

Minimum Requirements for Non Exclusive BUYER Service Agreements

COMMON LAW BROKERAGE: Agreement Outline with Example Clauses

The *Real Estate Act* Rules section 43(2) states ...

Every written service agreement shall:

- (a) Be signed by the relevant parties;
- (b) Clearly show all terms and conditions of the agreement and shall include:
 - (i) the names of the parties to the agreement;
 - (ii) if applicable, the address or legal description of the property affected by the agreement;
 - (iii) if applicable, the date on which the agreement will become effective;
 - (iv) the duration of the agreement;
 - (v) the services to be provided by the brokerage or real estate appraiser;
 - (vi) the responsibilities of each party to the agreement;
 - (vii) the use and distribution of personal or confidential information;
 - (viii) the amount or method of calculating the remuneration or alternate compensation to be paid and the circumstances on which it will be payable;
 - (ix) provisions for the termination of the agreement; and
- (c) Provide that any amendment or addition to the terms of the agreement shall be in writing and signed by the relevant parties.

The following agreement outline with example clauses further assists industry members to meet the minimum requirements of the *Real Estate Act* Rules, sections 41(c)(e), 48 and 55.

TERM OF AGREEMENT

The start date and the end date or duration of the agreement must be included in the agreement.

AGENCY RELATIONSHIP AND BROKERAGE'S RESPONSIBILITY

The Buyer agrees an agency relationship will exist only with the Designated Agent and not with the Brokerage.

The Buyer agrees the Brokerage's responsibilities will be limited to:

- (a) providing a true copy of this Agreement to the Buyer after all parties have signed;
- (b) treating the interests of both the Buyer and sellers represented by the Brokerage in an even-handed, objective and impartial manner;
- (c) ensuring compliance by the Designated Agent with the Brokerage's policies and procedures governing designated agents;
- (d) supervising the Designated Agent and support staff to ensure the Designated Agent fulfills their mandate under this Agreement; and,
- (e) holding monies received by the Brokerage in trust in accordance with the provisions of the *Real Estate Act*.

BROKERAGE'S MANDATE

Obligations: The Brokerage will:

- (a) obey the lawful instructions of the Buyer and exercise reasonable care and skill in the performance of this Agreement;
- (b) use best efforts to seek out and advise the Buyer, in a timely manner, of properties available for sale in the Market Area(s) which may meet the Buyer's material requirements and generally promote the Buyer's interests;
- (c) subject to mutual agreement regarding a change in representative capacity, act only as the Buyer's Agent, be loyal to the Buyer, and act in the Buyer's best interests at all times;
- (d) make timely and full disclosure of all conflicts of interest that may arise between the Buyer's interests and those of the Brokerage, Designated Agent or sellers;

- (e) at the earliest reasonable opportunity, advise any seller in whose property the Buyer is interested that the Brokerage is the agent of the Buyer;
- (f) assist the Buyer in negotiating favorable terms and conditions with a seller;
- (g) assist the Buyer in preparing and complying with a legally binding agreement of purchase and sale for the Property;
- (h) use best efforts to discover relevant facts pertaining to any property for which the Buyer is considering making an offer;
- (i) hold all monies received by the Brokerage in trust in accordance with the *Real Estate Act*;
- (j) present, in a timely manner, all offers and counter-offers to and from the Buyer even where a property is already the subject of an agreement of purchase and sale;
- (k) disclose to the buyer, in a timely manner, all relevant facts known to the Brokerage affecting a property or a transaction;
- (l) keep the Buyer fully informed regarding the search for a property and any resulting transaction;
- (m) advise the Buyer to obtain expert advice on matters of importance to the Buyer;
- (n) subject to mutual agreement regarding a change in representative capacity, disclose to the Buyer the existence and terms of any competing offers for a property in which the Buyer is interested known to the Brokerage; and,
- (o) provide a true copy of this Agreement to the Buyer after all parties have signed.

BUYER'S CONFIDENTIAL INFORMATION WILL BE PROTECTED

The Brokerage undertakes it will not use confidential information received from the Buyer, or obtained as a result of providing services under this Agreement, for its own gain or the gain of its employees or to the prejudice of the Buyer's interests.

USE AND DISTRIBUTION OF BUYER'S INFORMATION

The Buyer consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of this Agreement and such other use as is consistent with the purchase or prospective purchase of a property.

