the approved form (Item 4.1 of the PAMD 20a).

Where insufficient or incorrect reference to the attached schedule has been made in this item (or no reference made at all) the courts have deemed the appointment to be invalid, even though it is quite apparent the attached schedule forms part of the appointment.

Contrary to statements made in recent media releases, the requirement to state how the service is to be performed on the approved form may still be a requirement under the proposed legislation. Refer s104(1)(c)(i) which states:

- (1) An appointment of a property agent or resident letting agent must include the following in the approved form—
  - (c) for each service, provision for the inclusion of a statement about the following—
    - (i) the service to be performed by the property agent or resident letting agent

To help alleviate the issues associated with insufficient room on approved forms of appointment:

- i. ADL provides default pro forma wording in relevant fields for referencing attached schedules, which is correct wording. However agents will often not use our default wording, resulting in problems as outlined above.
- ii. ADL appointments have an overall page numbering system that incorporates both the approved form and the attached schedule.

#### **Conclusion – Approved Forms (including sub items a. thru e.)**

As outlined above it is obvious the use of ‘approved’ appointments can cause serious issues with the appointments. Not only does the necessity to attach further information to the appointments pose its own issues, but the good intentions of government forms designers can inadvertently cause real-life forms completion issues that can create confusion and lead to technically incomplete appointments.

Approved forms definitely have their place in the scheme of things, especially when it comes to disclosure and forms of notice. Experience shows there needs to be a more user friendly way to ensure agents comply with legislative requirements in respect to appointments.

#### **Recommendation – Approved Forms**

We recommend the components of an agency appointment, currently required by legislation to be in the ‘approved form’, be able to be incorporated into a document format published by industry form providers, such that such form is approved as long as the current “‘approved form’ components” are included.

The proposed legislation s104 need not be reworded, but s234 could be amended to read as follows:

“The chief executive may approve forms **or components of forms** for use under this Act.”

This approach has been adopted in other States with a great deal of success.

For example, Victoria has a number of requirements for their agency appointments, some of which are designed and published at <http://www.consumer.vic.gov.au/resources-and-education/forms-and-publications>. In Victorian legislation the wording ‘a statement in a form approved by the Director’ is used where wording is to be included in respect to a particular Section of the Act (eg. refer Estate Agents Act 1980 s49A(1)(c)(iv)).

The attached sample ADL Vic Exclusive Selling Agency Authority shows in items 5 (Agent’s Estimate of Selling Price), 12 (Making a Complaint) & 14 (Rebate Statement) where information has been inserted into the Authority in a form approved by the Director.

Following this approach for agency appointments will have the following benefits:

- a. All legislation requirements (including warnings) will be incorporated into the appointment providing maximum protection to the consumer.
- b. Agency Appointments will be easier to follow and complete, without risk of technical infringement.
- c. Agents will be able to use electronic merging facilities to ensure consistency of data.
- d. Where precedents require or industry standard practices change, industry forms providers can produce and publish updated forms in a fraction of the time that can be accommodated by Government processes. Where an ‘approved form’ component requires change, much less effort is required by the Government.

## 2. Day Appointment Ends

s108(2)(b) requires that the appointment states the 'day the appointment ends'.

Given that s103 states that the client may negotiate a term up to 90 days, does this mean the term must also be stated to prove that a term was negotiated? If so, agents will often calculate the wrong end date and unwittingly invalidate the appointment. It needs to be clearer with less room for error.

### Recommendation – Day Appointment Ends

Have this section allow for either:

- a. Date of Agreement (the Start) and Term of Agreement; OR
- b. Date of Agreement (the Start) and Day Agreement Ends

## 3. Copy of Signed Appointment

s109 requires that a copy of the signed appointment be must be given to the client.

There are a few points of concern in respect to this requirement:

- i. There is no time frame specified to indicate how long may lapse between all parties signing and the copy being provided to the client.
- ii. Is the appointment effective only when the 'copy' is given to the client? If so, the Date of Agreement would be the date the copy is given to the client.
- iii. With the advancements in technology, we at ADL are currently investigating the use of digital signatures in respect to real estate transactions. When using digital signature technology, it is my understanding that, a fully signed agreement in the currently accepted sense, does not necessarily ever exist. As such the 'completed agreement' is 'made available' to the parties electronically once all parties have 'signed' the agreement.

### Recommendation - Copy of Signed Appointment

- a. Ensure that legislation is clear on when an agreement starts.
- b. Ensure that legislation allows for digital signatures (They are coming – industry pressure is overwhelming)

## Summary

Generally the proposed legislation appears to have covered most of the suggestions not already addressed in previous submissions by ADL Software. With the above issues addressed I believe the proposed legislation will stand a far greater test of time than previous attempts at reform.

We thank you for the opportunity to make submission in respect of the proposed Bills.

Yours Sincerely



Alan D Liddle  
(Director)



## Appointment of agent—Letting and property management

Property Agents and Motor Dealers Act 2000

This form is effective from 1 July 2009

ABN: 97 406 359 732

Department of Employment, Economic  
Development and Innovation (DEEDI)

### WARNING

The client is advised to seek independent legal advice before signing this form.

This form must be completed and a copy given to the client before the agent performs any service for the client. Failure to do so may result in a penalty and loss of commission.

This form enables a person ('the client') to appoint a real estate agent or a resident letting agent ('the agent') to perform one or more letting, leasing or property management services for the client.

### Instructions

Please complete in **BLOCK** letters. Attach extra pages if needed. All references to dates should be in DD/MM/YYYY. If you need help completing this form, please contact the Office of Fair Trading on 13 13 04.

### Part 1—Client details

Please provide details of the client name and their full address.

Name .....

Company name (if applicable) .....

BN / ACN: .....

ABN:  Registered for GST:  Yes  No

Address .....

Suburb ..... State  Postcode

Phone ..... Fax .....

Mobile ..... Email .....

### Part 2—Agent details

Agent's logo (optional).

Agency name .....

ABN:  Registered for GST:  Yes  No

Licensee name .....

Address .....

Suburb ..... State  Postcode

Phone ..... Fax .....

Mobile ..... Email .....

Licence number ..... Licence expiry ..... / ..... / .....

### Part 3—Property details

Please provide details of the property.

Address .....

Suburb ..... State  Postcode

Lot ..... Plan .....

Title reference .....



## Part 4—Appointment of agent

	<p>The client appoints the agent to perform the following service/s:</p> <p><input type="checkbox"/> Letting/leasing of property                      <input type="checkbox"/> Collection of rent</p> <p><input type="checkbox"/> Other property management service/s (please specify) .....</p> <p>(if insufficient space, please attach schedule)</p>
<p><b>4.1 Performance of service</b></p>	<p><b>To the agent:</b> State how you will perform the service/s AND any conditions, limitations or restrictions on the performance of the service/s. (e.g. whether and how often the agent conducts property inspections, whether and to what limit the agent is authorised to supervise and carry out repairs and maintenance on property.)</p> <p><b>PROPERTY TO BE LEASED &amp; OR MANAGED &amp; SERVICES TO BE PERFORMED IN ACCORDANCE WITH THE ITEM SCHEDULE &amp; TERMS OF APPOINTMENT FORMING PART OF THIS PAMD FORM 20a</b></p> <p>(if space is insufficient, please attach additional sheet/s)</p>
<p><b>4.2 Type of appointment</b> Tick whichever appointment type applies.</p>	<p>The appointment is a:    <input type="checkbox"/> Single appointment    <input type="checkbox"/> Continuing appointment (for a particular service).                      (for a number of services over a period).</p> <p>End of continuing appointment: .....</p> <p><b>To the client:</b> If the appointment is a continuing appointment, you may revoke the appointment by giving 90 days notice in writing to the agent, unless you and the agent agree to a shorter notice period (but it must not be less than 30 days).</p>
<p><b>4.3 Listed rental charge</b></p>	<p>Listed rental charge: .....</p>
<p><b>4.4 Assignment clause</b> Tick whether you agree or disagree with the assignment. In the absence of a tick and initials, it is taken that the client <b>does not</b> agree to this assignment clause.</p>	<p><b>Real estate agent:</b> The client agrees that the agent may, at any stage throughout the appointment, assign the appointment to another real estate agent without changing the terms of the appointment.</p> <p><b>Resident letting agent:</b> The agent may assign its interest in this appointment to any person or entity which is, or will be, with the approval of the body corporate for the complex in which the property is situated, the letting agent for the complex.</p> <p><input type="checkbox"/> I agree with the assignment clause.                      <input type="checkbox"/> I disagree with the assignment clause.</p> <p>Client to initial: .....</p> <p><b>Note:</b> The client will receive notice of the assignment, including the name and business address of the agent being assigned the appointment.</p>

