

MERE POSTINGS

Purpose: This bulletin explains the relationship between a real estate professional and a mere posting seller and answers mere posting frequently asked questions.

This bulletin applies to real estate brokerages, brokers, associate brokers and associates.

Background

There are many different business models for Alberta real estate brokerages. Each offers a different package of services. Consumers should clearly understand the different business models available to them. Consumers must know what services are in the brokerage business model or just as important, what services are not in their business model. Real estate professionals must ensure their client and third parties clearly understand their role.

Some examples of real estate services include:

- providing a current market assessment (CMA)
- installing a "For Sale" sign
- advertising the property for sale
- hold public open houses
- show properties to prospective buyers
- post information to a local real estate board MLS® System
- providing agency representation services
- use best efforts to market or locate a property

Real estate professionals create agreements explicitly or implicitly. They may be oral or written and may include agency representation as one of the services. Residential real estate client relationships must be in writing. When a real estate professional gives services to a consumer, that consumer is a client. The obligations to the client will depend on the relationship and the service(s) the brokerage offers.

A real estate professional has three options when establishing a relationship with a consumer:

- a customer relationship in which the real estate professional gives no service
- a client relationship in which the real estate professional gives limited service. "Mere Postings" fall into this category
- a client relationship in which the real estate professional's services include agency representation

Real estate professionals may opt to give some administrative services to a customer without creating a client relationship. Real estate professionals will typically provide these services to a customer as it benefits their client and the transaction. When dealing with a customer, a real estate professional must be honest and must exercise reasonable care and skill in relation to any services.

Client relationship: mere postings

The Consent Order between CREA and the Commissioner of Competition (Consent Order) defines a “Mere Posting” as a listing on a Member Board’s MLS® System where the member has chosen or agreed not to provide services to the seller other than to submit the listing for posting on MLS®.

CREA states a listing brokerage must act as agent for the seller to post, amend, or remove a property listing on MLS® System. This allows for the “Mere Posting” of a property listing on MLS® System but removes the requirement for a continuous agency representation relationship for the full duration of the listing.

A REALTOR® who enters into an agreement with a seller of a property to facilitate a “Mere Posting” on the MLS® System enters into a service agreement as defined in the *Real Estate Act* Rules (Rules). This constitutes a client relationship because the seller engages the REALTOR® to list their property and submit it to the MLS® System.

RECA’s conclusion of the review of “Mere Posting” services is a person who provides a “Mere Posting” service in Alberta is trading in real estate. They require a real estate broker licence from RECA.

Understanding your role

A self-represented “Mere Posting” seller is a client to a real estate professional that assists a “Mere Posting” seller. Real estate professionals must impart a clear understanding of their role and extent of services they offer. RECA recommends real estate professionals clearly articulate there is no agency representation on the “Mere Posting” service agreement without written amendment. Real estate professionals must avoid any activity that might create an implied agency representation relationship with the seller. They should not give confidential advice or any service that requires the use of judgment or discretion.

A self-represented “Mere Posting” seller is a customer to a real estate professional representing a Buyer. Real estate professionals who represent buyers must avoid any activity that might create an implied agency representation relationship with the seller. When buyer representatives deal with unrepresented sellers, whether on MLS® or

otherwise, they should not provide confidential advice or any service that requires the use of judgment or discretion.

Real estate professionals are responsible for documenting the roles in any relationship. This documentation must match the relationship to which the parties have agreed. Of primary importance, a real estate professional's conduct must always reflect the nature of the documented relationship.

Practice tip

Clients and customers must understand the role of the real estate professional. A clear understanding of the services and the implications of limiting services will help to establish realistic expectations for consumers and real estate professionals. A clear understanding of the nature of the relationship and brokerage services is the best dispute prevention strategy for consumers and real estate professionals.

Frequently asked questions

How can I ensure "Mere Posting" sellers clearly understand my role?

When providing "Mere Posting" services for a seller, the service agreement should clearly identify the relationship and what brokerage services you will include.

When representing buyers in a trade involving a "Mere Posting" seller, real estate professionals should obtain a signed *Customer Acknowledgement* or a *Seller Customer Acknowledgement and Fee Agreement*.

How will I know when a particular MLS® listing is a "Mere Posting" listing?

The Consent Order states the seller contact information, instructions to contact the seller directly, and instructions for offer presentation will be in the REALTOR®-only remarks section. If that information is incomplete, or unclear, the real estate professional must contact the "Mere Posting" representative for further clarification. You may require further direction from your broker and real estate association.

Do I have to advise buyer clients about "Mere Posting" listings?

Yes. If you are in an agency relationship with a buyer, the Rules say you must advise the buyer of all available properties in the market area that might meet their needs. This includes "Mere Posting" listings, property listed with other brokerages, and other available properties known to the real estate professional. The details should clearly identify the properties the real estate professional will search. The written service agreement may exclude properties with specific characteristics.

As a real estate professional, do I have to offer “Mere Posting” listing services?

No. Brokerage management makes business decisions regarding what services are available through the brokerage. Brokerages and their registered real estate professionals are not obliged to offer “Mere Posting” services.

Can my brokerage create policies regarding “Mere Posting” listing services?

Yes. A real estate brokerage can create policies around whether or not they will offer “Mere Posting” services. RECA does not regulate business models.

