



Real Estate
Council of Alberta
Designated Agency
Practice Guide



Real Estate Council of Alberta Designated Agency Practice Guide

© December 2016 Real Estate Council of Alberta

These guidelines are for real estate industry professionals licensed by the Real Estate Council of Alberta (RECA).

As the result of changing legislation, evolving Court decisions, and the practice of trading in real estate, the Real Estate Council of Alberta may periodically update this Guide. To obtain the current version of the guide, please visit the RECA website at www.reca.ca

Table of Contents

For all real estate professionals

What is designated agency?	4
What are the benefits of designated agency?	4
Who decides if the brokerage will operate under designated agency?	4
How does designated agency affect my brokerage's real estate practice?	5
Does a brokerage have to advise consumers it operates as a designated agency brokerage?	5
What forms do I have to use?	5
If I am working with a buyer in my designated agency brokerage, does it have to be an exclusive right to represent?	5
How are privacy and confidentiality different under designated agency?	5
Does the broker or supervising manager have access to the client's information?	6
I am an associate, what happens to my listing if I change brokerages?	6
Who can take care of my listings if I am sick or away on holidays?	6
What happens if there are competing buyers represented by the same brokerage, but separate real estate designated agents?	6

For brokers

I am a broker, if my brokerage becomes a designated agency brokerage, can it return to a common law brokerage later?	7
Do I need to have a practice review (audit) from RECA prior to implementing designated agency?	7
I am a broker, what do I have to do to implement designated agency within my brokerage?	7
What is the role of a broker, or a delegate, in a designated agency brokerage?	8
I am a broker in a designated agency brokerage. One of our associates (designated agent) asks me for assistance on a specific purchase contract where they represent a buyer. Another associate in our brokerage represents the seller. What can I do to assist this individual?	8
I am a broker, who actively trades in real estate. What do I do if I am the designated agent for one of the parties to the transaction and an associate in our brokerage represents the other party to the transaction?	9

For all real estate professionals



What is designated agency?

Designated agency is a type of representation relationship between real estate professionals and consumers. In a designated agency relationship, the service agreement is between the brokerage and the consumer, but the agency relationship is between the consumer and the real estate professional(s) designated as their agent(s).

Designated agency is fundamentally different from common law. In designated agency, although the service agreement is with the brokerage, the agency and fiduciary relationship is between the designated real estate professional(s), not the brokerage, and the consumer. Another significant difference in a common law brokerage is that the law deems that all persons in the brokerage have the same knowledge about the clients of the brokerage. In a designated agency brokerage, designated agents do not share information with the brokerage or with the designated agents representing other buyers or sellers. Clear documentation, agreed to by the brokerage, the designated agent(s), and the consumer are necessary for such a fundamental departure from common law brokerage practices.

What are the benefits of designated agency?

Designated agency reduces the chances of a conflict of interest arising in a real estate transaction. Designated agency eliminates the conflicts of interest that arise for a brokerage when two industry

members from the same brokerage represent the buyer and seller in the same transaction (in-house transaction). Although real estate professionals in a common law brokerage may act as if they only represent their respective clients, the reality is they and their brokerage are in a conflict of interest because of the assumption all real estate professionals registered with that brokerage have the same knowledge.

Designated agency is consistent with consumer expectations, and consistent with existing practices of many common law brokerages.

In a designated agency brokerage, real estate professionals are sole agents for all of their clients, unless a buyer they are representing becomes interested in a property owned by a seller who the designated agent also represents.

Who decides if the brokerage will operate under designated agency?

Typically, the brokerage owner and/or broker decides if the brokerage will operate as a designated agency brokerage.

How does designated agency affect my brokerage's real estate practice?

- real estate professionals in designated agency brokerages must use the forms specifically designed for designated agency. Sample forms containing the mandatory content are available on RECA's website.
- service agreements are between the brokerage and the consumer, but agency relationships are between individual real estate professionals(s) and their clients
- a real estate professional registered with a brokerage can represent a seller and a separate real estate professional registered with the same brokerage can represent a buyer without creating a conflict of interest
- real estate professionals must keep their clients' information confidential at all times, even from other real estate professionals at the brokerage, unless they are required to release the information by law or are authorized to do so by their client
- brokerages must implement information barriers to ensure confidentiality of client information between real estate professionals within the same brokerage, and between brokerages

Does a brokerage have to advise consumers it operates as a designated agency brokerage?

Yes. Industry professionals must explain to clients how their brokerage operates. It is important for consumers to understand the basic differences between a traditional (common law) brokerage and a designated agency brokerage. Industry professionals should explain the benefits of this type of relationship.