## Part 5—Commission

	<p><b>To the client:</b> The <i>Property Agents and Motor Dealers Regulation 2001</i> sets a maximum amount of commission chargeable by your agent for the letting and collection of rent on residential property.</p> <p><b>Please note you have a right to negotiate an amount lower than this amount of commission.</b></p>
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**Part 5—Commission continued**

**5.1 Agreed commission**  
Please note that you (the client) will have to pay Goods and Services Tax (GST) on any commission chargeable under this appointment.

The client and the agent agree that the commission payable for the service to be performed by the agent is:

**You must express the commission in both formats**

Dollar amount	Percentage
Total commission \$ REFER TO ITEM SCHEDULE ITEM B .....	..... %
GST \$ REFER TO ITEM SCHEDULE ITEM B .....	..... %
Total payment \$ REFER TO ITEM SCHEDULE ITEM B .....	.....

**To the client:** For collection of rent –

- **Percentage:** Commission expressed as a percentage is worked out only on the amount of rent or leasing fee actually collected.
- **Amount:** Commission expressed as an amount represents the commission payable if the property is rented at the listed rental charge (see section 4.3 above). If the actual rent charge, or the amount collected in any rental period, is higher or lower than the listed rent charge, the amount of commission payable may vary from the amount stated.

**5.2 When payable**  
Agent to specify when commission is payable.

.....  
.....

Date   /   /      
D D / M M / Y Y Y Y

**Part 6—Fees and charges**

**6.1 Amounts payable**  
The fees and charges payable by the client for the service are (e.g. bank charges, fee for arranging and supervising repairs and replacements).

Please note that fees and charges chargeable under this appointment are inclusive of Goods and Services Tax (GST).

**REFER TO ITEM SCHEDULE ITEM D**

**6.2 When payable**  
Agent to specify when fees and charges are payable.

.....  
.....

**6.3 The maximum value**

The maximum value of repairs and maintenance to be paid by the agent without prior approval by the client is: \$ .....

**Part 7—Expenses**

**7.1 Authorisation to incur expenses**  
**Note:** Only the actual amount of any expense can be retained or recovered by the agent, if expenses are authorised.

The client authorises the agent to incur the following expenses in relation to the performance of the service/s: (Agent to complete in relation to each service or category of service.)

7.1.1 **Advertising/marketing** (if any):  
.....  
.....

7.1.2 **Other** (e.g. photocopying, telephone calls, facsimile transmissions, postage, etc):  
.....  
.....

Authorised amount \$: .....

**Part 7—Expenses continued**

**7.2 Agent's rebate, discount, commission or benefit**

**To the agent:** State the source and the estimated amount or value or any rebate, discount, commission or benefit that you may receive in relation to any expenses that you may incur in connection with the performance of the service:

Source	Estimated amount (\$)	Value (%)
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

**Part 8—Signatures**

**Client 1**

**Please note:** If more than two clients, please photo copy this page when blank and attach when complete.

**To the client:** If you want more information before you sign this form, visit the Office of Fair Trading's website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or call 13 13 04. All parties are to sign and keep a copy of this appointment.

Signature .....

Signatory (print name) .....

Date signed   /   /

D D M M Y Y Y Y

**Client 2**

Signature .....

Signatory (print name) .....

Date signed   /   /

D D M M Y Y Y Y

**Agent**

Signature .....

Signatory (print name) .....

Date signed   /   /

D D M M Y Y Y Y

When performing this service, the agent must comply with the code of conduct for real estate agents or resident letting agents as set out in the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001* or *Resident Letting Agency Practice Code of Conduct*.

**SCHEDULES OR ATTACHMENTS  
(if applicable)**



**Item Schedule**  
(In conjunction with PAMD Form 20a)

**Item**

**A. AVAILABILITY DATE**

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

**B. COMMISSION** (Payable in accordance with PAMD Form 20a Part (5))

Clauses 2.2, 4(1), 4(2), 5 & 6

**YOU MUST EXPRESS THE COMMISSION IN BOTH FORMATS**

Rent Collection: (Refer to Property Agents and Motor Dealers Regulation 2001, Schedule 1A, Sections 3(1)(a) and 3(1)(b))

**DOLLAR AMOUNT**

**PERCENTAGE**

COMMISSION: .....

GST: .....

TOTAL PAYABLE: .....

COMMENTS:   
.....  
.....

Letting: (Refer to Property Agents and Motor Dealers Regulation 2001, Schedule 1A, Sections 2(1)(a) and 2(1)(b))

COMMISSION: .....

GST: .....

TOTAL PAYABLE: .....

COMMENTS:   
.....  
.....

**C. RENT & STATEMENTS**

Clause 10.12

Rent Payment Period: .....

Payable to:  Client  Bank/Building Society  Other (please tick only one)

Bank: ..... Branch: ..... BSB: .....

Account Name: ..... Account No.: .....

If Other: Name: .....

Address: .....

Statements Issue Period: .....

Sent to:  Client

Other Name: .....

Address: .....

Phone: ..... Fax: .....

**D. FEES & CHARGES**

Clauses 2.2, 4(1), 4(2), 6 & 21(6)

\*A fee may be expressed as either: (a) Fee + GST Amount = GST inclusive Fee OR (b) single GST inclusive figure

Fee Type	Fee* (GST Inclusive) (Specify \$ or %)
1) Management Fee: .....	.....
2) .....	.....
3) .....	.....
4) .....	.....
5) .....	.....
6) .....	.....
7) .....	.....
8) .....	.....
9) .....	.....
10) .....	.....
11) .....	.....
12) .....	.....
13) .....	.....

**E. PAYMENTS BY AGENT**

*Clauses 6, 9.6, 9.7, 10.14, 12 & 21(8)*

*The Client authorises and directs the Agent to pay from rental the items marked to be paid.*

*Note: The Agent is not authorised to acquire the financial product or advise on such product (unless licensed to do so in accordance with the Financial Services Reform Act 2001)*

**1. Insurance (List all insurance policies for Property)**

	To Pay	Insurer/Detail	Policy Number	Expiry
(1) Building	<input type="checkbox"/>	.....	.....	/ /
(2) Contents	<input type="checkbox"/>	.....	.....	/ /
(3) Public Liability	<input type="checkbox"/>	.....	.....	/ /
(4) Workers Comp.	<input type="checkbox"/>	.....	.....	/ /
(5) Landlord Protection	<input type="checkbox"/>	.....	.....	/ /
(6) .....	<input type="checkbox"/>	.....	.....	/ /
<b>2. Body Corporate Levies</b>				
(1) Sinking Fund	<input type="checkbox"/>	.....	.....	.....
(2) Administration Levy	<input type="checkbox"/>	.....	.....	.....
(3) .....	<input type="checkbox"/>	.....	.....	.....
<b>3. Caretaking</b>				
(1) Gardening	<input type="checkbox"/>	.....	.....	.....
(2) Pool	<input type="checkbox"/>	.....	.....	.....
(3) Pest	<input type="checkbox"/>	.....	.....	.....
(4) Cleaning	<input type="checkbox"/>	.....	.....	.....
(5) Repairs & Maintenance	<input type="checkbox"/>	.....	.....	.....
<b>4. Rates</b>				
<input type="checkbox"/>				
<b>5. Other</b>				
(1) .....	<input type="checkbox"/>	.....	.....	.....
(2) .....	<input type="checkbox"/>	.....	.....	.....