Do I have an obligation to verify “Mere Posting” information?

The Rules say real estate professionals must not make misleading representations. When real estate professionals list “Mere Posting”, they must exercise reasonable care and skill to determine the facts of a property. Some examples of exercising reasonable care and skill are:

- conducting a review of title to ensure the parties have a legal right to sell the property
- confirming property tax information being posted on the board’s MLS®
- verifying sizes and dimensions
- verifying recent improvements

When giving unverified information in any posting or listing, or where the intent is to ask a buyer to verify any information, you must clearly communicate this fact. You may require further direction from your broker and real estate association to answer this question as specific MLS® obligations may apply.

Do I have an obligation to use the Residential Measurement Standard (RMS) when listing a “Mere Posting” listing?

Yes. When making a representation about a residential property’s size in a listing, all real estate professionals in Alberta are required to use the RMS. This requirement applies to “Mere Posting” listings too. If a seller does not want to include the property’s size in its listing, that is acceptable – but if including a size, it must be determined using the RMS. The real estate professional must personally measure the property or arrange to have a qualified person measure it using the RMS. Remember as with other information in a mere posting listing, real estate professionals must not make misleading representations, and they are required to use reasonable care and skill to determine the facts of a property.

How do I offer additional services after signing the “Mere Posting” agreement?

A “Mere Posting” seller may request additional services you did not contemplate in the original agreement. A real estate professional may offer additional services to which the seller may agree. All parties must execute a written amendment to the original agreement before additional services start.

Is it true the more services I provide, the more likely the relationship will become agency representation?

The likelihood to create an implied agency representation relationship may increase with additional services. The nature of services and the conduct of the parties, not the quantity of services, determine whether an agency relationship exists. You risk an implied agency representation relationship when your services include:

- exchange of confidential information
- give confidential advice
- act in a way that you require the use of your judgment or discretion on which a consumer will rely
- communicate with third parties on behalf of the consumer
- negotiate on behalf of the mere posting seller

Can I advertise “Mere Posting” listing services?

Yes. If your brokerage allows “Mere Posting” arrangements and you decide to offer this service, you may advertise in accordance with the brokerage advertising policies.

How will I ensure payment of fees when providing “Mere Posting” services for a seller?

When providing “Mere Posting” listing services, remember, the Rules state:

“Every written service agreement shall clearly show all terms and conditions of the agreement and shall include the amount or method of calculating the remuneration or alternate compensation to be paid and the circumstances on which it will be payable”

In complying with this Rule, you create an obligation for the seller to pay fees as a specific term in the agreement.

How will I ensure payment of fees when representing a buyer in a trade involving a “Mere Posting” seller?

When you represent a buyer in a trade with a “Mere Posting” seller, either the buyer or the seller may pay the fees. If the buyer is paying the fees, ensure there is a written service agreement that includes this provision. If the seller is paying the fees to the buyer’s brokerage, ensure you have a written service agreement with your buyer and have the seller execute a *Seller Customer Acknowledgment and Fee Agreement*.

Clearly articulate the amount or method of calculating the fees in all agreements.

Who will hold the trust deposit(s)?

The buyer and the seller must agree on who holds trust deposits. The Purchase Contract contains the terms of trust. Real estate professionals do not have the authority to impose trust conditions. When representing a buyer in a trade with an unrepresented seller, the real estate professional may give advice to their client, explaining different options and implications for holding the deposit. For example, if you recommend the buyer's real estate brokerage hold the deposit in its trust account, it will ensure the Real Estate Assurance Fund coverage is available. The buyer and seller must agree on the terms of trust. Buyer representatives must not give advice to an unrepresented seller.

Who will convey the transaction?

A listing brokerage traditionally provides conveyance. A "Mere Posting" seller may not have considered this service. Conveyance is a matter for agreement between the buyer and the seller. The unrepresented seller may wish to convey documents or this may be a service of the listing brokerage or another service provider. When representing buyers in a trade with a "Mere Posting" seller, real estate professionals must understand and abide by the agreed upon terms.

Who is responsible for FINTRAC identification for "Mere Posting" sellers?

FINTRAC record keeping falls outside RECA's jurisdiction. You must seek further direction from your broker, FINTRAC, or your real estate association.

How will "Mere Posting" sellers handle multiple offer situations?

Self-represented sellers are exempt from authorization requirements and do not fall under RECA's jurisdiction. Real estate professionals must act based on the terms in the written service agreement. In the event of multiple offers, if the agreement does not include consultation service, the real estate professional must decline to provide that service unless there is a signed written amendment.

How do I handle multiple offer situations when representing buyers in a negotiation with a "Mere Posting" seller?

Real estate professionals must continue to act in the best interest of their buyer client. In dealing with "Mere Posting" sellers, do not give advice, offer any service that requires the use of your judgment or discretion, or do anything that may create an implied agency representation relationship.

Related information

Legislation

- *Real Estate Act* Rules – sections 1(1)(g), s.1(1)(i), s.41(e), s.42(a), s.43, s.58(h), s.60(4), s.60(5)

Information bulletins

- Client – Real Estate Brokerage
- Customer – Real Estate Brokerage

Education

- Real Estate Update 2012 – Dealing with an Unrepresented Seller

INFORMATION
BULLETINS

Last Revised January
2017

© 2017 RECA