

## Introduction

Buying or selling a property is probably one of the most important financial decisions a typical consumer will make in their lifetime. It is in your best interest to take a moment to consider the type of relationship you might be entering into with an Industry Member. The more you understand your relationship, the more likely it is you will be satisfied with the results. This Guide will help you and your Industry Member discuss the information you need in order to make an informed decision about your relationship. Industry Members have a regulatory requirement to present and discuss this Guide with you.

## What is Agency?

Agency is a relationship established when two parties agree to have one party act on behalf of the other. For the purposes of this document, when the word “Agent” is used it will refer to “the brokerage” if you are dealing with a common law agency brokerage, and will refer to a “designated agent” if you are dealing with a designated agency brokerage.

The Agent examples discussed in this guide will be:

- the real estate brokerage acting on behalf of a buyer or a seller, known as common law agency
- designated agent(s) from a designated agency brokerage acting on behalf of a buyer or a seller designated agency.

In common law agency, the agency relationship exists between the Client (buyer or seller), and the brokerage and its industry members. In designated agency, the agency relationship exists between the Client and a designated agent(s) from a particular brokerage, and not with the brokerage and its industry members. Industry members are obligated to inform you which type of brokerage they work for, a common law brokerage or a designated agency brokerage.

At the first point of contact with an Industry Member, the buyer or seller is not in an agency relationship with the brokerage or designated agent. You should be careful not to form a relationship until you and the Agent have made a conscious decision to have the brokerage or designated agent act on your behalf.

If you choose to be in an agency relationship with a brokerage or designated agent you will be asked to sign a written service agreement confirming your choice. Although you may decline a written service agreement, it is recommended. Written service agreements provide clarity and transparency regarding the agency relationship. Examples of the written service agreement are the seller brokerage agreement and the buyer brokerage agreement. These agreements explain the duties and obligations of the Agent and the Client.

# Sole Agency

Sole agency is a relationship in which the brokerage or industry member acts as the Agent for only one party in a trade. The essence of the agency relationship is that the Agent has authority to represent the Client in a real estate transaction. In sole agency, Agents are obligated to protect and promote the interests of their clients. Specifically, your Agent owes you the following duties:

## ***Agent Duties to the Client***

*Undivided Loyalty:* The Agent must act solely in your best interests, must always put your interests above the agent's own interests and above the interests of other parties. This means avoiding conflicts of interest and protecting your negotiating position at all times.

*Confidentiality:* The Agent has a duty to keep your confidences. Confidential information includes any information about you, the property, or the transaction that is not required by law to be disclosed, but if disclosed could be used by another party to your disadvantage. The duty of confidentiality continues even after the agency relationship ends.

*Full Disclosure:* The Agent must inform you of all facts known to the Agent that might affect your relationship or influence your decision in a transaction. This includes any conflicts of interest the Agent might have in providing services to you. The Agent should not decide if information is important to you, rather, the Agent is obligated to disclose all relevant information to you. However, any confidential information from a previous agency relationship will not be disclosed to you unless the previous client agrees in writing.

*Obedience:* The Agent must obey all of your lawful instructions, as long as instructions are reasonable and ordinary under the circumstances. If you insist the Agent do something unlawful, the Agent would be obliged to refuse, and consider terminating the relationship and existing service agreement.

*Reasonable Care and Skill:* The Agent must exercise reasonable care and skill in performing all assigned duties. The Agent is expected to meet the standard of care that a reasonable and competent industry member would exercise in a similar situation.

*Full Accounting:* The Agent must account for all money and property placed in the Agent's hands while acting on your behalf.

## ***Client Obligations***

The Client's obligations are set out in the written service agreement and include:

- compensating the Agent for expenses incurred as a result of carrying out responsibilities as requested on your behalf;
- paying any agreed-upon remuneration or compensation as outlined in the signed service agreement; and,
- disclosing to the Agent matters that could affect a transaction, including material facts that must be passed onto the third party in the transaction.