**F. TENANT'S PAYMENTS**

*Clauses 21(12) & 21(13)*

*Where the Tenant is responsible for payment of Water Consumption Charges a copy of the water rates notice must be provided.*

*(Tick 'Yes' if the Tenant must pay. Provide a percentage apportionment if applicable)*

Electricity:  Yes  No ..... % Gas:  Yes  No ..... % Telephone:  Yes  No ..... %  
 Cable:  Yes  No ..... % :  Yes  No ..... %

**Water:** *(Water Consumption Charges are only payable if the Property is separately metered)*

Laws apply with respect to Water Consumption Charges under the Residential Tenancies and Rooming Accommodation Act 2008.

The Property is / is not water efficient in accordance with Section 22 of the Residential Tenancies & Rooming Accommodation Regulation 2009.

Tick only **one** of the boxes below

- The Tenant is required to pay the Water Consumption Charges for the Property if:
  - The Tenant's water service to the Property is individually metered (or water is delivered by vehicle), &
  - The Property is Water Efficient (see the Residential Tenancy Authority for information on Water Efficient devices and minimum ratings), &
  - The General Tenancy Agreement specifies an amount for Water Consumption that is payable by the Tenant
- Tenant to pay for Water Consumption costs in excess of the reasonable amount of water use agreed between the Tenant and the Landlord of .....
- Tenant not required to pay an amount for Water Consumption

**G. FURNISHINGS & FITTINGS INVENTORY**

*Clauses 7.1, 11.2 & 11.3*

To be prepared by **Agent / Client**

**1. Inclusions (for use by Tenant/s)**

*(Insert inclusions, for example, furniture or other household goods let with the Property, as would be noted on the General Tenancy Agreement. Attach list if necessary)*

**G. FURNISHINGS & FITTINGS INVENTORY (Continued)**

Clauses 1, 11.2 & 11.3

**2. Exclusions (not for use by Tenant/s)**

.....  
.....

**H. PERMITTED TENANTS**

Number: ..... Details: .....

**I. PETS**

Clauses 14.1(c) & 14.1(d)

Permitted:  Yes  No Details (if any): .....

**J. AGENT INSPECTIONS**

Clause 11

The Agent will perform ..... inspection/s per year and: .....

**K. LETTING / RE-LETTING INSTRUCTIONS**

Clauses 9.5 & 9.8

.....  
.....

**L. BODY CORPORATE DETAILS**

Clause 12

Name: .....

Address: .....

Secretary: .....

Phone: .....

Fax: .....

Email: .....

Manager: .....

Phone: .....

Fax: .....

Email: .....

**M. SERVICE AGENTS / MAINTENANCE CONTRACTS**

Clauses 10.2, 10.3 & 10.6

1) .....

2) .....

3) .....

4) .....

**N. PREFERRED TRADES PEOPLE**

Clauses 10.2, 10.3 & 10.6

Electrical Repairs: .....

Phone: .....

Plumbing Repairs: .....

Phone: .....

Building Repairs: .....

Phone: .....

Other: .....

Phone: .....

**O. TENANT INSPECTIONS**

Prospective tenants may / may not be provided with keys to perform an unsupervised inspection of the Property in accordance with any conditions stated below.

Conditions: .....

**P. ELECTRICAL SAFETY SWITCH**

Clause 1b

An Electrical Safety Power Switch is / is not installed for general purpose socket outlets.

(A Licensed Electrician can advise in relation to this requirement)

**Q. SMOKE ALARMS**

Clauses 7.1(f), 10.4 & 14.1(f)

1) Smoke alarms are / are not installed in accordance with Part 9A Division 5A of the Fire and Rescue Service Act 1990.

2) Service and maintenance of smoke alarms:

(a) Date smoke alarm last tested and cleaned: ..... / ..... / .....

(b) Date smoke alarm batteries last changed: ..... / ..... / .....

(c) Service life as indicated by the manufacturer's warranty: .....

3) The Client does / does not authorise the Agent to perform the Client's duties in respect to smoke alarms.

Client's Initials: .....

{Since the 1st July 2007 owners of all houses and units (domestic dwellings) in Queensland must install and maintain smoke alarms in compliance with the Fire and Rescue Service Act 1990 as amended.}



**R. POOL SAFETY CERTIFICATE**

Clauses 21(9), 21(10), 1.1(1) & 1.2(b)

(complete if the Property being let contains a Regulated Pool (shared or non-shared))

- 1)  **Shared Pool** (eg. Owned by a Body Corporate in a complex) - Property to be leased with one of the following:
  - Current Pool Safety Certificate Certificate No.: \_\_\_\_\_ Expiry: \_\_\_\_ / \_\_\_\_ / \_\_\_\_
  - Form 36 - Notice of no pool safety certificate
- 2)  **Non-Shared Pool\*** (eg. Owned by the owner of the Premises) - Property cannot be leased without a Current Pool Safety Certificate: \_\_\_\_\_ Certificate No.: \_\_\_\_\_ Expiry: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**\* Note to Owners:**

If no current Pool Safety Certificate is in effect the Client must obtain the certificate prior to entering into, altering, extending or renewing a General Tenancy Agreement with Tenants. Failure to do so will result in substantial penalties under the Building Act 1975.

**S. CONJUNCTING AGENT/S** (Complete if applicable)

The Agent named in Part 2 of the attached PAMD Form 20a is acting in conjunction with the Agent/s below:

Conjuncting Agent: \_\_\_\_\_  
ABN: \_\_\_\_\_ Licence No.: \_\_\_\_\_ Licence Expiry: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**T. ADDITIONAL INSTRUCTIONS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**U. SPECIAL CONDITIONS FOR THIS APPOINTMENT**

Clause 18

Special Conditions to this Appointment where inserted at the direction of the Client were prepared by the Client or an Australian Legal Practitioner instructed by the Client and not by the Agent. No warranty is given by the Agent with respect to such clauses. Legal advice should be sought.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**V. SPECIAL TERMS FOR A GENERAL TENANCY AGREEMENT**

Clause 10.11

Any Special Terms inserted under instruction by the Client where not prepared by the Client were prepared by an Australian Legal Practitioner, not by the Agent, who gives no warranty in respect of same & in accordance with the warning in Item (Z), legal advice should be sought as to the meaning and effect of such Special Conditions before signing any General Tenancy Agreement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**W. CLIENT'S PUBLIC LIABILITY INSURANCE**

Prior to signing, the Client should provide to the Agent, proof and details of current Public Liability Insurance, as listed below.

Insurer: \_\_\_\_\_ Policy No.: \_\_\_\_\_ Expiry Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**X. DATE OF COMMENCEMENT OF APPOINTMENT**

\_\_\_\_ / \_\_\_\_ / \_\_\_\_ If left blank, will be the date of the last party (Client or Agent) signing.

**Y. AGREED NOTICE PERIOD**

Clause 16.1

Agreed notice (if less than 90 days) is \_\_\_\_\_ days.

**Z. SIGNING**

**WARNING:** By signing this Appointment the parties confirm that no legal advice as to the conditions contained herein was provided by the Agent. The parties have been advised to seek legal advice with respect to this Appointment.

