



MEMO

TO: Real Estate Agents
FROM: Alicia Hutton
SUBJECT: Termination Clause for Agency Agreements
DATE: 15/09/2011

The Board has received legal advice on what constitutes a **valid written appointment** for the purposes of Section 18 of the *Property Agents & Lands Transactions Act 2005*.

Section 18(1) provides that an agent is only entitled to receive remuneration for services provided by the agent in the capacity of a real estate agent if there is in place a **valid written appointment** of the agent as such; that is, an appointment contained in a document that meets all of the requirements of S18(2).

One of those requirements is that the document must clearly set out "how either party to the agreement may terminate the appointment and any conditions subject to which it may be terminated". If a document that purports to appoint an agent to act for another person in the capacity of a real estate agent does not contain provision for termination in accordance with paragraph (e) of sub-section 18(2), then it is not a valid appointment for the purposes of sub-section 18(1) and the agent cannot, without leave from a court, receive or retain any remuneration for the agent's services.

It is not correct to assert that the mere expression of a fixed period for which the agency will continue constitutes a provision that clearly sets out how either party to the agreement may terminate the appointment.

S18(2)(e) plainly requires that regardless of whether an appointment is for a fixed period or of indefinite duration there must be provision for either party to terminate it; and in the absence of a provision for termination by either party then the appointment is not a valid one.

For example, if an appointment is for the sale of a client's property and is for a period of 90 days, then unless there is also a provision for termination by either party during that period, the agreement does not contain a termination provision and therefore is not a valid agency agreement. The fact that it may terminate when the fixed period of 90 days expires does not constitute the required termination provision.

An example of a very simple termination clause would be: *This agreement may be terminated by either party by giving 30 days written notice to the other.*

The Board urges all property agents to review the provisions of their appointment documents to ensure that they meet the requirements of the Act.