



Best Practice Guide

Tender

DISCLAIMER: The information contained in this document is not intended to form professional legal advice or legal opinion on any particular matter.

1.0 General

- 1.1 Members should ensure compliance at all times with the provisions of the Fair Trading Act 1986, the Commerce Act 1986, the Real Estate Agents Act 2008, the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 and the Rules of the Real Estate Institute of New Zealand Inc.
- 1.2 Members should not engage in any conduct which is misleading or deceptive or is likely to mislead or deceive prior to, during or after the sales process.
- 1.3 Members should endeavour to conduct a sale by tender in a manner that does not result in a sale prior to the tender closing date wherever possible.
- 1.4 Nothing in this Guide limits or diminishes members' obligations to report suspected misconduct or unsatisfactory conduct of a licensee to the Real Estate Agents Authority as required under the Real Estate Agents Act 2008 and/or its regulations.

2.0 Sale by Tender

- 2.1 Members should not use the expression "sale by tender" or any similar wording or engage in a process for sale by tender unless the process is one in which the seller invites confidential offers for the purchase of land or a business upon terms which include statements:
 - (a) as to date and time for closing of offers, and
 - (b) that offers shall remain unopened until that date and time, and
 - (c) that the price stated is without any reference to the price stated in any other tender(s).

3.0 Authority to Sell

- 3.1 Members should not commence a sale by tender unless a written authority for sale by tender has been signed by or on behalf of the seller.
- 3.2 Members should submit a copy of this Guide to prospective sellers prior to accepting instructions for sale by tender.
- 3.3 Prior to advertising a sale by tender, members should agree with the seller on the form of the particulars and conditions of sale by tender to be used and should provide each tenderer with a copy of the agreed Particulars and Conditions of Sale by Tender.
- 3.4 Where the seller has reserved the right to sell the property prior to, during or after the opening of tenders, the member should ensure that a written authority is obtained from the seller confirming such method of sale. In these situations, the particulars and conditions of sale by tender referred to in paragraph 3.3 should be carefully drafted to reflect the tender process chosen by the seller.

4.0 Marketing

- 4.1 In advertising a property for sale, members should use the words "tender" or "for sale by tender" and should not use any qualifying words or expressions such as "open" or "closed."
- 4.2 Members should ensure that the tender process being utilised by the seller is made clear in all promotional materials, advertising and representations.
- 4.3 Where the seller has elected to reserve the right to sell the property prior to, during or after the opening of tenders, then any advertising carried out by the member on behalf of the seller should state this method clearly. The appropriate phrase to insert in the advertising may be "tender unless sold by private treaty" which reflects the reference to the sale taking place prior to, during or after the opening of tenders.

5.0 Receiving of Tenders

- 5.1 Members should ensure that all tenders (howsoever received) are placed in a sealed (tender) envelope and that immediately upon receipt; the envelope is marked with the address or other appropriate identification of the property, the date and time of receipt. Members should ensure that all tenders are deposited and held by the member in a secure and confidential manner until the Closing Date and Time.
- 5.2 Members should keep and maintain a register for all tenders received, and should, on request by the tenderer, provide a written acknowledgement for the tender received, identifying the property and the date and time the tender was lodged. Members should ensure that the register is held in a secure and confidential manner at all times.
- 5.3 Members should ensure that the tenders, tender envelopes or envelopes for records of payment for deposits are not opened by any person for any reason whatsoever prior to the Closing Date and Time.
- 5.4 Where the seller has elected to reserve the right to sell the property prior to, during or after the opening of tenders then the member should notify each tenderer of this election by the seller at the time that the member is approached by a tenderer for information about the tender and also at the time that the tenderer submits the tender in accordance with the provisions of this clause 5.

6.0 Opening of Tenders

- 6.1 After the Closing Date and Time, all tenders should be opened by the member or the member's representative in the presence of the seller or the seller's nominated representative.
- 6.2 Members should ensure that they identify for the seller or the seller's representative all tenders that do not comply with the Particulars and Conditions of Sale by Tender.
- 6.3 Members should ensure that all tenders, including the identity of the tenderer, will be kept secure and confidential and that the details of any tender (whether successful or unsuccessful) will not be divulged to any other tenderer or third party, save that statistical data may be provided to the Real Estate Institute of New Zealand Inc.
- 6.4 Members should ensure that all unsuccessful tenderers are notified and deposits returned within two (2) working days of a tender being accepted or the tender process being terminated.