Client's Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Client's Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Agent's Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Terms of Appointment  
(being a schedule to and forming  
part of the approved PAMD Form 20a)**

**1. Appointment of Agent**

- 1.1 In consideration of and in accordance with the terms of this Appointment, the Client appoints the Agent and its permitted Assigns, and the Agent agrees to let and/or manage the Property for the Client. Authority vested in the Agent by this Appointment shall be deemed to be vested in the Agent's authorised employees.
- 1.2 The Agent is authorised to assign this Appointment provided such assignment is made in accordance with the terms and conditions of this Appointment.
- 1.3 The Agent is authorised to contact the Client in respect of other services which may be of interest or benefit to the Client.
- 1.4 Where details as to the type of appointment are not completed in Part 4.2 of the attached PAMD Form 20a this Appointment is a continuing appointment.
- 1.5 Where this Appointment is a continuing appointment and no end of continuing appointment has been specified in Part 4.2 of the attached PAMD Form 20a, the Appointment ends on the date specified in a notice given
- (1) by either party in accordance with Clause 16 of this Appointment.
  - (2) by the Client in accordance with Clause 8 of this Appointment.

**2. Prior Appointment by Client**

- 2.1 The Client has not appointed any other agent to let or manage the Property, or has revoked in writing any prior appointment to act with respect to the Property given to any other party.
- 2.2 If another party acts for the Client in providing the services set out in this Appointment, the Client will still be responsible for Commission and/or Fees to the Agent as outlined in this Appointment.

**3. Exclusive Appointment**

By signing this Appointment the Client appoints the Agent as Exclusive Agent. The Client will for the duration of this Appointment refer any prospective tenants of which the Client becomes aware to the Agent.

**4. General Tenancy Agreement**

The Client will be in breach of this Appointment should the Client fail to observe the provisions of any General Tenancy or other agreement entered into during the term of this Appointment under the *Residential Tenancies and Rooming Accommodation Act 2008* as amended. In the case of a breach which results in termination of the General Tenancy Agreement the Client must pay to the Agent:

- (1) all Commission and Fees then due and owing to the Agent
- (2) the Commission and Fees payable in respect of any balance of the term (not to exceed six months), of such General Tenancy Agreement subject to the Agent taking reasonable steps to mitigate any loss.

**5. Commission**

- 5.1 The Client will pay all Commission as more particularly detailed in Part (5) of the attached PAMD Form 20a. (Item (B) of the Item Schedule)
- 5.2 Notwithstanding the monetary amounts listed in Part (5) of the PAMD Form 20a and Item (B) of the Item Schedule, the actual amount of Commission will be calculated based on the percentage set out in Part (5) of the PAMD Form 20a. (Item (B) of the Item Schedule)

**6. Fees, Charges and Expenses**

The Client will pay all Fees and Charges as detailed in Part (6) and Expenses as detailed in Part (7) of the attached PAMD Form 20a or as outlined in Items (B), (D) & (E) in the Item Schedule. The Client authorises the Agent to deduct all such Fees, Charges, Expenses and other outlays owing to or incurred by the Agent in association with this Appointment where possible from rent collected.

**7. Client's Obligations Regarding Tenancy (Refer to the Residential Tenancies and Rooming Accommodation Act 2008, S185 for obligations generally)**

7.1 At the start of the tenancy the Client must ensure, at its own cost:

- (1) the Property and inclusions are clean and comply with local and state authority building and emergency services legislation.
- (2) the Property is safe and fit for the Tenant/s to live in.  
*Note: Prior to occupancy the Client should have the Property inspected by a person with appropriate experience in house maintenance.*
- (3) the Property and inclusions (including all locks and security fittings) are maintained and are in a reasonable state of repair.
- (4) after the General Tenancy Agreement is signed, sufficient keys to the Property are provided to the Agent and Tenant/s for each lock as provided in accordance with Section 210 of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (5) that telephone lead-in work (cabling) is completed to the premises to enable the tenant to connect a basic telephone service.
- (6) compliance with the *Fire and Rescue Service Act 1990* Part 9A, Division 5A (installation and maintenance of smoke alarms see Item (Q) of the Item Schedule)
- (7) Where the Property contains a Regulated Pool (shared or non-shared), compliance with its obligations under Chapter 8 of the *Building Act 1975* in respect to pool safety.

7.2 While the tenancy continues the Client must, at their own cost:

- (1) maintain the Property and inclusions in a reasonable state of repair, and comply with local and state authority building regulations.
- (2) ensure the Property is safe for the Tenant/s to live in.
- (3) keep any common area reasonably clean.
- (4) treat the Property as necessary by a licensed pest controller.
- (5) where Item (R)(2) applies, ensure that a current Pool Safety Certificate is in effect prior to entering into, altering, extending or renewing a General Tenancy Agreement with Tenants for the Property.

7.3 The Client warrants it is the owner of the Property and has full authority to enter into all General Tenancy Agreements.

7.4 All dealings with a Tenant regarding the tenancy are to be communicated and dealt with through the Agent.

**8. Property Sale or Transfer**

In the event of the Property being transferred by the Client:

- (1) the Client will forthwith inform the Agent in writing of the Real Estate Agent appointed to sell the Property.
- (2) the Client will promptly notify the Agent of the signing of a contract and of the Client's intention to terminate the Appointment giving the Agent not less than thirty days notice.

**9. Client Obligations and Authority**

9.1 The Client has at the time of entering into this Appointment disclosed to the Agent all relevant facts about the Property and has not provided information that is or is likely to be misleading or deceptive.

