

Estate Agent contracts & terms

Turners Oak



Here we share some information about estate agency contracts and what to look out for. It is not exhaustive and is not legal advice. If you have a question about an estate agent's contract or terms just get in touch and we will happily answer it for you, contact details on the website www.turnersoak.co.uk

Types of contract

There are four main types of estate agency contract: sole agency, sole selling rights, joint agency & multi agency.

Sole agency is the most common type of contract. It means that you are instructing a single agent to market your home subject to the terms of the contract and that you will pay them the agreed commission should they introduce a buyer to your property who then goes on to exchange contracts. You will breach the contract if you instruct a second agent within the contract term and could end up being liable for their fees.

Sole selling rights give the estate agent the "sole selling rights" to your property during the contract term. This means that even if you find a buyer yourself you will still have to pay the estate agent. These contracts should be avoided.

Joint agency contract is where you instruct two agents who agree the commission together and often share it, irrespective of who sells your property. They do not work in competition with each other. These are rare and most often used when dealing with unique properties that may have cross-market appeal.

Multi-agency contracts allow you to instruct as many agents as you like. They can have different commissions although the commissions in general tend to be higher. They operate as 'winner takes all', so the agent that introduces your buyer is the one that you pay. It is thought that they encourage competition and open your property to more buyers. In reality it can mean a mad dash to market your property - often not presenting it at its best - and a lack of care to ensure the best buyer has been found at the best price as the agents are incentivised to push for a sale to be agreed to 'beat' the other agent. Bear in mind over 90% of buyers will first see a property online and that agent's databases will more than likely all hold the same buyers so you may be paying a higher fee for a poorer service that is not aligned with your objectives.



Cooling off period

If you sign your contract in a location that is not the agent's business premises (i.e. your home) you have the right to a 14 day cooling off period during which you can cancel the contract without penalty.

Because of this right, some agents, understandably, will ask for your agreement to cover their costs if you want them to start work within the 14 day cooling off period and you subsequently cancel. If they do this, the agent must make this clear in their Terms of Business and specify the fees and costs, which, according to The Property Ombudsman, must be reasonable, reflect the activity undertaken and not include a penalty charge.

Contract length

Your contract length is the number of weeks you agree to commit to a particular estate agent exclusively, during which you cannot market with another agent.

Some agents will ask you to sign exclusively with them for 20 weeks or more! This is wholly unreasonable. Imagine if they weren't performing or you weren't happy with them - there's nothing you can do for 5 months!

The maximum contract term we suggest accepting is 12 weeks. This gives the agent time to market your property properly and make any adjustments. If after this time your property isn't sold but you are happy with your agent you can continue, but you have the choice to look elsewhere should you wish.

Do not be pressurised to sign a contract longer than 12 weeks even if you're told 'that's the industry standard' or 'the boss won't let them change it'. It's not standard and any decent agent should want you to stay with them because you are happy to, not because you are contractually obliged to.

Notice period

As well as a contract length, most contracts will also have a notice period which could be 14-28 days. Check whether you have to wait until the end of the contract before you can give notice - i.e. if the contract is 12 weeks with a 28 day notice period that can only start at the end of the 12 weeks then, effectively, it's a 16 week contract.

Sometimes the notice has to be in writing/email. When giving notice make sure you receive confirmation back from the agent.



Fees

The vast majority of estate agent fees are on a no-sale no-fee basis and are based on the agent introducing a buyer to your property who subsequently completes the legal process to exchange of contracts (check our jargon buster). The fee becomes due at this stage and your solicitor will pay them from the proceeds of sale (so you don't need the money in advance)

Fees are normally agreed as a percentage of the sales price the estate agent achieved plus VAT, however The Property Ombudsman states that the agent should include in your contract the fee in pounds inclusive of VAT so you are explicitly aware of the total cost.

Watchout for agents charging a percentage of the marketing price rather than the sales price, as if they sell for less you are still going to pay them based on the original marketing price. Equally watch out for any fees if you withdraw from marketing - these aren't standard but you may decide they are reasonable.

Some estate agents will have a 'ready, willing and able' clause in their contract which means that if they find a buyer who is ready, willing and able to purchase your property and for whatever reason you decide not to sell then you still have to pay them their fee. Whilst there is an argument that the agent has done their work in finding a buyer, these clauses aren't standard and should be avoided.

Most online estate agents will charge a fixed fee upfront. This tends to be lower than the no-sale no-fee option and means that you pay whether you sell your property or not. Online estate agencies tend to offer significantly less support and there can be a host of additional costs if you want a full service, so make sure you know what you are paying for and you have the support you value.



Other costs

Some agents will charge separately for enhanced marketing such as professional photography or videos. These charges are normally paid in advance. Every agent should be marketing your property at its best as part of their service so ask why they are not included in their service as standard and only agree to pay for these upfront if you agree that there is a valid reason for them to be at an additional cost.

An EPC (Energy Performance Certificate - see our jargon buster) is a legal requirement to market your home. Some agents include this in their fee, some will source an EPC assessor for you and charge you separately. You can source an assessor yourself which may be cheaper than the agent doing it for you.

You will need a solicitor/conveyancer (see our 'jargon buster' and 'things to consider when selling a home you've been in for many years' on the website) to carry out the legal work required to transfer your property to your buyer. Many estate agents will recommend solicitors/conveyancers to you as part of their service - be cautious as to their motives as many agents are heavily targeted to do this irrespective of the service that the solicitor/conveyancer provides and they can earn large referral fees from them. Be particularly cautious if it is a 'panel conveyancer' as they can be very hard to communicate with and tend to manage very high volumes of 'transactions' rather than looking after clients personally.

Don't forget we have more free resources including 'What to think about when choosing your estate agent' on our website
www.turnersoak.co.uk