

Tenders

Fact sheet

What is a tender?

A tender is a method of selling a property, which requires all buyers to submit their sealed offers to the seller, through the seller's agent, by a set date.

FOR SELLERS

Should I consider selling by tender?

Your agent¹ may recommend selling by tender on the basis that this process imposes a time limit on buyers. This may create a sense of urgency and competition for buyers, and may therefore result in a quicker sale or better price. Buyers may also be prepared to limit the conditions that they attach to their offer in a competitive situation.

A tender will not guarantee that your property sells – this will depend on a range of factors, including the state of the market, and how attractive your property is to buyers compared with other similar properties. If a tender does not result in a sale, you can consider other selling methods.

Do I need to have an agency agreement?

Yes, you do. This will be a sole agency agreement (not a general agency) as the process needs to be run through a single agent. During the period of the tender, you cannot sell the property by any other method.

For more information on Agency Agreements and Sale and Purchase Agreements is available from www.reaa.govt.nz or by calling **0800forREAA** (0800 367 7322).

¹ Agent is a general term that refers to an agent, branch manager or salesperson.

How does the process work?

When a property is advertised by tender, there is a set period during which potential buyers can inspect the property and submit their sealed offers. Properties offered by tender are generally advertised on the basis of “not selling prior”. This means that buyers must submit their offers along with all other buyers, and the seller will not negotiate with any buyer before the closing date.

Properties sold by tender are advertised without a price although sometimes advertising will include the rating valuation (RV).

The tender can call for either unconditional offers only, or allow conditional offers. A tender that is confined to unconditional offers means that buyers must be in a position to conclude the sale if they are the successful bidder. This means that they will have to have arranged finance in advance and taken any legal and technical advice they require. Unconditional offers provide the seller with more certainty that the sale will be concluded. However, accepting only unconditional offers does carry a risk that fewer offers will be made.

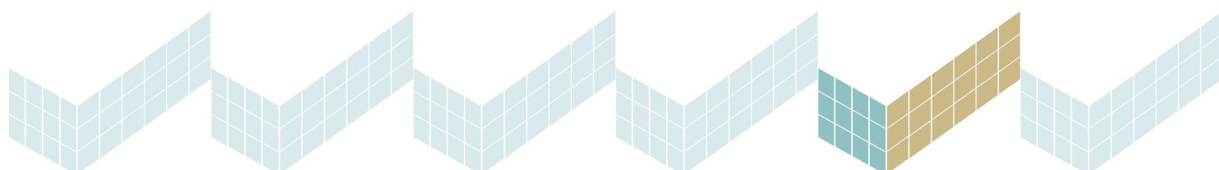
A tender that allows conditional offers may result in more offers. If your property is being marketed to overseas buyers, you will need to allow for conditional offers as overseas buyers may not be able to conclude a purchase without first getting approval from the Overseas Investment Commission.

The agent or salesperson will make available to buyers the Particulars and Conditions of Sale by Tender that have been agreed by the seller. The agent is also required to give you the approved Guide to New Zealand Residential Property Sale and Purchase Agreements.

The offers are held securely and remain sealed until the tender closing date. The seller considers all of the offers once that date has been reached.

Do I have to accept the highest offer?

No. You can accept any offer you wish. For example, a lower offer with fewer conditions may be more attractive as it gives you more certainty about a potential sale than a higher offer with more conditions. Before deciding, you should get advice from your lawyer. If you have a preferred offer, you may want to accept, or negotiate further with that buyer, through your agent. If none of the offers are satisfactory to you, you can reject them all and discuss other selling methods with your agent.



FOR BUYERS

Most of the information set out above is relevant to buyers as well as sellers. The following provides some additional information if you are a buyer.

What should I think about when submitting an offer?

Buying at tender requires the same care and research as buying by any other method. You should ensure you carefully read the Particulars and Conditions of Sale by Tender that the agent must give you. You should also take advice from your lawyer before finalising your offer.

When submitting your offer you will generally be required to include a deposit of a specified amount. This will be held in a trust account and returned to you if your bid is not accepted.

If the tender calls for unconditional offers only, you will need to ensure that you have arranged any finance you need, obtained a Land Information Memorandum (LIM), building inspection report, or other information that you need, before you submit your offer. If you have submitted an unconditional offer and you are the successful bidder, you will not be able to impose any conditions or change the offer subsequently.

Will other buyers know what I've offered?

No. Unlike an auction, which is a public process, tenders protect the privacy of the bidders. You submit your sealed offer to the seller's agent, who is required to hold it securely until the closing date. The only people who will see your offer are the seller and agent.

Fact sheets that provide further information on the property buying and selling process are available from www.reaa.govt.nz or by calling **0800forREAA** (0800 367 7322).

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To the best of the Real Estate Agents Authority knowledge, the information in this guide is accurate at the date shown below. However, the requirements on which this information is based can change at any time and the most up-to-date information is available at www.reaa.govt.nz [Version 1.0, 17 November 2009].