- 9.2 The Client will at all times during the currency of this Appointment keep the Agent advised of and disclose to the Agent in writing all relevant and material facts and changes thereto about the Property.
- 9.3 The Client does not rely on the Agent to determine the financial or credit suitability of any prospective tenant beyond the details set out or obtained in accordance with the Application for Tenancy used by the Agent.
- 9.4 The Client acknowledges once a General Tenancy Agreement has been entered into by the Client and Tenant the Agent is limited to its Obligations under this Appointment.
- 9.5 The Client authorises and directs the Agent to let, re-let (as necessary) and manage such letting of the Property at a Rent authorised by the Client or failing such authorisation for a fair and reasonable Rent as determined by the Agent, unless otherwise instructed by the Client in Item (K).
- 9.6 The Client must obtain and maintain the insurance policies listed, "to pay" in Item (E), and the Client must upon request, provide certificates annually for each insurance policy confirming the currency of such policies.
- 9.7 The Client must have public liability insurance and be covered for a minimum of 10 million dollars, in addition to any insurance provided by a body corporate for common areas. Such policy must be maintained for the term of this Appointment and the Client must upon request provide a certificate annually confirming the currency of such policy.
- 9.8 Notwithstanding the Agent's responsibility to refer suitable Tenants based on the Agent's standard Application for Tenancy, final approval shall at all times be the responsibility of the Client as Landlord.
- 9.9 The Client must comply with the requirements of the *Fire and Rescue Service Act 1990* and the *Building Fire Safety Regulation 2008* together with all relevant acts, legislation, by-laws, rules & regulations local, state and federal.
- 10. Agent's Obligations and Authority**
- 10.1 Except as otherwise authorised by the Client, the Agent will be responsible for locating and introducing to the Client suitable prospective tenants in accordance with the criteria detailed in the Agent's Application for Tenancy so as to enable the Client to make an informed decision as to the suitability of the prospective tenants.
- 10.2 The Agent will seek the Client's written approval before ordering repairs or maintenance in excess of the authorised amount specified in Part (6.3) of the attached PAMD Form 20a or any amount otherwise specified by the Client in writing.
- 10.3 The Agent must where required or necessary, organise repairs, service and maintenance (utilising where appropriate, a licensed tradesperson) and where possible utilise those services of the persons detailed in Item (N) of the Item Schedule.  
Note: The Client acknowledges that where a self-employed tradesperson is paid under a contract that is wholly or principally for their labour, provision should be made for superannuation contributions as individual tradespersons could be considered employees for super guarantee purposes.
- 10.4 Where the Agent is authorised and directed to carry out the Client's duties in respect of matters detailed in Clause 7.1 & 7.2 the Agent is authorised and reserves the right to employ the services of a suitably licensed tradesperson to carry out such requirements and bill the cost thereof to the Client.
- 10.5 When appointing tradespersons the Agent must exercise proper due diligence and in so doing, except in the case of negligence on the part of the Agent, will not be liable for loss or damage caused by or resultant upon the tradespersons carrying out works.
- 10.6 Urgent repairs or maintenance particularly relating to the safety of person or property may be carried out at the Agent's discretion if the Client is not readily contactable.
- 10.7 The Agent will take reasonable steps to ensure goods or services obtained for the Client are at competitive prices.
- 10.8 The Agent will not induce or attempt to induce, a breach of, or an interference with, a Contract between the Client and a tenant.
- 10.9 The Agent will maintain its Licence in accordance with the *Property Agents and Motor Dealers Act 2000*.
- 10.10 The Agent will advise the Client upon the termination of any General Tenancy Agreement and/or vacancy of the Property.
- 10.11 The Agent will, subject to the *Residential Tenancies and Rooming Accommodation Act 2008* and other Applicable Legislation, negotiate, finalise and where necessary, execute on behalf of the Client any General Tenancy Agreement or any amendments or variations thereto, including any other documents in relation to the tenancy arising from this Appointment.
- 10.12 The Agent is to collect and receive all monies payable (Rent, bond and otherwise) under any General Tenancy Agreement entered into pursuant to this Appointment.
- 10.13 The Agent must account in writing to the Client with respect to Clause 10.12 and those monies paid or used by the Agent carrying out the Agent's Obligations under this Appointment.
- 10.14 The Agent will make all payments required under and in accordance with this Appointment and which the Agent may have an obligation to make as the Client's Agent.
- 10.15 The Agent is authorised to apply to the Residential Tenancy Authority for payment of the Tenant's bond to recover all monies including unpaid rent under the General Tenancy Agreement relevant to the Property.
- 10.16 The Agent will promptly respond to and, subject to the Client's written instructions, attend to all reasonable requests by the Client for service, maintenance of, and repairs to, the Property.
- 10.17 The Agent will not engage a person to perform building work unless the person holds a licence under the *Queensland Building and Construction Commission Act 1991* authorising the performance of the work.
- 10.18 The Agent must immediately notify the Client in writing if the Agent becomes aware of a tenant's breach, which is in the Agent's opinion a fundamental breach of the General Tenancy Agreement.
- 10.19 In relation to expressions of interest the Agent will keep the Client advised of enquiries regarding the re-letting and letting of the Property.
- 10.20 The Agent is authorised to, and in so doing may, on obtaining written instruction from the Client, use independent legal services, to recover monies due and unpaid by the Tenant subject to the General Tenancy Agreement.
- 10.21 When dealing with prospective tenants the Agent will comply with the Code of Conduct which does not preclude the Agent from ascertaining the Tenant's suitability to rent the Property.
- 11. Property Inspection**
- 11.1 The Client will comply with all obligations with respect to condition reports and inspection required by the *Residential Tenancies and Rooming Accommodation Act 2008* or the General Tenancy Agreement.
- 11.2 The Agent is required to complete an Inventory and/or inspection report of the Property if specified in Item (G) & (J) of the Item Schedule.
- 11.3 The Agent will notify the Client in writing of any serious tenant's complaint or defect to the Property (subject to the limitations set out in Clause 14.2) creating a possible liability.



- 11.4 The Client will be responsible for rectification of matters notified under Clause 11.3.
- 12. Body Corporate**
- 12.1 Should the Property be subject to Building Units and Group Titles Legislation, the Agent is authorised and directed to deal in all matters relevant to this Appointment and any General Tenancy Agreement entered into under the authority of this Appointment with the relevant Body Corporate.
- 12.2 The Agent is authorised to obtain from the Body Corporate a copy of current by-laws. A copy of such by-laws are to be provided to all Tenants by the Agent upon occupying the Property.
- 12.3 The Client must instruct the Body Corporate to provide the Agent with revised by-laws when and if such by-laws are amended.
- 13. Work Health and Safety**
- Insofar as either party to this Appointment is, with respect to the Premises a - Person Conducting a Business or Undertaking (under the *Work Health and Safety Act 2011*, Regulations or relevant Codes of Practice in relation thereto) such party must comply with the Act, Regulations or relevant Codes of Practice. Provided however, in carrying out such obligations the Agent acts only as Agent for the Client.
- 14. Indemnity**
- 14.1 The Agent having complied with its obligations under this Appointment and not having been negligent, the Client indemnifies the Agent, its officers and employees, from and against all actions, claims, demands, losses, costs, damages and expenses arising out of or in respect of this Appointment from;
- (a) the Client's failure to comply with this Appointment and/or Applicable Legislation; or
  - (b) the Client's failure to give the Agent prompt and appropriate authority or instruction, or sufficient funds to carry out an instruction or authority; or
  - (c) the Tenant's failure to comply with his/her obligations according to the General Tenancy Agreement, at no fault of the Agent; or
  - (d) the Tenant's failure to comply with his/her obligations under the *Residential Tenancies and Rooming Accommodation Act 2008* and or other Applicable Legislation; or
  - (e) the Agent acting on behalf of the Client under this Appointment; or
  - (f) any loss arising from injury to person or damage to property howsoever caused (except in the case of negligence on the part of the Agent).
- 14.2 The Client acknowledges that the Agent is acting only as a licensed letting and/or managing agent and is not responsible for reporting any matters (including defects latent or otherwise) other than those that are readily apparent during the course of standard periodic inspections (see Clause 11) or as brought to their attention as letting agent by the Tenant.
- The Agent is not otherwise qualified and it is the Client's responsibility to obtain specific advice with respect to the Property and its soundness as to building and structural integrity, pest, health, fire safety and other requirements. As such, the Client indemnifies the Agent from and against all actions, claims, demands, losses, costs, damages and expenses arising out of, or in respect of this Appointment, resulting from matters of cleanliness, safety, construction, building requirements or building deterioration, notwithstanding the Agent's obligations under Clause 11.
- 15. Electrical Safety Switch**
- If an Electrical Safety Switch is not installed on the Property, the Client must install an approved Electrical Safety Switch. (See Section 80A of the Electrical Safety Regulation 2002)

- 16. Termination**
- 16.1 Either party may terminate this Appointment by giving notice in accordance with Part (4.2) of the attached PAMD Form 20a for the time specified therein or such time as is otherwise specified in Item (Y) of the Item Schedule.
- 16.2 In the event of the Client committing to sell or transfer the Property the Client will terminate this Appointment in accordance with Clause 8 of this Appointment.
- 16.3 Any Termination shall be without prejudice to either party's rights under this Appointment.
- 16.4 Upon Termination of this Appointment the Client must pay, within the time period specified in Part (4) of the attached PAMD Form 20a, to the Agent all Fees and Commission then due and owing to the Agent.
- 17. Provision of Appointment**
- Each party has received a signed copy of this document and understands such document or has had the opportunity to obtain professional advice with respect to the Appointment and each party acknowledges it is bound by the terms of this Appointment which include the attached PAMD Form 20a and all schedules annexed thereto and each party acknowledges this Appointment constitutes the entire agreement between the parties.
- 18. Special Conditions**
- Any Special Conditions to this Appointment shall form part of this Appointment. Should there be inconsistency between these Terms of Appointment and a Special Condition, the Special Condition will apply. All Special Conditions must be in compliance with the *Residential Tenancies and Rooming Accommodation Act 2008*.
- 19. Privacy Statement**
- 19.1 The Agent collects and uses personal information provided by you as the Client to provide the services required by you or on your behalf.
- 19.2 You as Client agree the Agent may subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:
- (1) potential tenants, to the extent required to complete a General Tenancy Agreement; and/or
  - (2) property data collection agencies; and/or
  - (3) Body Corporates & financial institutions; and/or
  - (4) tradespeople and similar contractors in order to facilitate the carrying out of works with respect to the Property; and/or
  - (5) other third parties as may be required by the Agent for the purposes of marketing, sales promotion and administration relating to the use of the Agent's products and services and complying with legislative and regulatory requirements.
- 19.3 Without provision of certain information the Agent may not be able to act effectively or at all on the Client's behalf.
- 19.4 The Client has the right to access such personal information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
- 20. Provision of Documents**
- The parties agree and confirm this Appointment may be forwarded electronically if the recipient has provided an email address or facsimile number in the Item Schedule to this Appointment.

