

# Common Law Transaction Brokerage Agreement

This form was developed by the Real Estate Council of Alberta for use in residential real estate.

**BUYER:**

**and**

**SELLER:**

Name \_\_\_\_\_ Name \_\_\_\_\_  
 Name \_\_\_\_\_ Name \_\_\_\_\_  
 Address \_\_\_\_\_ Address \_\_\_\_\_  
 \_\_\_\_\_ (postal code) \_\_\_\_\_ (postal code)  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_ Email: \_\_\_\_\_

**and BROKERAGE:**

Brokerage Name \_\_\_\_\_  
 Address \_\_\_\_\_ (postal code)  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

This Agreement is entered into by the Buyer, the Seller and the Brokerage with respect to the Property known as: \_\_\_\_\_

Plan: \_\_\_\_\_ Block: \_\_\_\_\_ Lot/Unit: \_\_\_\_\_

(the Property) on the basis of the following facts:

- (a) The Buyer is interested in purchasing, and the Seller is interested in selling, the Property;
- (b) The Brokerage concurrently represents both the Buyer and the Seller;
- (c) Such concurrent representation of both the Buyer and the Seller by the Brokerage prevents it from:
  - (i) being loyal both to the Buyer and the Seller and to act solely in both of their best interests;
  - (ii) avoiding all conflicts of interest including conflicts that may arise between the interests of the Buyer, and of the Seller and the Brokerage;
  - (iii) making full disclosure of all facts that may influence the decisions of the Buyer or of the Seller; and,
  - (iv) maintaining the confidentiality of information obtained from the Buyer or from the Seller.
- (d) Such concurrent representation by the Brokerage is only permitted by law with the fully informed and voluntary consent of both the Buyer and the Seller;
- (e) The Buyer and the Seller have read the *Agency Relationships Guide* published by the Real Estate Council of Alberta and this Agreement, and have been given the opportunity to seek further information and independent advice concerning Transaction Brokerage representation and other relationships discussed therein.

Therefore the Buyer and the Seller consent and agree to their continued representation by the Brokerage now acting in the capacity of Transaction Facilitator, on the following terms:

**1. IMPARTIALITY**

1.1 The Brokerage will treat the interests of both the Buyer and the Seller in an even-handed, objective and impartial manner, including but not limited to, any advice or information given to one party will be disclosed to the other.

**2. REASONABLE CARE AND SKILL**

2.1 The Brokerage will exercise reasonable care and skill in the performance of its mandate under this Agreement.

**3. ACCURACY OF INFORMATION**

3.1 The Brokerage will not negligently or knowingly give false or misleading information to the Buyer or the Seller.

**4. INSTRUCTIONS**

4.1 The Brokerage will obey the lawful instructions of the Buyer or the Seller to the extent that they are consistent with the other terms of this Agreement.

**5. DISCLOSURE OF INFORMATION**

5.1 Other than the information described in clause 6, the Brokerage will disclose all information it provides or receives during the course of this Agreement and, in particular, will disclose:

- (a) to the Buyer, all material latent defects affecting the Property known to the Brokerage; and,
- (b) to the Seller, all material facts relevant to the Buyer's ability to purchase the Property known to the Brokerage.

**6. NON-DISCLOSURE OF CERTAIN INFORMATION**

6.1 The Brokerage will not disclose without the informed written consent of the Buyer or the Seller, as the case may be:

- (a) that the Buyer may be prepared to offer a higher price or terms other than those contained in the offer to purchase;
- (b) that the Seller may be prepared to accept a lower price or terms other than those contained in the Seller's Exclusive Seller Brokerage Agreement;
- (c) the motivation of the Buyer or the Seller for wishing to respectively purchase or sell the property; and,
- (d) subject to clause 5, personal information relating to the Buyer or the Seller and other information disclosed at any time in confidence by either to the Brokerage.

**7. INSPECTIONS AND INQUIRIES**

7.1 The Brokerage will not, for the Buyer:

- (a) conduct or influence an independent inspection of the Property; nor
- (b) in the absence of instructions from the Buyer, arrange or decide on arrangements for an inspection of the Property by another; nor
- (c) verify the accuracy or completeness of any information supplied or statements made by the Seller concerning the Property.

7.2 The Brokerage will not, for the Seller:

- (a) conduct or influence an independent inquiry into the financial status of the Buyer; or
- (b) verify the accuracy or completeness of any financial information supplied by the Buyer.