What forms do I have to use?

All residential buyer and seller clients are required to enter into a written service agreement (seller or buyer representation agreement) with their real estate professional. If you are registered with a designated agency brokerage, make sure you are using designated agency versions of the written service agreements. Sample forms with the mandatory content are available on RECA's website, and the Alberta Real Estate Association has forms available to its members.

If I'm working with a buyer in my designated agency brokerage, does it have to be an exclusive right to represent?

No. You can enter into a buyer brokerage (client) agreement that is non-exclusive whether you are in a common law brokerage or a designated agency brokerage. You can find a sample non-exclusive designated agency service agreement for buyers on RECA's website at www.reca.ca. That said, nothing prevents a brokerage from having a policy that states all buyer brokerage agreements must be exclusive. If that is the case, all licensees registered with that brokerage must abide by that policy.

You can also work with a buyer or seller in a customer relationship where you provide services, but do not provide advice or advocate on behalf of that customer. If you are not going to "represent" a buyer or seller in an agency capacity, it is best practice to explain a customer relationship to the buyer or seller and have them acknowledge it by signing a Customer Status Acknowledgement.

How are privacy and confidentiality different under designated agency?

In a designated agency brokerage, designated agent(s) only have confidential information about the clients with whom they are working as designated agents. Designated agents do not have the knowledge from and information about clients who are working with other real estate professionals in the brokerage. There is no assumption that every other real estate professional registered with the brokerage knows what the designated agent knows.

In a traditional (common law) brokerage, the client's file is available to all real estate professionals registered with that brokerage and its employees, subject to any brokerage policies regarding access to client files. Common law brokerages consider the knowledge of a specific real estate professional to be available to all of the other real estate professionals registered with their brokerage, and its employees.

In designated agency brokerages, the brokerage must ensure each designated agent keeps their clients' information confidential from other real estate professionals registered with the brokerage, and must not disclose any confidential information concerning the client to any other member of the brokerage or other person unless authorized by the client or required by law.

Does the broker or supervising manager have access to the client's information?

The broker has access to the client's information as it relates to the creation and administration of the service agreement between the brokerage and the client. The broker would not have access to the client's confidential information except in the following circumstances:

- where it was required for the broker, or supervising manager, to ensure real estate professionals comply with the brokerage's policies and procedures governing designated agents
- to ensure real estate professionals provide services competently and perform their due diligence
- during transaction brokerage, to ensure the brokerage treats the interests of both a seller and potential buyer in an even-handed, objective, and impartial manner

I am an associate, what happens to my listing if I change brokerages?

The seller representation agreement is a service agreement between the seller and the brokerage. The agreement includes a clause that states if, for any reason, the designated agent named in the agreement ceases their registration with the brokerage, the brokerage will designate a new agent upon the request of the client. Each brokerage should have a policy for such circumstances. You should discuss this question with your broker. If the client does not request that the brokerage appoint another designated agent, the service agreement ends.

Who can take care of my listings if I am sick or away on holidays?

The brokerage, in consultation with the seller, can designate another real estate professional within

the brokerage to act on the seller's behalf for the period of time you are away or otherwise unavailable. The parties must amend the seller representation agreement accordingly. The seller representation agreement can name multiple real estate professional(s) as designated agent(s) at the time of listing the property. Written service agreement are not limited to a single designated agent.

For example, a designated agent goes on three weeks' vacation. The designated agent can email their clients informing them that they are away for a specific period. They can write, "In my absence I asked Jane Doe to act as your designated agent. You can reach Jane at xxx-xxx-xxxx, and her email is jdoe@abc.com. Please email me back to confirm you are okay with Jane acting as your designated agent while I am on vacation." On the designated agent's return they would email the same clients to let them know they are back and that Jane is no longer be acting as their designated agent. This puts a temporary designated agent in place, and at the same time ensures you communicate it in writing. Place a copy of the emails in the brokerage's files.

What happens if there are competing buyers represented by the same brokerage, but separate real estate designated agents?

Each buyer would have a separate designated agent. Each designated agent would maintain the confidentiality of their client's information, act solely in their client's best interests, and provide full agency representation. This illustrates another benefit of designated agency. In designated agency brokerages, this situation is not a conflict of interest, and should not be a concern for either the clients or the real estate professionals representing them.

FAQs for real estate brokers



I am a broker, what do I have to do to implement designated agency within my brokerage?