## 21. Definitions

In this Schedule the following terms mean:

- (1) **Applicable Legislation:** Reference to relevant Legislation includes Queensland Government Legislation generally but particularly the *Property Agents & Motor Dealer's Act 2000*, regulations and amendments thereto, including (*Real Estate Agency Practice Code of Conduct*) Regulation 2001, *Property Law Act*, *Queensland Building and Construction Commission Act 1991*, *A New Tax System (Goods & Services Tax) Act 1999*, *Electrical Safety Regulation 2002*, *Fire and Rescue Service Act 1990*, *Building Fire Safety Regulation 2008*, *Residential Tenancies and Rooming Accommodation Act 2008* as amended and the *Work Health & Safety Act 2011*.
- (2) **Appointment:** the PAMD Form 20a Appointment to Act as Real Estate Agent including the whole of this document.
- (3) **Building Work:** refer to the *Queensland Building and Construction Commission Act 1991*, Schedule 2
- (4) **Code of Conduct:** the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001*.
- (5) **Condition Report:** a report in compliance with Section 65 or Section 66 of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (6) **Fee:** an amount charged by the Agent for a service provided.
- (7) **General Tenancy Agreement:** any general tenancy or other agreement with respect to the letting of the Property complying with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* as amended.
- (8) **GST:** meaning used in the *A New Tax System (Goods & Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (9) **Pool Safety Certificate:** means the certificate issued with respect to a Regulated Pool (shared or non-shared) that complies with the Pool Safety Standards in accordance with Chapter 8 of the *Building Act 1975*.  
*Note: For Shared Pools - a Pool Safety Certificate is valid for one year*  
*For Non-shared Pools - a Pool Safety Certificate is valid for two years.*
- (10) **Regulated Pool:** where used in this document has the same meaning as given to it by Section 231B of the *Building Act 1975*.
- (11) **Tenant:** is the person to whom the right to occupy the Property under a General Tenancy Agreement is given.
- (12) **Utilities:** services such as gas, electricity or water provided by a public utility.
- (13) **Water Consumption Charge:** is the variable part of a water service charge assessed on the volume of water supplied to the Property.

## 22. Using this Form

Where such information is required to be entered on the approved form, information contained in the Item Schedule and the Terms of Appointment shall apply to the approved PAMD Form 20a.

# EXCLUSIVE SELLING AGENCY AUTHORITY (Residential)

Item

## Item Schedule

### 1. VENDOR

Name/s: .....  
Business Name: .....  
Address: .....  
ABN: ..... Phone: ..... Fax: ..... Mobile: .....  
Email: ..... GST Registered: Yes / No

### 2. AGENT

Clause 1.1(2)

Name/s: .....  
Address: .....  
ABN: ..... Phone: ..... Fax: ..... Mobile: .....  
Contact: .....  
Email: .....

### 3. PROPERTY (Includes land and all improvements)

Clause 1.1(9)

3.1 Address: .....  
Real Property Description: .....

#### 3.2 Included Fittings / Furnishings / Chattels:

.....  
.....

#### 3.3 Property is Sold: Subject To Tenancy / With Vacant Possession

### 4. VENDOR'S SALE PRICE & SETTLEMENT

Clause 5.4

*Note: Vendor should obtain independent advice as to Sale Price*

Vendor's Sale Price: ..... GST exempt / including GST  
Vendor's Preferred Settlement Date: ..... days from date of Contract

### 5. AGENT'S ESTIMATE OF SELLING PRICE (Section 47A of the Estate Agents Act 1980)

Clause 9

*Note: This amount is an estimate not a valuation. The GST status of any estimate is as indicated in Item 4.*

*Note: If a price range is specified, the difference between the upper and lower amounts cannot be more than 10% of the lower amount.*

Single amount: \$ ..... OR Between: \$ ..... and \$ .....

### 6. TERM OF EXCLUSIVE AUTHORITY (SOLE AGENCY)

Clauses 3 & 7.1(a)

6.1 This Exclusive Authority will be for a period of ..... days from the date of signing this Authority.

#### 6.2 Note: Section 54 (1) of the Estate Agents Act 1980

If an agreement stating that an estate agent is to act as the sole agent for the sale of any real estate or business does not state when the sole agency is to end, the sole agency ends:

- (a) in the case of a sale by auction, 30 days after the date of the auction; or
- (b) in any other case, 60 days after the date the agreement is signed by, or on behalf of, the vendor of the real estate or business.

### 7. ONGOING AUTHORITY PERIOD

Clauses 3.3 & 7.1(b)

At the end of the term of the Exclusive Authority (Item 6), unless terminated, this Authority will continue as an ongoing authority for a period of ..... days (ongoing authority period).

*Note: Where no days are inserted, the period shall be 1 Business Day.*

### 8. SPECIAL INSTRUCTIONS

#### 8.1

.....  
.....  
.....

**8. SPECIAL INSTRUCTIONS (Continued)**

8.2 The Agent is authorised to advertise the Property for the following price or price range:

Single amount: \$ ..... OR Between: \$ ..... and \$ .....

**9. FEE PAYABLE TO AGENT FOR SERVICES**

Clause 7

*(this statement must be incorporated within the Authority in the approved form - s49A(1)(c) Estate Agents Act 1980)*

Selling Fee: Based on an estimated Selling Price of \$ ..... **GST Exempt / Including GST**  
 the Agent's Selling Fee would be as calculated using one of the following methods:

- ..... % of the Selling Price
- ..... % of the first \$ ..... of the Selling Price plus ..... % of the balance
- Fixed Amount of \$ ..... plus GST
- Other: .....

Where calculated on a % basis, as set out above, the Selling Fee as an actual dollar amount would be:

Selling Fee: \$ ..... plus GST of \$ ..... **Total Fee Payable: \$ .....** (incl. GST)

**10. EXPENSES (Attach schedule if insufficient room)**

Clauses 7.7 & 7.9

The Vendor shall reimburse the Agent for the following authorised Expenses incurred during the term of this Authority:

Expense	Amount (Include GST)	*Due and Payable
Advertising		

\* When Due and Payable is left blank, Expenses are payable on receipt by the Vendor of an itemised invoice.  
 [Note: Payment is not dependent upon a sale taking place]

**11. COMMISSION SHARING**

Clause 7.11

Will the Agent's commission be shared with other people (other than a licensed estate agent or an agent's representative employed by the agent, or a licensed agent who is in partnership with the agent)?

- Yes  No (Important - if "Yes", see Clause 2.1(9))

**12. MAKING A COMPLAINT CONCERNING COMMISSIONS AND/OR OUTGOINGS**

*(this statement must be incorporated within the Authority in the approved form - s49A(1)(c) Estate Agents Act 1980)*

Any complaint relating to commission or outgoings can be made to the Director, Consumer Affairs Victoria (CAV), GPO Box 123, Melbourne, Victoria, 3001 or by telephoning 1300 73 70 30.