CHANGE IN REPRESENTATIVE CAPACITY OF THE BROKERAGE

If the Brokerage is the agent of a seller and the Buyer wishes to view that seller's property, the Brokerage will:

- (a) disclose this fact to both the Buyer and the seller; and,
- (b) unless instructed otherwise by the seller, facilitate the viewing of the Property by the Buyer and make available the marketing information that is available to all potential buyers; however, the mere viewing of the property will not mean the Buyer is interested in the Property for the purposes of initiating a discussion about mutual agreement regarding a change in representative capacity.

If the Brokerage is also the agent of a seller in whose property the Buyer is interested, the Brokerage will:

- (a) immediately advise the Buyer and the seller of all relevant facts and of the implications of concurrent representation;
- (b) give the Buyer and the seller an opportunity to seek independent advice;
- (c) obtain the written informed consent of the Buyer to the Brokerage continuing to provide services to the seller and the Buyer in a Transaction Brokerage relationship on the terms and conditions specified in the *Common Law Agency Transaction Brokerage Agreement* and in the *Agency Relationships Guide* published by the Real Estate Council of Alberta prior to writing the offer; and,
- (d) obtain the written informed consent of the seller to the Brokerage continuing to provide services to the seller and the Buyer in a Transaction Brokerage relationship on the terms and conditions specified in the *Common Law Agency Transaction Brokerage Agreement* and in the *Agency Relationships Guide* published by the Real Estate Council of Alberta prior to presenting the Buyer's offer to the seller.

Should the Brokerage **decide not to** enter into a *Common Law Agency Transaction Brokerage Agreement* or should either the Buyer or seller **refuse to consent** to Transaction Brokerage, unless

otherwise agreed in writing, the Brokerage will continue to represent the party, be it the Buyer or the seller, with whom it first entered into an agency relationship and the Brokerage will:

- (a) offer to treat the other party as a customer; or,
- (b) to refer the other party to another brokerage.

ADDITIONAL REPRESENTATION RELATIONSHIPS

The Buyer agrees, subject to mutual agreement regarding a change in representative capacity, the Brokerage may represent other sellers and other buyers.

The Buyer and Brokerage agree that the Buyer may enter into a buyer brokerage agreement with another brokerage. However, if the Buyer enters into an EXCLUSIVE buyer brokerage agreement with another brokerage, the Buyer and the Brokerage acknowledge this agreement will be ended.

ADDITIONAL TERMS

The Buyer:

- (a) agrees the Brokerage cannot disclose to the Buyer confidential information obtained through any other agency relationship to which the Brokerage is or has been a party; and,
- (b) has received and read the *Agency Relationships Guide* published by the Real Estate Council of Alberta and this Agreement, and has been given an opportunity to seek further information and independent advice concerning representation by a brokerage and the other relationships discussed herein.

BROKERAGE'S FEE

The brokerage will specify the amount or method of calculating the remuneration or alternate compensation to be paid, the source of the remuneration and the circumstances on which it will be payable. Once remuneration has been agreed to the following clause should be added.

The Brokerage agrees not to accept any other remuneration, whatever its form (including a finder's fee, referral fee or gift) and from whatever source (including the seller, another brokerage or a contractor), directly or indirectly related to its agency under this Agreement unless, before accepting such remuneration, the Brokerage has:

- (a) fully disclosed in writing to the Buyer all relevant facts relating to the offer of remuneration including the maximum amount to be received; and,
- (b) obtained the Buyer's written consent to the Brokerage receiving such remuneration.

ENDING THIS AGREEMENT

This Agreement will terminate upon:

- (a) an earlier date than that specified herein if mutually agreed to by the Buyer and the Brokerage in writing;
- (b) a completed purchase of a property (i.e., when the purchase price is paid to the seller or the seller's lawyer and is releasable);
- (c) the bankruptcy or insolvency of the Brokerage or if it is in receivership.

When this Agreement ends, the Brokerage and Designated Agent will return any documents or other materials provided by the Buyer. Ending this Agreement for whatever reason does not relieve the Brokerage of its duties to account for all monies received by the Brokerage and confidentiality to the Buyer.

OTHER CLAUSES / TERMS

Depending on the particular business model of the Brokerage and unique needs of the Buyer, additional clauses and terms may be added at the discretion of the Brokerage and with the mutual consent of the Brokerage and the Buyer.