## **Common Law Agency**

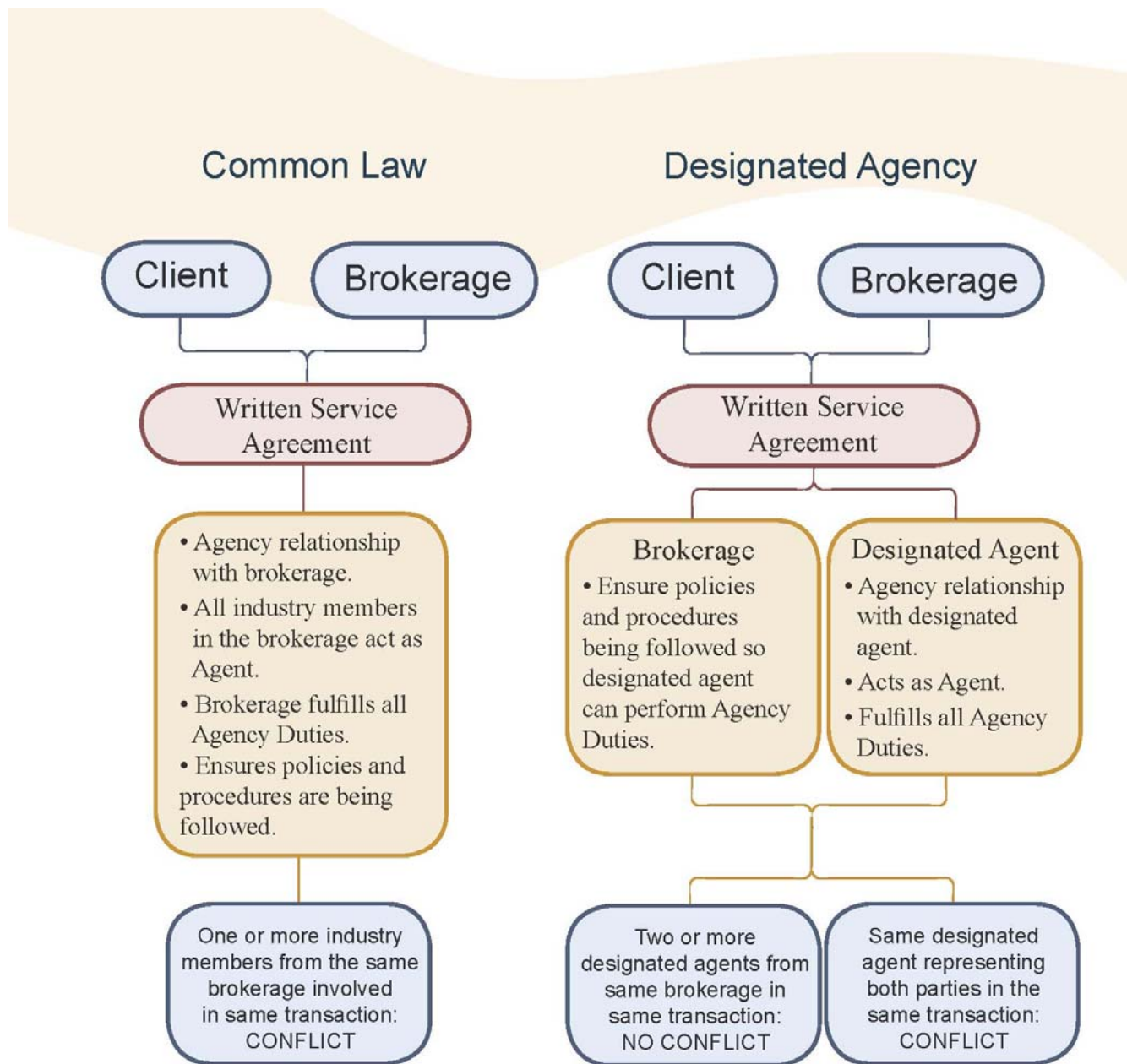
In common law your agency relationship is with the brokerage. If the other party to a potential transaction is represented by the same brokerage that represents you, the brokerage has a conflict of interest. In common law the brokerage cannot serve two masters because of the conflict it creates to the Agent's duties to their Client. In sole agency, the brokerage cannot represent the competing interests of two parties in the same transaction. Specifically, the conflict arises from the brokerage's obligation to be loyal, disclose all relevant facts, and maintain confidentiality of personal information for you and the other party in the transaction. Several options exist to resolve this conflict, including transaction brokerage, customer status and a referral to another brokerage.

Resolving this conflict is further discussed in the transaction brokerage section of this Guide.

## **Designated Agency**

If a brokerage operates under designated agency, your agency relationship is with the industry member and not with the brokerage. Should the other party to a potential transaction be represented by another industry member in the same brokerage, there is no conflict, as each industry member will be in sole agency with their respective clients. This is a key difference between common law agency and designated agency. If you choose to work with an industry member who is associated with a designated agency brokerage, you will need to sign a written service agreement. This document explains the nature of the agency relationship in detail and confirms your choice of agency representation. A designated agency relationship allows your designated agent to fulfill his or her full duties and obligations to you when the other party to a transaction is represented by another industry member of your brokerage.