Unless there are exceptional circumstances Consumer Affairs Victoria cannot deal with any dispute concerning commission or outgoings unless it is given notice of the dispute within 28 days of the client receiving an account for, or notice that the Agent has taken the amount in dispute, whichever is later.

**13. SPECIAL CONDITIONS**

Clause 12

The Special Conditions are inserted under instruction from a party to this Authority and where not prepared by that party, were prepared by an Australian Legal Practitioner and not the Agent. No warranty is given by the Agent. Legal advice should be sought.

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**14. REBATE STATEMENT**

*(this statement must be incorporated within the Authority in the approved form - s49A(1)(c) Estate Agents Act 1980)*

**Important information for Vendor(s)**

A rebate includes any discount, commission, or other benefit, and includes non-monetary benefits. It is illegal for an Agent to keep any rebate they receive for advertising or other outgoings purchased by the Agent on your behalf. Section 48A of the *Estate Agents Act 1980* requires the Agent to immediately pay you any rebate they receive in relation to the sale of your property.

The Agent is not entitled to retain any rebate and must not charge you an amount for any expenses that is more than the cost of those expenses.

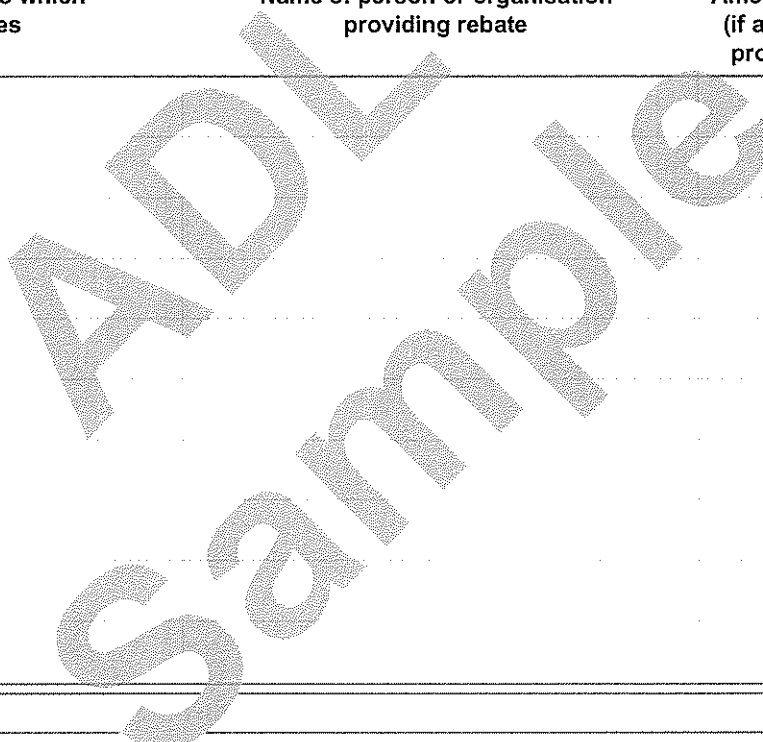
The Agent will not be, or is not likely to be, entitled to any rebates.

**OR**

The Agent will be, or is likely to be, entitled to rebates.

These rebates are listed below.

- any outgoings; or
- any pre-payments made by the person engaging or appointing the Agent (the Client) in respect of any intended expenditure by the Agent on the Client's behalf; or
- any payments made by the Client to another person in respect of the work.

Goods/Services to which rebate relates	Name of person or organisation providing rebate	Amount (including GST) (if amount not known, provide an estimate)
		

**15. SIGNATURES**

Signature of Agent:

..... Date: .. / .. / ..

**By signing this Authority the Vendor(s) confirm(s) having read and understood the provisions of Clause 2.1 of the Authority.**

Signatures of Vendor(s):

..... Date: .. / .. / ..

..... Date: .. / .. / ..

..... Date: .. / .. / ..

## Terms of Authority

### 1. Definitions

1.1 In this Authority, which includes the Item Schedule, the following terms mean:

- (1) **Act:** the *Estate Agents Act 1980* as amended.
- (2) **Agent:** means the Agent set out in Item (2) together with the Agent's representative as defined by the Act.
- (3) **Authority:** this Exclusive Selling Agency Authority consisting of the Item Schedule, Terms of Authority and any additional schedules that may be attached.
- (4) **Commission:** includes fees, charges, rewards or other remuneration whether monetary or otherwise.
- (5) **Expenses:** any cost or charge incurred by the Agent (including in respect of advertising or marketing) in carrying out the Agent's obligations under this Authority.
- (6) **GST:** where used in this Authority, has the meaning used in *A New Tax System (Goods & Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (7) **GST Act:** refers to the *A New Tax System (Goods & Services Tax) Act 1999*.
- (8) **Item:** an Item in the Item Schedule forming part of this Authority.
- (9) **Property:** the Property as described in Item (3).
- (10) **Relevant & Material Facts:** facts relating to the Vendor's obligations and authority as detailed in Clause 5, including but without limitation, property ownership, tenancy agreements, safety and condition of the Property and fittings and compliance with relevant Government legislation.

1.2 Other words and phrases not defined in this Authority will, where applicable, take on those meanings given to them in the Act.

### 2. Vendor's Confirmation

2.1 By signing this Authority the Vendor(s) warrants and confirms:

- (1) having read this Authority.
- (2) being authorised to enter into this Authority.
- (3) having authority to grant the Agent selling rights of the Property.
- (4) the Property is not subject to any binding sale contract at the time of entering into this Authority.
- (5) that, in accordance with s 49A(1)(b) of the *Estate Agents Act 1980*, prior to signing this Authority the Vendor was advised by the Agent that Expenses and Commission were subject to negotiation.
- (6) having received at the time of signing a signed copy of this Authority.
- (7) having had the opportunity to obtain legal and other professional advice with respect to this Authority.
- (8) that, prior to signing, the Vendor's attention has been drawn to Item (11) *Commission Sharing*, Item (12) *Making a Complaint Concerning Commission and/or Outgoings*, Item (14) *Rebate Statement* and Clause 13 *Dispute Resolution*.
- (9) Where commission sharing is applicable as indicated in Item (11) the Vendor acknowledges, prior to signing this Authority, having received a notice of commission sharing in accordance with section 48 of the *Estate Agents Act 1980*.

2.2 Where the Vendor is a proprietary company the Agent may require the directors of such company to provide personal guarantees guaranteeing the company's performance under this Authority.

### 3. Agency and Authority

#### 3.1 Exclusive Authority

The Vendor by this Authority appoints the Agent as Exclusive Selling (Sole) Agent for the term of this Authority as set out in Item (6) or any extension to the exclusive authority period and will refer any prospective buyers of which the Vendor becomes aware to the Agent. Authority vested in the Agent by this Authority shall be deemed to be vested in the Agent's authorised employees.

3.2 The Agent agrees to such appointment.

#### 3.3 Ongoing Authority

Either party may terminate this Authority during the ongoing authority period at any time on the giving of not less than 14 days written notice. Such termination will be without prejudice to either party's existing rights, duties or obligations.

### 4. Agent's Selling Obligations and Authority

4.1 (1) The Agent will market the Property, as instructed by the Vendor in accordance with this Exclusive Selling Authority.

(2) The Agent is authorised to advertise the Property for sale, in accordance with the Vendor's instructions, at the Vendor's Sale Price (Item 4) or such other price as the Vendor may from time to time instruct in writing.

4.2 The Agent will take reasonable steps to ensure goods and services obtained for the Vendor are at competitive prices.

4.3 (1) The Agent must provide financial statements and account to the Vendor with respect to all monies received, paid or used by the Agent, carrying out the Agent's obligations under this Authority.

(2) The Agent will issue tax invoices, when necessary or required by the Vendor, in respect of all monies owing by the Vendor to the Agent.

4.4 The Agent's authority does not extend beyond the terms of this Authority and the Agent will not be required to provide services not authorised by this Authority.

