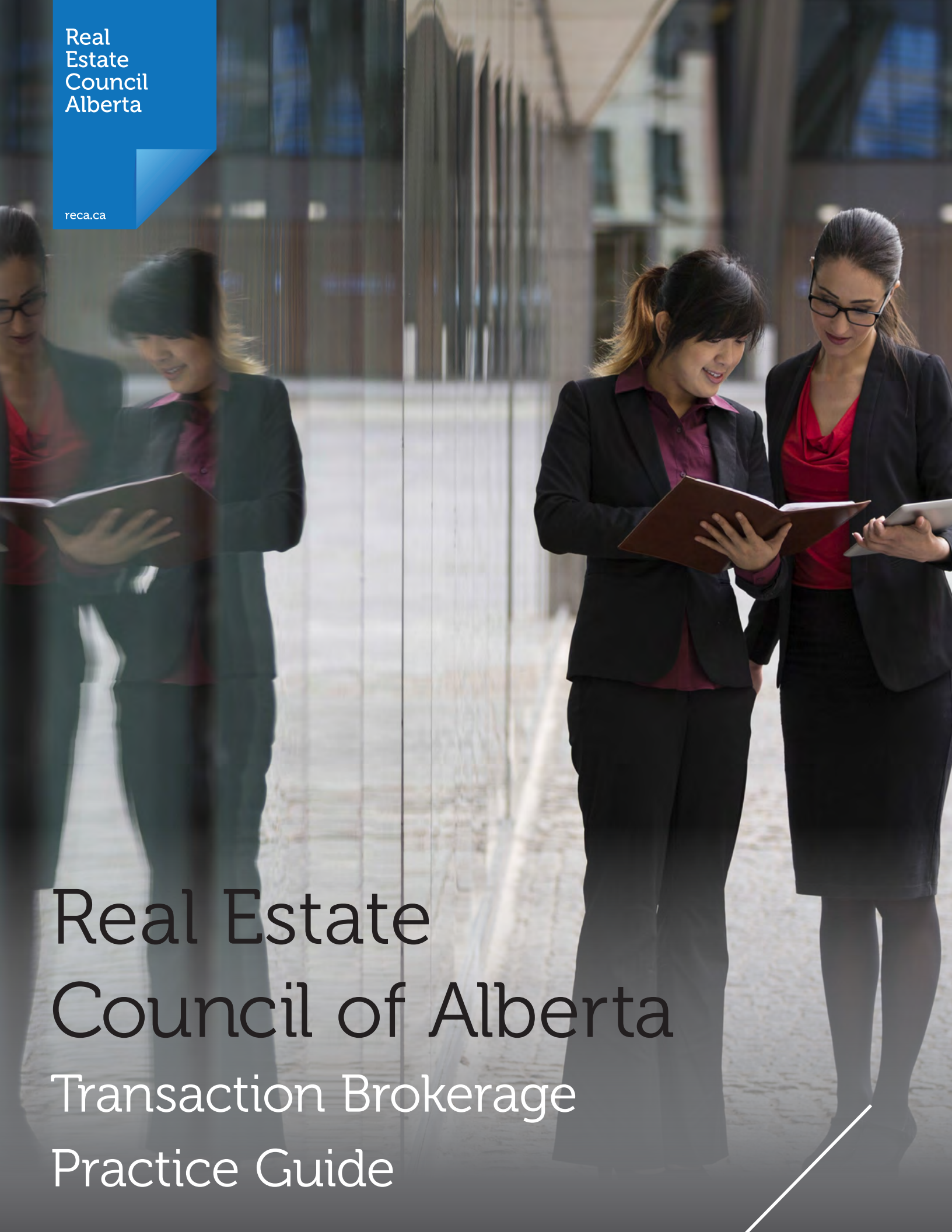


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Real Estate
Council of Alberta
Transaction Brokerage
Practice Guide



