

Disclosure of Financial Benefit

(Section 136, Real Estate Agents Act 2008)

Full name of Licensed Sales Consultant: Lena Mercer

Purchaser: _____

Vendor: John William + Ann Misa Gilda Te Amo

Address of property: 26 Hemingway Place, Spencerville

1. I/We _____ (~~Vendor~~
~~or Purchaser~~) acknowledge that Lena Mercer (full
name of Licensed Sales Consultant) is the Vendor or has an interest in the property at 26 Hemingway Plc
Spencerville (address)
and may benefit financially from this transaction.

OR

2. I/We John + Ann Te Amo (vendor or
~~purchaser~~) acknowledge that Lena Mercer (name of
person related to the Licensed Sales Consultant)
is a person related* to the Licensed Sales Consultant named above.
John + Ann Te Amo (person related to
the Licensed Sales Consultant) is the vendor of or has an interest in the property at 26 Hemingway Place
Spencerville
and may benefit financially from this transaction.

I acknowledge that I have been advised to seek legal advice concerning this disclosure prior to signing any sale and purchase agreement.

Signature(s): _____ Date: _____

Client(s) Name: _____

*Select one

Guide to using Disclosure of Financial Benefit

s136 Real Estate Agents Act 2008

The majority of licensees are now familiar with the disclosure requirement that applies to them under section 134 of the Act where the client's property is acquired by the licensee or its related persons. It is, however, easy to forget that situations that may not necessarily be captured by s134 may fall under s136.

Section 136 states that a licensee must disclose in writing any potential financial benefit from a transaction before or at the time that the licensee provides the prospective party with any contractual documents that relate to the transaction.

As this requirement captures potential financial benefit, its application can be very wide and can include situations where any indirect financial benefit to a licensee or its related person is possible or likely.

Agencies must ensure that proper processes are in place for this type of disclosure to be made where required in order to carry out their supervisory role.

Decisions from the CAC to date indicate that it is not sufficient to simply rely on a clause inserted in a sale and purchase agreement that deals with this requirement. A separate form of disclosure in writing is required.

When you are using this sample form, you will need to write the details of the disclosure in the space provided.

The following are some of the common scenarios where s136 would apply:

1. Licensee is one of the vendors of the property being sold to a customer.
2. Vendor is a company and licensee is a director or a shareholder of that company.
3. Vendor is a trust and licensee is a trustee of that trust.
4. Vendor is a company and licensee's spouse or a de facto partner is a shareholder or director of that company.
5. Vendor is the licensee's employee, parent, child, grandchild, brother, sister, nephew, uncle, aunt, grandparent or niece of the licensee.
6. All or part of the sale proceeds are to be received or shared by the licensee or any of the "related persons" defined under s137 of the Act.
7. Any other type of financial benefit is received by the licensee or any of the "related persons" defined under s137 of the Act.
8. Any financial benefit that may be received as a result of or indirectly from the transaction by any related person subsequent to the transaction.

This is not a conclusive list of scenarios where s136 could apply and on each occasion the licensee will need to be very careful to ensure that s136 will not be breached.

NB - s136 does not apply in situations where the transactions are done privately and where it cannot be said that "real estate agency work" was being performed by a licensee. You must check your agency's policy before undertaking a private sale and also ensure that the agency is not involved in any private sale.