If your designated agent represents the other party to the transaction, this creates the same conflict as discussed in common law (i.e. the same Agent is representing both parties). In addition to the options to resolve the conflict identified in common law, in designated agency you can also be referred to another designated agent within the brokerage who may provide you sole agency representation.



## Transaction Brokerage

Transaction brokerage occurs when one or more industry members in the same common law brokerage, or the same designated agent from a designated agency brokerage, represent both the buyer and seller in the same real estate transaction. Transaction brokerage is permitted with the fully informed, voluntary and timely consent of both parties to the transaction. The industry member must obtain your written informed consent to transaction brokerage before this relationship may occur and before any offer is presented to buy or sell a property. If the other party to the potential transaction is represented by the same Agent (brokerage) that represents you, unless otherwise agreed to by the parties, the industry member needs to discuss the *Transaction Brokerage Agreement* with you at the time and seek your informed party change from representation to facilitation.

The Agent will now act as a transaction facilitator and provide facilitation services to assist the parties in reaching a mutually acceptable agreement. Facilitation services means services by which the interests of the buyer and seller are met in an even handed, objective and impartial manner without providing confidential advice, advocating on behalf of either the buyer or seller, or using discretion or judgment that benefits the buyer or seller to the prejudice of the other, and may include:

- providing real estate statistics and information on property including comparable property information available through listing services or other local databases;
- providing standard form agreements of purchase and sale, lease and other relevant documents, and preparing these documents in accordance with the instructions of the Client;
- presenting in a timely manner, all offers and counter-offers to and from the Client;
- conveying to the client(s) in a timely manner all information that either wishes to have communicated to the other;
- keeping the client(s) informed regarding the progress of the transaction.

Finally, as transaction facilitator, the Agent will fulfill all other facilitation services to both parties as far as they are consistent with the terms of their respective agreements.

## **Customer Status (Non-Agency)**

If you do *not* choose to have an agency relationship but still want to work with an industry member, you may choose customer status. If you choose customer status, the brokerage or designated agent is not your Agent and does not owe you agency duties. Duties to a customer are limited to acting honestly, using reasonable care and skill, and not negligently or knowingly providing false or misleading information. If you choose to be a customer, you may be asked by your industry member to acknowledge your choice by signing a *Customer Status Acknowledgement Form*.

As a customer, the brokerage may provide you with services to help you complete the transaction. These may include:

- completing standard contracts and other relevant forms;
- providing you with real estate statistics and information on comparable properties;
- providing you with the names of appraisers, mortgage brokers and other service providers (but may not recommend one);
- presenting, in a timely manner, all offers and counter-offers between the buyer and seller;
- conveying all information that either party wishes to have communicated to the other;
- keeping you informed of the progress of the transaction.

These services cannot require the exercising of discretion or judgment, giving confidential advice, or advocating on your behalf.

There are several reasons why a consumer might choose, or the brokerage might recommend, customer status. This may occur when:

- As a buyer, you are interested in a house for sale by the owner, and the seller is not interested in forming an agency relationship with your Agent. In order to complete the transaction, the seller may wish to instead become a customer of your Agent.
- As a buyer you are interested in a property where the seller has a long-standing relationship with your Agent. In this case you may wish to opt for customer status for the duration of that transaction. This often occurs when purchasing new homes, as the industry member selling at a show home has a very strong and often exclusive relationship with a particular home builder.

It should be known that customers always have the option of choosing another brokerage to represent them.

## Make an Informed Choice

You have a number of relationship choices as outlined in this Guide. Your industry member has the responsibility to explain the options you have. It is in your best interest that you understand what duties you are owed and what limitations there are, or might be, when choosing a certain relationship. Ask your industry member questions and be sure you are satisfied with the answers before you enter into a particular relationship.

### Agency Relationships Guide Acknowledgement

I understand that I will be required to sign this guide to acknowledge that I received and read the *Agency Relationships Guide* from the brokerage representative named below and have obtained satisfactory answers To my questions. I understand that I may be required to sign agreements or acknowledgements of the type of relationship I decide to enter into with the brokerage.

Signed and Dated on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Brokerage Name

\_\_\_\_\_  
Signature of Industry Member

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Consumer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Consumer

\_\_\_\_\_  
Print Name