Real Estate Council of Alberta Transaction Brokerage Practice Guide

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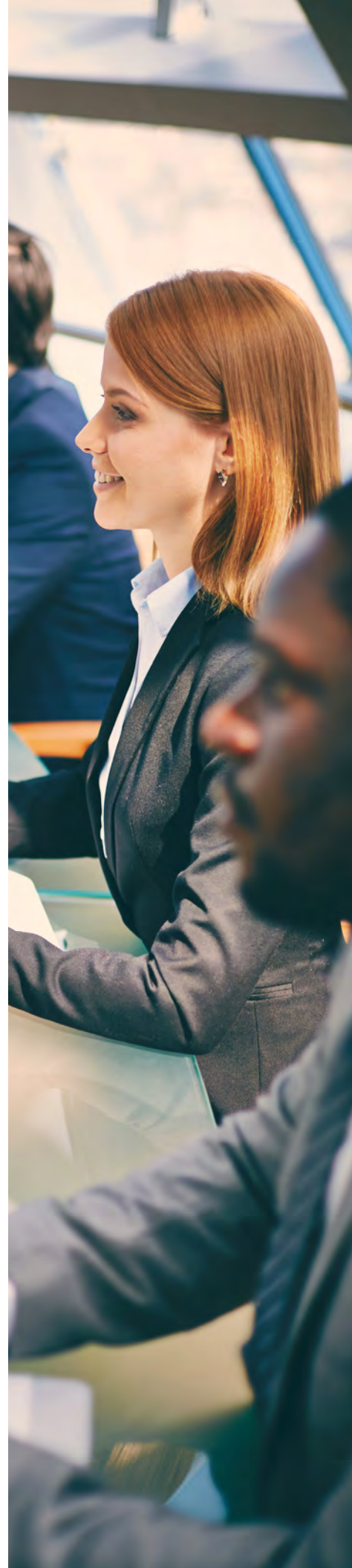
Disclaimer

This Guide does not include every possible transaction brokerage situation and it is not legal advice. Please review the appropriate legislation concerning conflict of interest and transaction brokerage as a brokerage or an individual industry professional in Alberta before proceeding with a transaction.

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

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Transaction brokerage basics



What is transaction brokerage?

Transaction brokerage is a service option in which a brokerage or an individual real estate professional provides facilitation services to a buyer and seller in the same transaction. If agreed to by both parties to the transaction, the brokerage or individual real estate professional(s) facilitates the transaction and does not advocate or act in the best interests of either party.

When does transaction brokerage become an option?

Transaction brokerage is intended as a service option when you have existing client relationships with a buyer and a seller, and a conflict of interest arises. For example, when your buyer client is interested in purchasing your seller client's property. Transaction brokerage is an option that addresses the inherent conflict of interest that arises when this happens.

Why does a conflict of interest exist?

A brokerage or individual real estate professional that has established an agency relationship with a client is a fiduciary. As a fiduciary, a brokerage or individual real estate professional must maintain the highest standard of care and fulfill their fiduciary duties to that client.

When a brokerage or individual real estate professional is in an agency relationship with a buyer or seller client, their fiduciary duties include:

- undivided loyalty to the client
- acting in the best interests of the client at all times
- the duty to avoid all conflicts of interest
- the duty to disclose all conflicts of interests when they arise

When a brokerage or individual real estate professional represents a buyer who is interested in purchasing a property and the seller of that property is also represented by the same brokerage or individual real estate professional, there is an inherent conflict of interest. The brokerage or individual real estate professional cannot fulfill their fiduciary duties to both clients in the same transaction. In this situation, there is a conflict between the best interests of the buyer and those of the seller. The buyer client wishes to pay as little as possible for the property on terms most favourable to the buyer. On the other hand, the seller wishes to sell their property for the highest price on terms most favourable to the seller. It is impossible to advocate for and represent the best interests of a buyer client AND seller client in the same transaction.

As a matter of practice, some brokerages or individual real estate professionals choose not to represent a buyer and a seller in the same transaction and will encourage one of their clients to obtain independent representation. However, another approach is to present both clients with

a service option that deals with the conflict of interest. Transaction brokerage is one such option.

NOTE: A buyer simply viewing property listed with the same brokerage or same designated agent does not create transaction brokerage. If the buyer expresses interest in the property after the showing, this triggers the need to discuss each client's options.

Do my clients need to consent to transaction brokerage?

Yes, clients need to consent in writing to transaction brokerage before you can proceed.

You must disclose to your clients the conflict of interest. The disclosure must be full; which means it needs to state all relevant facts, the nature of the conflict of interest, and include the advantages and disadvantages of the various ways to resolve the conflict. You must disclose the conflict as soon it arises. After you have made full and timely disclosure to each client, you must seek their direction regarding the preferred means to resolve the conflict of interest.

If both clients agree to enter into transaction brokerage, you must obtain their informed written consent. Informed consent means each client understands the facts, implications, and future consequences of providing their consent.

When a conflict arises:

- make a full and timely disclosure of the conflict to clients
- clients give their informed written consent to transaction brokerage
- proceed with the transaction as a transaction facilitator

You cannot obtain a client's informed consent to transaction brokerage before the conflict of interest arises, as the facts related to the conflict will vary based on the transaction. You cannot obtain 'blanket consent' from a client when you first start working with them in sole agency.