4.5 Where authorised in writing to do so by the Vendor, the Agent may:

- (1) participate in the exchange or filling up of the sale contract.
- (2) sign the Contract where the terms have been agreed to by the Vendor.

4.6 Any services provided will be appropriate and carried out with all reasonable due care and skill.

### 5. Vendor's Obligations and Authority

5.1 The Vendor has at the time of entering into this Authority:

- (a) disclosed to the Agent all relevant and material facts
- (b) made no statement with respect to the land which the Vendor knows or has reason to believe may be misleading or deceptive. (Section 12 of the *Sale of Land Act 1962*)
- (c) provided all information relevant to Section 32 of the *Sale of Land Act 1962*.

5.2 The Vendor will at all times during the currency of this Authority keep the Agent advised of and disclose to the Agent in writing details, reasonably known to the Vendor, of any defects or want of repair to the Property likely to result in or cause injury to persons occupying, entering upon or using the Property.

5.3 The Vendor acknowledges, for the purposes of Clause 5.1, having been advised by the Agent of its obligations with respect to the relevant sections of the *Sale of Land Act 1962*, in particular Sections 12 & 32.

- 5.4 Where the Vendor has nominated a Vendor's Sale Price in Item (4) the Vendor must consider offers to buy at that price.
- 6. Indemnity**  
The Agent having complied with its obligations under this Authority and not having been negligent, the Vendor indemnifies the Agent, its officers and employees, from and against all actions, claims, demands, losses, costs, damages and expenses (including Fees and Expenses) which the Agent may suffer or incur in respect of:
- the Vendor's failure (without fault on the part of the Agent) to comply with this Authority; or
  - the Vendor's failure to give the Agent appropriate authority or instruction, or sufficient funds to carry out an instruction or authority; or
  - in accordance with the terms and conditions of this Authority, the Agent acting on behalf of the Vendor under this Authority.
- 7. Agent's Fee Reimbursement**
- 7.1 The Vendor acknowledges the Agent is entitled to the Selling Fee if:
- during the initial or any extended exclusive authority period (Item 6), the Property is sold; or
  - during the ongoing authority period (Item 7) the Property is sold and the Agent is the effective cause of sale; or
  - within 120 days after the conclusion of the exclusive authority period, the Property is sold to a Buyer introduced by the Agent during the exclusive authority period and the Agent is the effective cause of the sale; or
  - a binding sale contract is entered into or in accordance with Clauses 7.1(a), 7.1(b) or 7.1(c) and not completed due to:
    - cancellation by mutual consent
    - the default of the Vendor
    - repudiation by the Vendor
    - breach of warranty by the Vendor resulting in termination of the Contract by the Buyer.
- 7.2 The Agent will be entitled to the Selling Fee if the Property is sold during the exclusive authority period irrespective of whether the Property is sold by the Agent, Vendor or another person.
- 7.3 The Selling Fee will be calculated on the actual price the Property is sold for (Selling Price) notwithstanding such Selling Price may be greater or less than the Vendor's Sale Price set out in Item (4).
- 7.4 The Selling Fee, as detailed in Item (9), will be payable by the Vendor on settlement of the sale or within 7 days of the Vendor's default in Clause 7.1(d).
- 7.5 The Vendor authorises and directs the Selling Fee and Expenses (including taxes and GST if applicable) to be paid to the Agent by the person holding the deposit monies or other monies due under the contract for the sale of the Property, be that the stakeholder or other person as provided herein. The Authority shall be sufficient authority and discharge for such payment.
- 7.6 The Agent will not be entitled to the Selling Fee (Item 9) if after the termination or conclusion of this Authority the Vendor has signed an Exclusive Authority with another Agent.
- 7.7 The Agent is entitled to Fees for Services and reimbursement or payment of Expenses (including any taxes or deductions debited by financial institutions against the Agent's account and attributable to the affairs of the Vendor) as set out in Items (9) and (10) respectively, and whilst this Authority is in force and provided there are no genuine disputes as to the Agent's conduct of this Authority, is irrevocably authorised to deduct from monies received by the Agent on behalf of the Vendor all such Fees, Commissions and Expenses.
- 7.8 This Authority cannot be varied without agreement in writing signed by the parties.
- 7.9 Unless otherwise stated, all prices of Goods and Services under this Authority include (where applicable) GST.
- 7.10 If the Agent is entitled to an input tax credit on any payment or expense the Vendor will reimburse such payment or expense to the Agent at its GST free value unless payment by the Vendor to the Agent amounts to a taxable supply as defined in the GST Act in which case the Vendor will pay the payment or expense plus GST.
- 7.11 The Vendor acknowledges the Agent may, during the term of the Authority, to better facilitate the provisions of the Authority, utilise the services of another Agent in which case there may be commission sharing and upon the Vendor granting consent to commission sharing, which consent will not be unreasonably withheld, the Vendor will complete a new Authority making such provision, but otherwise on the same terms as this Authority (unless amendment is agreed to) including completion of Item (11) to enable such commission sharing for the balance term of this Authority.
- 7.12 The parties agree the Property is sold, or a sale obtained, when a binding contract, which is obtained in compliance with this Authority for the sale of this Property becomes unconditional.
- 7.13 The parties agree a Buyer will have been introduced to a property where the Agent has been a source of information with respect to bringing to the attention of a Buyer that such property is available for purchase.
- 8. Interest on Overdue Monies**  
Any monies payable under this Authority by the Vendor to the Agent (or any judgment given in respect of this Authority) not paid when due will attract interest from the due date for payment, to the date of payment at the rate prescribed by the Attorney General in accordance with the *Penalty Interest Rates Act 1983*.
- 9. Agent's Opinion**
- The Agent makes no representation as to being a financial or investment advisor.
  - The Agent's Estimated Selling Price range is applicable as at the date of this Authority and is the Agent's honest and fair opinion of the estimated value.
  - Nothing in this section requires the Estimated Selling Price (Item 5) and the Vendor's Sale Price (Item 4) to be the same amount.
  - An Agent making a false representation as to the Estimate Selling Price commits an offense under the Act in which case penalties apply.
- 10. Buyer's Default**  
In the case of default by the Buyer in not completing the purchase the Vendor will pay the Agent's Fees and/or Expenses and to do so may utilize any forfeited or recovered deposit monies. Should any balance Fees and/or Expenses remain unpaid thereafter, the Vendor shall pay same in accordance with this Authority.

**11. Provision of Documents**

The parties agree and confirm documents may be forwarded electronically if the recipient has provided an email address or facsimile number in the Item Schedule to this Authority.

**12. Special Conditions**

Any Special Conditions to this Authority shall form part of this Authority. Should there be inconsistency between the terms of this Authority and a Special Condition, the Special Condition shall apply.

**13. Dispute Resolution**

In compliance with the *Estate Agents (Professional Conduct) Regulations 2008* the Agent has in place procedures for resolving complaints and disputes arising from the operation of the Agent's estate agency practice. If a complaint is made the Agent will advise the dispute resolving procedures. The Agent will make every effort to minimize or resolve disputes relating to the Agent's performance.

**14. Privacy Statement**

14.1 The Agent collects and uses personal information provided by you as the Vendor to provide the services required by you or on your behalf.

14.2 You as the Vendor agree the Agent may subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:

- (1) potential buyers; and/or
- (2) property data collection agencies; and/or
- (3) Body Corporates & financial institutions; and/or
- (4) other third parties as may be required by the Agent for the purposes of marketing, sales promotion, administration and complying with legislative and regulatory requirements.

14.3 Without provision of certain information the Agent may not be able to act effectively or at all on the Vendor's behalf.

14.4 The Vendor has the right to access such information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.

14.5 By signing this Authority the Vendor consents to the collection and use of information as provided for in this Privacy Statement.