

CONFLICT OF INTEREST

Purpose: This bulletin describes a conflict of interest and your duties when you have a conflict in giving services.

This bulletin applies to all industry professionals

Industry professional's requirements

Industry professionals must fulfil their fiduciary obligations to their clients, avoid and disclose to their clients at the earliest practical opportunity, any conflict of interest they may have in the course of providing services to a client. At the earliest practical opportunity means immediately, or the first opportunity, upon learning of the existence of the conflict. This would include potential conflicts of interest. It is up to the client to decide if the conflict or potential conflict is acceptable.

What is a conflict of interest?

For the purposes of the *Real Estate Act Rules*, conflict of interest means a real or obvious incompatibility concerning an industry professional's interest and the interest of the client or potential client. The perception of a conflict of interest may be more than the client may agree.

The test to determine if a conflict of interest exists is to take an objective viewpoint. If a reasonable person concludes the industry professionals' judgement, advice or loyalty to the client may have an adverse effect on the client - this would be a conflict of interest.

What are fiduciary obligations?

When an industry professional is in an agency relationship with a client, they owe that client fiduciary duties. These include:

- undivided loyalty to the client,
- acting in the best interests of the client at all times,
- the duty to avoid and disclose all conflicts of interests

What to do if there is a conflict of interest

You must give full disclosure of the conflict to the client at the earliest practical opportunity. This includes:

- give to the client all the details known to the industry member about the conflict

- explain why you believe you are in a conflict or potential conflict of interest
- describe how the conflict affects the client
- advise the client to obtain independent advice concerning the conflict

You cannot provide services to a client or a potential client if you are in a conflict of interest unless you receive the client's written informed consent. If the client decides to use the services of the industry professional in a conflict of interest, they must provide written and informed consent to the industry member.

Examples of conflicts of interest

1. You have a buyer client and he includes a condition in an offer for a home inspection. The seller accepts the offer. The buyer asks you to recommend a home inspector. You recommend your wife's brother. Your wife's brother is a good home inspector and gives you quick service.
2. You have a buyer client and she has a financing clause in an accepted offer. You recommend that she use your mortgage broker. The mortgage broker pays you ½ % of the mortgage amount for each successful mortgage he completes from you.

INFORMATION
BULLETINS

Last Revised April
2014

© 2014 RECA

Property management examples

1. You have a property management division in your brokerage. You manage a number of properties for many owners. You develop special relationships with a number of service providers, which include appliance repair, painters, carpet cleaners, plumbers, electricians, and lawn and snow maintenance. Each of these service providers provide you with an incentive to continue to send them business
2. You manage a large rental complex owned by a large corporation. One of your jobs is to hire third-party service providers for the rental complex such as landscapers, snow removers, etc. You want to hire a snow removal company owned by your brother.

In RECA's view, it is not enough to set out in the management agreement that you as property manager may contract with related individuals or entities for the provision of services to the property owner(s). You cannot obtain blanket general approval for consent to a

conflict of interest through such an agreement. You must disclose each conflict of interest to the client in each circumstance and obtain the appropriate written and informed consent each time a conflict of interest arises.

If your client has given you approval to use a related company for the provision of a specific service in one instance, should you wish to contract with that company for additional services for the client / owner, you again must disclose the conflict of interest to your client and obtain the client's informed written consent to proceed.

Conflict resolution

You must disclose to the client at the earliest practical opportunity:

- your relationship with service provider
- your conflict of interest.
- how this conflict affects your client
- the advantages and disadvantages of using your brother's company
- a discussion on how you will handle conflicts and problems with your service provider
- quotations from other service providers for your client's review
- advise them to obtain independent advice.

If your client consents, they must provide written informed consent to you before you contract for the services with your brother.

Related information

Legislation

Real Estate Act Rules - sections 1(h), s.41(a)(d)(f)(g), s.45, s.49, s.54(3)