

Service Agreements for Buyers Working with Common Law Brokerages

Summary: An industry member in a common law brokerage who is providing brokerage services to a buyer **should** enter into a written service agreement with the buyer. If the agreement is an Exclusive Brokerage Agreement (right to represent the buyer), it **must** be in writing. The *Real Estate Act* Rules establish the minimum requirements of a written service agreement. **For residential real estate, the Rules further identify mandatory content for Exclusive Brokerage Agreements.** Whether or not the agreement is an exclusive or non-exclusive right to represent the client is a decision that must be made by mutual consent.

[See: *Real Estate Act* s.1(1)(w.1), *Real Estate Act* Rules s.43(2), s.44(1), s.48, s.55(1)(2)(3), s.56, s.58, s.60.1 and Schedule 1]

Note: For the purposes of this Information Bulletin, and where the context permits, “real estate broker” refers to all four categories of real estate broker license i.e. brokerage, broker, associate broker and associate.

Are written service (brokerage) agreements mandatory in common law agency when representing buyers?

No; however, a written service agreement is preferable. This is reflected in the *Real Estate Act* Rules. Section 43(1) states that an industry member who establishes a client relationship **should** enter into a written service agreement with that client. Section 43(2) outlines the minimum requirements for any written service agreement.

Are written service (brokerage) agreements widely used in common law agency when representing buyers?

In common law brokerages today, the most common practice when representing buyers is to establish a verbal non-exclusive agreement. Typically in this relationship, the real estate broker and the buyer have verbally consented to an agency relationship. In the case of residential real estate, RECA's [Agency Relationships Guide](#) or similar guide containing mandatory content has been used to assist in the process.

The use of written service agreements for buyers in common law agency is gaining greater acceptance by real estate brokers and consumers. The requirements of a written service agreement include the requirements of s.43 of the Rules as well as the other requirements of the Rules and provide additional clarity in meeting all requirements over those of a verbal agreement. As well, in the absence of a written service agreement, there is a degree of risk to the real estate broker that the proper disclosures have not been made and the role and services of the real estate broker may not be clear in the minds of the buyer.

In common law agency, does a written service agreement (buyer brokerage agreement) have to be an exclusive right to represent?

No, written service agreements in common law agency can be either exclusive or non-exclusive. Regardless of the type of relationship they enter into with consumers, real estate brokers should have a clear understanding of their obligations to all parties. While consumers should make an informed choice about the type of relationship they wish to have with a real estate broker, they should also understand the implications of the options available to them.

In common law agency, what is the difference between an exclusive and a non-exclusive buyer brokerage agreement?

In common law agency, an **exclusive** buyer brokerage agreement is an agreement between a buyer client and a brokerage whereby the buyer gives the brokerage the exclusive right to act on behalf of the buyer on the terms and conditions outlined in an Exclusive Buyer Brokerage Agreement. In this type of agreement, the buyer warrants to the brokerage that he or she is not currently represented by any other brokerage and will not enter into another buyer brokerage agreement with another brokerage during the term of the agreement.

In other words, in an exclusive buyer brokerage agreement, the buyer agrees only to use the services of and be represented by the common law agency brokerage to assist them in purchasing a property during the term of the agreement.

A **non-exclusive** brokerage agreement for buyers is significantly different from an exclusive right to represent. The key difference is that the buyer is not limited to using the brokerage they have entered into the brokerage agreement with. In other words, they can enter into non-exclusive buyer brokerage agreements with other brokerages during the same period of time.

In common law agency, when a client agrees to enter into a written service agreement, are there specific forms I must use when representing a buyer?

The answer to this question will depend on two factors. Will you be representing a buyer who is interested in a residential property? Will you be entering into an exclusive or non-exclusive buyer brokerage relationship?

If the answer to **BOTH** of these questions is “yes”, the agreement must contain the mandated wording as set out in the *Real Estate Act* Rules, section 60.1. The mandated content of an *Exclusive Buyer Brokerage Agreement* for use in residential real estate transactions is contained in Schedule 1 of the Rules. The *Exclusive Buyer Brokerage Agreement* is posted on RECA’s website under [industry member tools](#).

If the service agreement does not relate to a trade in residential real estate **OR** does not involve an exclusive right to represent the client, you are not required to use the same wording as provided in the mandated form. However, it is important to recognize you must comply with section 43(2) of the *Real Estate Act* Rules when employing a written service agreement.

Can the wording in an Exclusive Buyer Brokerage Agreement contained in Schedule 1 of the Real Estate Act Rules be changed or altered by the brokerage?

If an industry member uses a different form than the *Exclusive Buyer Brokerage Agreement* contained in Schedule 1 of the Rules, the form must contain the mandatory content set out in Schedule 1 and this mandatory content must not be directly or indirectly altered by the industry member.

Any form used by the industry member may, in addition to the mandatory content, include additional or supplementary content; however, such additional or supplementary content must not directly or indirectly alter the meaning or effect of the mandatory content and must not alter the obligations or requirements of industry members outlined in the *Real Estate Act* or the Rules. That said, upon the initiative and request of a client the forms may be amended by having the parties to the agreement agree to and initial the changes.

Practice Tip for Non-Exclusive Common Law Brokerage Agreements

When a brokerage has decided to develop its own non-exclusive brokerage agreement for either residential or non-residential transactions (e.g. commercial, industrial, investment, farm, ranch etc.), RECA recommends the brokerage refer to the Common Law Brokerage: Agreement Outline with Example Clauses document posted on RECA's website under [industry member tools](#) as this is intended to assist brokerages in developing forms that meet the minimum requirements established in s.43(2) of the *Real Estate Act* Rules.

Brokerages may include additional terms and / or clauses to these minimum requirements as may be appropriate for their chosen business model and the needs of the consumers they represent.

For additional information about written service agreements please review the Information Bulletin on RECA's website entitled [Service Agreements - Real Estate Brokerage](#).