



FACT SHEET

Calculating rates of pay where two or more employees work together to sell a property

Important information

This Fact Sheet has been prepared by the Australian Fair Pay Commission to assist in the understanding and implementation of the *Real Estate Agents' (Commission Only) Australian Pay and Classification Scale* [2007] APCS 3.

Nothing in this Fact Sheet provides a legally enforceable interpretation of the Pay Scale or constitutes legal advice. This Fact Sheet should, therefore, be seen as a general guide only.

Sometimes two or more employees are involved in selling a property. This can be due to varying workloads, levels of expertise or particular working arrangements at different real estate businesses.

In order for two or more employees to be involved in selling a property, where at least one of those employees is covered by the *Real Estate Agents' (Commission Only) Australian Pay and Classification Scale* (the Pay Scale), the conditions in paragraph 6(2) of the Pay Scale must be satisfied. These conditions require that:

- each employee who will be involved in selling a property make an agreement with their employer, in writing, that states the proportion of the employer's net commission each employee responsible for selling that property is entitled to; and
- the total of all the proportions in the agreement(s) sum to at least 35% of the employer's net commission.¹

Once these conditions have been met, each employee covered by the Pay Scale who is involved in the completed sales transaction must be paid at least the relevant proportion of the employer's net commission that is set out in the agreement(s).

Note: Even where two or more employees are involved in selling a property, if an agreement of the type described above is **not** in force in relation to an employee who is covered by the Pay Scale, that employee must be paid at least 35% of the employer's net commission.

Below are two examples of arrangements where two or more employees work together to sell properties.²

¹ Note that 35% of the employer's net commission is the minimum aggregate proportion only. In some cases negotiated agreements will specify an aggregate proportion in excess of 35%.

² These examples are provided for general guidance only. The Australian Fair Pay Commission in no way wishes to endorse or impede any particular remuneration arrangements that employers and employees may have at their places of work.

Example 1:

Sally has been employed as a real estate salesperson at ABC Realty Pty Ltd for several years. Recently she agreed with her employer to be classified as a 'Commission only real estate salesperson undertaking sales transactions involving an agency relationship' and is now covered by the Pay Scale.

On 3 October 2007, Sally and all the other salespersons employed at ABC Realty sat down with their employer and negotiated an agreement to which they all agreed and signed.

The agreement set out, among other things, the method by which the 35% of the employer's net commission would be divided where two or more employees were responsible for selling a property. The terms of the agreement dealing with this matter provided as follows:

Commission splits

Where two employees are responsible for selling a property, the minimum proportion of the 35% of the employer's net commission (ENC) that each employee is to receive is to be calculated using the following formula:

		Type of sales transaction		
		Open	Exclusive	Auction
Function of sales person	List	30% (10.5% of ENC)	60% (21 % of ENC)	70% (24.5% of ENC)
	Sell	70% (24.5% of ENC)	40% (14 % of ENC)	30% (10.5% of ENC)

Several weeks after making the agreement, Sally sources a client and *lists* a property. Sally passes management of the sale of the property on to another salesperson at ABC Realty, who subsequently *sells* the property at auction.

The sale of the property generates an employer's net commission of \$7,500. Accordingly, Sally is entitled to receive a commission payment of \$1,837.50 (24.5% of \$7,500) for listing a property that sold at auction.

Example 2:

Peter, is employed as a 'Commission only real estate salesperson undertaking sales transactions involving an agency relationship' at XYZ Realty Pty Ltd and is covered by the Pay Scale.

Peter has sourced a client to XYZ Realty, however, he feels that his current family commitments will not leave him with enough time to also manage the completion of the sale.

Peter arranges a meeting with his employer and another employee who is covered by the Pay Scale, Donna. At the meeting, Peter, Donna and their employer agree, in writing, that if Donna manages the sale to completion, Peter and Donna shall each receive 17.5% of the employer's net commission.

Several weeks later, Donna completes the sale of the property and generates an employer's net commission of \$8,400. Accordingly, Donna and Peter each receive a commission payment of \$1,470 (17.5% of \$8,400) from their employer.

Need further information?

If you would like more information on wage rates, call the Workplace Infoline on 1300 363 264.

If you would like to view the Commission's decision in full you can visit the Australian Fair Pay Commission website at www.fairpay.gov.au.

