



GUARANTEED SALES AND REPRESENTATIONS

Summary: No industry member may make a representation to a seller that the industry member will guarantee a specific sale price for real estate within a specific time except under the terms of a written guaranteed sale agreement. Only a brokerage can execute a guaranteed sale with an owner. [See: *Real Estate Act*, s.19, s.20, *Real Estate Act Rules*, s.63]

No industry member may make a representation to a seller that the industry member will guarantee a specific sale price for real estate within a specific time except under the terms of a written guaranteed sale agreement. Only a brokerage can execute a guaranteed sale with an owner. The brokerage may delegate this authority to the broker, associate brokers and associates but the guaranteed sale agreement can only be executed on behalf of the brokerage. In other words, the brokerage is guaranteeing to purchase the real estate for a specific price as of a specific date.

When a brokerage performs a guaranteed sale:

- a purchase contract must be drawn up between the brokerage and the owner outlining the purchase price, date of possession and terms of the sale;
- the brokerage must place 5% of the total purchase price into a separate trust account and release it from trust upon completion of the transaction;
- the brokerage must hold the money in trust for the seller; and,
- the brokerage cannot charge a commission on the guaranteed sale.

The legislation is very clear that only a brokerage can enter into a guaranteed sale agreement. If a brokerage has a guaranteed sale program, it is recommended it be part of its office policy.

Brokerages that offer guaranteed sales agreements as an incentive must ensure the guaranteed sale program advertisements are not misleading. Often, guaranteed sale program advertisements are silent on the purchase price and the implication is the purchase price will be based on the listing price or the property's market value. However, the brokerage's purchase price will often be calculated using a formula where the commissions, legal fees, carrying cost and commission on the resale are discounted from the purchase price, therefore significantly reducing the purchase price paid to the seller. Where this is the case, the brokerage must disclose the purchase price formula or include the purchase price formula in the advertisement or suggest it may be viewable at the brokerage's website or available via fax, etc.

Additionally brokerages may not charge commissions or deduct commissions from the purchase price on guaranteed sale agreements.

Relocation companies can also become involved in guaranteed sales. Their involvement with the corporate client in the guaranteed sale can be as a power of attorney for the corporate client in which case they are not directly involved in a guaranteed sale and the rules governing guaranteed sales would not apply. However, in the takeover of an employee's property by a relocation company where the relocation company is directly

involved with the payout of the purchase price to the employee of the corporate client, the relocation company is then acting as a brokerage and is required to be licensed and to follow the rules of a guaranteed sale just like any other licensed brokerage.

There is a difference between a guaranteed sale by a brokerage and an industry member purchasing property on his/her own behalf. For more information, see RECA Information Bulletin: *Conflict of Interest – Buying a Client’s Property*.

Example

An industry member is prohibited from advising his seller that he or someone on his behalf will purchase the seller’s home for a certain amount of money within a certain time period. Or, in other words, “If your house hasn’t sold within two months, Mr. Seller, then I’ll buy it myself.” This would not be in compliance with the legislation and would be misleading to a seller as it implies a guaranteed sale of his property. The seller, on the strength of that misleading guarantee, might negotiate a purchase contract on another property and suffer financial loss.