You must:

- notify RECA that you would like to switch to designated agency as your brokerage model
- establish written policies and procedures for information barriers and designated agency
- RECA recommends that 4-6 weeks prior to a changeover, RECA's Real Estate Practice Advisor go over a transition checklist and give an informational presentation on designated agency to you and all your associates
- replace existing brokerage agreements by entering into new written designated brokerage agreements with sellers and buyers

Do I need to have a practice review (audit) from RECA prior to implementing designated agency?

No. Brokers can request a courtesy practice review (audit) from RECA. RECA will provide information or assistance to brokers who wish to implement designated agency in their brokerage, but a formal audit is not a requirement.

I am a broker, if my brokerage becomes a designated agency brokerage, can it return to a common law brokerage later?

Yes. The business model is something you choose and it can change from time to time. In order to revert to a traditional (common law) brokerage, though the brokerage must cancel its designated agency agreements and re-sign clients to common law agency agreements. The brokerage and its real estate professionals would have to explain to clients what it means to change to a common law brokerage.

What is the role of a broker, or a delegate, in a designated agency brokerage?

A broker in a designated agency brokerage has the same responsibilities that brokers have in a traditional common law brokerage. For example, the broker needs to carry out the business of the brokerage competently and in accordance with the *Real Estate Act*, Regulations and Rules.

In addition to carrying out the responsibilities common to all brokers, the broker of a designated agency brokerage must:

- establish and implement the necessary information barriers
- ensure designated agents comply with the brokerage's policies and procedures governing designated agents
- supervise, or provide supervision through its managers, the activities of designated agents and support staff to ensure the designated agents fulfill their agency obligations
- during transaction brokerage, ensure the brokerage treats the interests of both the buyers and sellers represented by the brokerage in an even-handed, objective, and impartial manner.

When a designated agent represents a seller, and another designated agent within the same brokerage represents a buyer (an "in-house" transaction), it is the broker's responsibility to ensure the brokerage remains neutral throughout the process. This requires the broker to provide objective, even-handed supervision. In this sense, the broker's role is similar to that of a transaction facilitator even though the broker is not dealing directly with the clients. The broker is available to provide information and general advice to the designated agents, and to ensure each designated agent provides competent service and performs their due diligence in the course of representing their client(s).

I am a broker in a designated agency brokerage. One of our associates (designated agent) asks me for assistance on a specific purchase contract where they represent a buyer. Another associate in our brokerage represents the seller. What can I do to assist this individual?

As broker, you must remain neutral. You cannot give advice to one designated agent that may be detrimental to the client of the other designated agent. If an associate asks you for assistance, you should review the offer, and go through a set of standard questions. A brokerage may develop a "due diligence" checklist and provide it to all associates to guide them when representing sellers or buyers. You can refer to this checklist and ask questions to ensure the associate has addressed all the issues. Additionally, you may refer the associate(s) to prior information, such as the brokerage policy or procedures, or brokerage checklists for writing offers or counter offers. In this case, the broker's role is similar to that of a transaction facilitator.

The broker may also provide information or advice on issues of mutual interest to both clients. For example, upon reviewing the purchase contract, the broker may notice it does not address the issue of financing when it is clear the buyer will need to obtain a mortgage to complete the transaction. The broker can draw this deficiency to the attention of the designated agent representing the buyer, and advise them to include a condition related to financing. The broker must disclose to the designated agent representing the seller that they provided this advice to the buyer's designated agent. The broker must not provide confidential advice to either designated agent.

Without giving advice to either designated agent, the broker can also provide general information and provide alternatives to address issues. For example, the broker can explain to a designated agent the difference between a term and condition in the purchase contract. A designated agent may describe to the broker a set of facts related to a specific transaction and ask whether a particular clause they drafted properly addresses the issue they are trying to address. Again, the broker or supervising manager can assist with drafting a clause in the purchase contract to achieve the desired intent but they cannot advocate on behalf of either party. Ultimately, the designated agents must represent their respective clients, advocate on their behalf, and assist them in resolving any issues that arise during the negotiation process.

I am a broker who actively trades in real estate. What do I do if I am the designated agent for one of the parties to the transaction and an associate in our brokerage represents the other party to the transaction?

If a broker represents one of the parties in an in-house transaction, they cannot carry out their supervisory role for the other associate who is involved in the transaction. In this case, another member of the brokerage must assume the broker's supervisory responsibilities in order to ensure the brokerage, the broker, and the other designated agent involved in the transaction fulfill their responsibilities. A supervising manager, a broker delegate, an associate broker, or an experienced associate are the best candidates to take over the temporary delegation of broker responsibilities.



