

PROTECTION OF CLIENT INFORMATION

Purpose: This bulletin explains the obligations of industry professionals to protect their client's information.

This bulletin applies to all industry professionals.

Confidentiality

One of the obligations of an industry professional is maintaining confidentiality of their client's information. Privacy legislation requires you to protect a client's personal information. You must not disclose information regarding a client, property or transaction to another person unless you have permission from your client or the law requires disclosure.

Client information belongs to the brokerage.

Personal information

Personal information is a broad concept. It means any information about an identifiable person. It includes addresses, phone numbers, e-mail, employers, age, physical traits, ID numbers, finances, marital status, health, family, ethnic origin, religion, sexual preferences, memberships, education, history and occupation.

Property information

Property information is a broad concept. It means any information about a specific property. It includes legal description, zoning designation, square footage, taxes, age, building condition, pictures or video of the property, sale price, past history, structural, heating, plumbing, electrical and mechanical.

Financial information

Examples of financial information include:

- financial position
- employment
- bank statements
- credit bureau reports
- business financial statements
- rent rolls
- debt obligations
- assets
- Canada Revenue Agency tax information
- lease or mortgage obligations

- payout penalties

Transaction information

Transaction information includes information you receive when you give services to a client. It includes all service agreements and communications between the industry professional and client (e.g. verbal, written, fax, email, and text message).

Real estate brokerage examples

- motivation of the buyer or seller
- the existence of an offer, multiple offers or backup offers
- the details of negotiations, offers, purchase contracts or lease agreements
- the existence of a conditional sale or lease
- whether the conditions in a purchase contract or lease have been met
- pictures of tenant belongings

Mortgage brokerage examples

- financial information (see above)
- loan application
- Social Insurance Number
- mortgage documents
- appraisal reports
- underwriting reports
- lender correspondence

Real estate appraisal examples

- property information (see above)
- pictures of tenant belongings
- appraisal report
- business financial statements
- rent rolls

Property management examples

- business financial statements
- rent rolls
- client bank account information
- the existence of an offer, multiple offers or backup offers
- the details of negotiations, offers or lease agreements
- the existence of a conditional lease
- whether the conditions in a lease have been met
- tenant application and references
- third party contracts

Exceptions to confidentiality

Material latent defects

A property owner must disclose material latent defects. When an industry professional is aware of a material latent defect, they must disclose this information to a potential buyer or the buyer's representative. This disclosure does not require the consent of the seller.

If it is not clear if the defect is material or latent, you should discuss this with your client. You should advise your client to seek expert advice before making any disclosure to third parties.

Ability to purchase or lease a property

When the brokerage is in a transaction brokerage, the brokerage must disclose any known material facts relevant to the buyer's ability to purchase, or the tenant's ability to lease, the property.

Tenant rights and privacy

In the sale, lease or appraisal of a tenant occupied property, you must have the tenant's permission to take pictures or video of their belongings and to disclose these to third parties.

Confidentiality obligation is ongoing

The requirement to keep a client's information confidential is ongoing. When a service agreement ends, you must still protect and keep your former client's information confidential.

Examples

- Doug, a real estate associate listed a property for sale and the listing expired. The seller listed the property with another brokerage. Doug has a buyer interested in the property. Doug cannot disclose any of the seller's confidential information to the buyer. The Seller and Buyer Representation Agreements reinforce this principle. Each one state: "Our duty to keep your information confidential continues after this agreement ends."
- Sally, a mortgage associate, takes a mortgage application from a borrower. Sally submits the loan application to three lenders. The lenders refuse the loan application. Sally moves to another brokerage. Without the borrower's permission, Sally submits their application to another lender. This is a breach of Sally's obligation to keep her previous brokerage's client information confidential

Practice tips

A brokerage or real estate appraisal company should have policies, procedures and enforcement mechanisms to protect current and former clients' confidential information. This will ensure the brokerage or real

estate appraisal company does not share the information with individuals who should not have access to that information.

Issues to consider for effective client confidentiality policies and procedures:

- identify and secure confidential client files from unauthorized access. This includes files in paper and electronic format
- industry professionals must have permission to maintain client files personally and must comply with brokerage policies and procedures for client confidentiality
- only industry professionals and support staff who work for a specific client can access that client's confidential information and must not communicate with or to other industry professionals, directly or indirectly, intentionally or inadvertently, any confidential information
- how long to retain paper and electronic records under legislation
- how to dispose of paper and electronic records in a safe manner
- to ensure employees and industry professionals understand confidentiality policies and procedures and acknowledge and agree to them in writing
- the legal and employment-related ramifications of policy non-compliance
- obtain client consent for unlicensed assistants, who are not brokerage employees, to access confidential client information

Practical considerations include:

- information sharing at office meetings
- office layouts (physical separation of staff)
- access, maintenance and destruction of electronic and paper files
- contents of office memos, announcements
- security of laptops and all electronic devices that store and access client confidential information
- shared computer and server access
- access to locked filing cabinets
- computer password use
- telephone systems privacy
- e-mail system privacy
- fax machines privacy
- keeping brokerage contacts confidential
- after sale relationships

Related information

Legislation

- *Real Estate Act* Rules - sections 1(1)(g.1), s.44, s.57(e)(i), s.58(e)

- *Personal Information Protection Act*
- *Personal Information Protection and Electronics Documents Act*

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