**8. NO ATTRIBUTION OF KNOWLEDGE**

8.1 The Brokerage's knowledge concerning the Buyer or the Seller will not be attributed to the other.

**9. VICARIOUS LIABILITY**

9.1 Neither the Buyer nor the Seller will be vicariously liable to the other for any acts of the Brokerage.

**10. FACILITATION SERVICES**

10.1 The Brokerage will:
(a) present to the Buyer and the Seller, in a timely manner, all offers and counter-offers to and from either regardless of whether the Property is already the subject of a contract;
(b) convey to the Buyer and the Seller, in a timely manner, all information that either wishes to have communicated to the other;
(c) keep the Buyer and the Seller informed regarding the progress of the transaction; and,
(d) comply with the provisions of the Real Estate Act and its regulations, and the rules and bylaws of the Real Estate Council of Alberta.

10.2 The Brokerage will also perform for the Buyer and the Seller all necessary facilitation services, that is, 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 as required, the brokerage will:
(a) assist the Buyer and the Seller in negotiating a mutually acceptable agreement;
(b) provide real estate statistics and information on property including comparable property information available through listing services or other local data bases;
(c) provide standard form agreements of purchase and sale, and other relevant documents;
(d) prepare all necessary documents in accordance with the instructions of the Buyer and Seller; and
(e) provide the names of real estate appraisers, mortgage brokers, surveyors, building inspectors, lenders, insurance agents, architects, engineers and the like, but will not recommend any particular professional to the Buyer or Seller.

**11. BROKERAGE'S FEE**

11.1 The Buyer and the Seller will compensate the Brokerage in accordance with the terms of the Buyer's Exclusive Buyer Brokerage Agreement (if any) and Seller's Exclusive Seller Brokerage Agreement with the Brokerage respectively.

**12. BROKERAGE'S RESPONSIBILITY**

12.1 The Brokerage will ensure that the member(s) of the Brokerage providing facilitation services to the Buyer and Seller under this Agreement;
(a) complies with the Brokerage's policies and procedures governing Transaction Brokerage; and,
(b) treats the interests of both the Buyer and the Seller in an evenhanded, objective and impartial manner.
12.2 The Brokerage will supervise the member(s) of the Brokerage and support staff providing facilitation services to the Buyer and the Seller to ensure that they properly fulfill this Agreement.
12.3 The Brokerage will hold all monies received in respect of the transaction in trust in accordance with the provisions of the Real Estate Act.

**13. PRIOR AGREEMENTS**

13.1 With the exception of clauses 2 and 3 specifying the Brokerage's mandate and services in the Buyer's Exclusive Buyer Brokerage Agreement and the Seller's Exclusive Seller Brokerage Agreement respectively, the rights and obligations of the Buyer, the Seller, and the Brokerage will be determined in accordance with those agreements.

**14. THIS AGREEMENT**

14.1 No amendment to the terms of this Agreement shall be effective unless it is in writing and signed by the Buyer, the Seller and the Brokerage.
14.2 If there is a conflict or discrepancy between any provision added to this Agreement and any provision in the standard pre-set portion hereof, the added provision will supersede the standard pre-set provision to the extent of such conflict or discrepancy.
14.3 Subject to clauses 11 and 13 of this Agreement, this Agreement will constitute the entire agreement between the Buyer and the Seller and the Brokerage, and there are no representations, warranties, collateral agreements or conditions, which affect this Agreement other than as expressed herein.
14.4 This Agreement will be read with all changes of number required by the context.

**15. ACKNOWLEDGMENT**

15.1 The Buyer and the Seller, having both received and read this Agreement and the Agency Relationships Guide, and having been given the opportunity to request further information concerning this Agreement and the representation relationships described and in the Agency Relationships Guide, acknowledge this Agreement accurately sets out the terms agreed to by the Buyer, the Seller and the Brokerage.

SIGNED AND DATED
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
Signature of Buyer \_\_\_\_\_
Print Name of Buyer \_\_\_\_\_
Signature of Witness \_\_\_\_\_
Print Name of Witness \_\_\_\_\_
Signature of Buyer \_\_\_\_\_
Print Name of Buyer \_\_\_\_\_
Signature of Witness \_\_\_\_\_
Print Name of Witness \_\_\_\_\_
Signature of Seller \_\_\_\_\_
Print Name of Seller \_\_\_\_\_
Signature of Witness \_\_\_\_\_
Print Name of Witness \_\_\_\_\_
Signature of Seller \_\_\_\_\_
Print Name of Seller \_\_\_\_\_
Signature of Witness \_\_\_\_\_
Print Name of Witness \_\_\_\_\_
Signature of Brokerage Representative \_\_\_\_\_
Print Name \_\_\_\_\_
Signature of Witness \_\_\_\_\_
Print Name of Witness \_\_\_\_\_