

Minimum Requirements for Non Exclusive BUYER Service Agreements

**DESIGNATED 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 *Real Estate Act* Rules section 58.1(3) states ...

All designated brokerage agreements must be in writing and must contain the following provisions:

- (a) that the brokerage will designate an agent to serve as sole agent for the seller and will designate other industry members registered with the brokerage to serve as sole agents of any buyers also represented by the brokerage who are interested in the property;
- (b) that if, for any reason, the designated agent ceases to be licensed with the brokerage, the brokerage will designate another member of the brokerage to serve as sole agent for the seller or buyer, as the case may be;
- (c) that the brokerage will not appoint another brokerage to act on behalf of the seller or the buyer, as the case may be, as a sub-agent without the seller's or buyer's prior written consent;
- (d) that a seller or a buyer, as the case may be, agrees that an agency relationship will exist only with the designated agent and not with the brokerage;
- (e) that a seller or a buyer, as the case may be, acknowledges that the brokerage's responsibilities will be limited to:
  - (i) treating the interests of both a seller and a potential buyer of a property in an even handed, objective manner;
  - (ii) ensuring compliance by the designated agent with the brokerage's policies and procedures governing designated agents;
  - (iii) supervising the designated agent and support staff to ensure the designated agent fulfills its mandate under the agreement;
- (f) that the brokerage and the designated agent undertake that they have not, and will not, disclose any confidential information concerning the seller or the buyer, as the case may be, to any other member of the brokerage or other person unless:
  - (i) authorized by the seller or the buyer, as the case may be; or,
  - (ii) required by law;
- (g) that a designated agent's knowledge will not be attributed to the brokerage or any other designated agent of the brokerage;
- (h) that the brokerage's knowledge will not be attributed to any designated agents of the brokerage.

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.

## **APPOINTMENT OF DESIGNATED AGENT**

The Brokerage designates (*insert name(s) of designated agent(s)*) (the Designated Agent(s)) to serve as agent for the Buyer and, subject to mutual agreement regarding a change in representative capacity, will designate other members of the Brokerage to serve as agents of any sellers represented by the Brokerage in whose properties the Buyer is interested.

## **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 AND THE DESIGNATED AGENT'S UNDERTAKING**

The Brokerage and the Designated Agent undertake they have not, and will not, disclose any confidential information concerning the Buyer to any other member of the Brokerage or other person unless authorized by the Buyer or required by law. Confidential information may be obtained by the broker or supervising manager for the purposes of meeting the Brokerage's responsibilities, but the information will be kept in confidence.

## **NO ATTRIBUTION OF KNOWLEDGE**

The Designated Agent's knowledge will not be attributed to the Brokerage or to its designated agents representing sellers.

## **DESIGNATED AGENT'S MANDATE**

Obligations: The Designated Agent 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 Designated Agent 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) 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;
- (j) disclose to the buyer, in a timely manner, all relevant facts known to the Designated Agent affecting a property or a transaction;
- (k) keep the Buyer fully informed regarding the search for a property and any resulting transaction;
- (l) advise the Buyer to obtain expert advice on matters of importance to the Buyer; and,
- (m) 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 Designated Agent.

### **BUYER'S CONFIDENTIAL INFORMATION WILL BE PROTECTED**

The Brokerage and Designated Agent undertake they will not use confidential information received from the Buyer, or obtained as a result of providing services under this Agreement, for their own gain or the gain of their 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 and Designated Agent 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 DESIGNATED AGENT**

If the Designated Agent is the agent of a seller and the Buyer wishes to view that seller's property, the Designated Agent 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 Designated Agent is also the agent of a seller in whose property the Buyer is interested, the Designated Agent 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 *Designated 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 *Designated 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 Designated Agent or the Brokerage **decide not to** enter into a *Designated Agency Transaction Brokerage Agreement* or should either the Buyer or seller **refuse to consent** to Transaction Brokerage, unless otherwise agreed in writing, the Designated Agent 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 designate another member of the Brokerage to represent the other party as agent;
- (b) to treat the other party as a customer; or,
- (c) 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 and Designated Agent 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 and the Designated Agent cannot disclose to the Buyer confidential information obtained through any other agency relationship to which the Brokerage or Designated Agent 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 designated agent and the other relationships discussed herein.

## **BROKERAGE'S FEE**

The brokerage or the designated agent on behalf of 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).

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 and Designated Agent of their 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.