

CLIENT – REAL ESTATE BROKERAGE

Summary: A client is a person who has entered into a service agreement with an industry member. [See: *Real Estate Act Rules*, s.1(1)(g), s.43(1), s.57, s.58, s.58.1, s.59, s.59.1]

Note: For the purposes of this Information Bulletin, and where the context permits, “real estate broker” refers to all four categories of real estate broker licence i.e. brokerage, broker, associate broker and associate.

In the course of conducting business, the nature of the relationship is an important issue for both industry members and consumers. It is the responsibility of industry members to ensure their role is clearly communicated when they are dealing with consumers and third parties. Consumers and potential clients must not be pressured or directed toward a particular type of relationship.

Regardless of the type of relationship they enter into with consumers, real estate brokers should have a clear understanding of their obligations to clients and customers. While consumers should make an informed choice about the type of relationship they wish to have with a real estate broker, they should also understand the implications of the options available to them.

The *Real Estate Act Rules*, s.1(1)(g), define a client as “a person who has entered into a service agreement with an industry member, whether or not that service agreement is in writing”. The *Real Estate Act Rules*, s.43(1), state “subject to these Rules, an industry member who establishes a client relationship should enter into a written service agreement with that prospective client, unless declined by the prospective client.” Pursuant to s.56 of the *Real Estate Act Rules*, exclusive buyer brokerage and exclusive seller brokerage agreements must be in writing. See *Information Bulletin - Service Agreement*.

In the context of real estate brokerage, a client will engage (hire or employ) a real estate broker to assist them with their real estate needs. A client can be a seller, buyer, landlord or tenant.

The *Real Estate Act Rules*, s.1(1)(i), define customer as “a person who has contacted, but not engaged or employed, an industry member to provide services.” In most cases, before they become a client, a person starts out as a customer. Usually, the consumer contacts the real estate brokerage or a specific real estate broker for a variety of reasons. For more information, see RECA’s *Information Bulletin: Customer – Real Estate Brokerage*. At some stage in the process, the person decides they would like to hire or employ the real estate broker to assist them with their real estate needs. At this point, assuming the real estate broker agrees to represent the seller or buyer, the relationship changes and the customer becomes a client.

A seller client hires a brokerage to assist them with the sale of their property and represent them throughout the selling process. A buyer client is a person who hires a brokerage to assist them with buying a property and represent them throughout the

buying process. In both cases, the client expects the brokerage to represent their best interests at all times and assist them with the real estate transaction.

Some customers will clearly communicate their desire to hire or “engage” the brokerage (i.e. enter into a client relationship) to represent them in a real estate transaction. Other customers will be less clear about their intentions or will allow things to proceed for a period of time and make assumptions as to the nature of the relationship they have developed with the broker.

It is never a good idea to ignore this issue for any length of time. As a professional, it is the responsibility of a real estate broker to address this situation with a customer at the appropriate stage and clarify the nature of the relationship.

There are no hard and fast rules as to when a real estate broker should discuss the issue of a client relationship with a customer and whether they wish to enter into such a relationship. Each case will be unique but the experienced real estate broker will often know based on the nature of the discussions that have taken place or, the information or services that have been provided, when the time is appropriate.

Several examples of when it is appropriate to discuss entering into a service agreement (client relationship), or at least clarifying the nature of the relationship, with a customer include the following:

- If during a discussion with a customer, the customer begins to provide confidential information about their real estate needs, motivation or financial qualifications.
- Following preliminary discussions with the property owner, the real estate broker is asked to view their property or the owner seeks advice on issues such as market values in the area, a possible listing price, best time to sell their property, or the fees they will be charged if they hire the brokerage.
- Following preliminary discussions with a potential buyer, the real estate broker makes arrangements to show one or more properties the customer has expressed an interest in viewing.
- Following the viewing of a property, the customer expresses an interest in obtaining more information about the property, viewing the property a second time or indicates a desire to make an offer to buy the property.

The basic obligations of a real estate broker representing a seller or buyer in a sole agency relationship are outlined in the *Real Estate Act* Rules, sections 57 and 58. The obligations of a real estate broker who has been authorized by a seller client and a buyer client to provide transaction brokerage services are outlined in the *Real Estate Act* Rules, section 59 and 59.1.

In designated agency, the agency relationship exists only between the client and the designated agent, not with the brokerage. A client will enter into a brokerage agreement with a brokerage, and through that agreement, the brokerage will designate an individual industry member or members to serve as the designated agent(s) for the client.

The basic obligations of the designated agent(s) for a seller or a buyer are the same as for an industry member who is in a sole agency relationship with a seller or buyer, including those that are set out in *Real Estate Act* Rules, section 57 and 58.

However, the basic obligations of the brokerage and the broker change in designated agency. The brokerage’s obligation is to have policies and procedures governing

activities of the brokerage, including the protection of a client's confidential information, and the broker's obligation is to ensure designated agents follow brokerage policies and procedures.

Whether under common law and designated agency, the basic obligations owed to clients and/or customers remain the same – the distinction, however, is the specific entity that owes those obligations (i.e. the brokerage, the broker or the designated agent).

Examples

1. A real estate broker receives a telephone call from a person who wishes to view a property listed by the brokerage. The person who wishes to view the property is a customer. The real estate broker should ensure the person understands the brokerage represents the seller and show the property to the potential buyer. A copy of the *Agency Relationships Guide* should be provided.
2. A real estate broker is representing the buyer who is searching for a suitable property. A property that may be suitable is being sold by the owner privately i.e. as a For Sale By Owner. The buyer is interested in viewing this FSBO. In this case, the seller would be a customer and not a client. If the buyer is interested in making an offer on the FSBO, the broker should consider a Customer Acknowledgment and Fee agreement with the seller.
3. A brokerage represents a condominium owner in selling numerous selected units. Unless a potential buyer has an existing service agreement with the brokerage, they would be considered a customer, not a client of the brokerage. The real estate broker should ensure the person understands the brokerage represents the seller and show the condominium unit to the potential buyer. A copy of the *Agency Relationships Guide* should be provided.
4. A real estate broker holds an open house for a property listed with their brokerage. A person who comes to view the property is a customer. A customer acknowledgment is not recommended unless the customer is unrepresented and subsequently indicates an interest in buying the property or wishes to make an offer.
5. A real estate broker is working at a show home where the brokerage represents the home builder with respect to sale of the show home, homes already built and those under construction. A couple comes to view the show home. The persons who view the show home are customers and not clients of the brokerage.