If one of the clients does not consent to transaction brokerage, please review page 13 of this Guide for information on how to proceed.

Is transaction brokerage always appropriate?

No. Transaction brokerage does not allow you to act solely in a client's best interest. It should be an option to continue a transaction only after your clients rule out other options to deal with the conflict of interest.

Brokerages and individual real estate professionals should not default to transaction brokerage simply because they have a property listed and their buyer client is interested in making an offer. Here are a few considerations to think about before suggesting transaction brokerage:

Seller Client

Who is your client? Were you originally representing the seller? The seller hired you to assist and represent them throughout the sale of their property, especially during the negotiation process. Is removing your ability to represent them and advocate on their behalf in their best interests? Does it fulfill your fiduciary duties?

Buyer: Client or Customer

Is the potential buyer your client or a customer? If you have a property for sale, and a person contacts you and indicates they wish to view the property or want to make an offer, this potential buyer is not your client but they are a customer.

How do I treat my seller (client) and potential buyer (unrepresented)?

Treating the potential buyer as a client or entering into a buyer representation agreement with this person is a breach of your fiduciary duties to your seller client. It is a breach of your duty to avoid conflicts of interest, and is a breach of your duty to act in your seller's best interest.

It is consistent with your fiduciary duties to your seller to show the property and provide the potential buyer with information and services that can be provided in a customer status relationship. Alternatively, you can refer the person to another brokerage or individual real estate professional. If you work in a common law brokerage, refer them to another brokerage. If you work in a designated agency brokerage, you can refer the person to another associate in your office.

When is transaction brokerage or customer status is not appropriate?

A client may need sole agency representation if they:

- have mental or physical limitations
- are of advancing age
- are a new immigrant
- are unfamiliar with the English language

Although those individuals have the capacity to enter into a contract, they may have limited ability to understand or access additional information. For that same reason, treating them as customers would also be inappropriate. Your broker can assist you in deciding on appropriate options to offer such clients.

When transaction brokerage will not resolve the conflict of interest

Transaction brokerage can resolve representational conflicts of interest, but it cannot resolve personal conflicts of interest. For example, one of your clients in the transaction may be a family member, close friend, long-term client, or business associate. It is impossible for you to be even-handed, objective, and impartial when you have this type of relationship with one of the parties in the transaction.

A personal conflict of interest can also arise when a brokerage or individual real estate professional is one of the parties in a real estate transaction. This is referred to as a "personal trade".

These are examples of a personal trade:

- in a common law brokerage, when the brokerage represents a buyer interested in an associate's property
- an associate wants to buy a property their brokerage has listed on behalf of a seller client

In designated agency, the conflict of interest arises when a designated agent wants to sell a property they own to one of their buyer clients, or they want to buy a property owned by one of their seller clients.

In both cases, the real estate professionals are required to disclose in writing these conflicts of interest to their clients. It is unrealistic to think a real estate professional can act as a transaction facilitator under these circumstances.

NOTE: The *Real Estate Act* Rules, section 51(1)(f), requires brokerages to have a policy for personal trades. Associates must adhere to brokerage policies and those policies may affect the options they offer their clients. A brokerage may have a policy that dictates when its associates are involved in personal trades with brokerage clients; those clients need full representation (i.e. sole agency) rather than a transaction brokerage relationship. Common law brokerages might offer to refer the client to another brokerage for the transaction, and designated agency brokerages might offer to refer the client to another designated agent or another brokerage.

Transaction facilitation



My clients consented to transaction brokerage, and I will facilitate the transaction. What does that mean?

Facilitating a transaction means you help clients reach a mutually acceptable agreement. During the negotiation between the buyer and the seller, as the transaction facilitator, you must treat both clients in an even-handed, objective, and impartial manner. You must adopt a neutral position as a “middleman” and not advocate for the interests of either party or assist either party in gaining an advantage over the other. You cannot interject yourself into the negotiations as an advocate for either client, nor can you use your discretion or judgement to advance the interests of one party over the other.

How can I know if I am being “even-handed, objective, and impartial?”

If you become a transaction facilitator, asking yourself these questions will help you determine if you were even-handed, objective, and impartial.

- did I provide the same information to both clients?
- did I treat all clients honestly and with reasonable care and skill?
- did I demonstrate impartiality or did I favour one client over the other?
- did I provide confidential advice to one client that was not shared with the other?
- would an outside observer conclude that I remained neutral throughout the process?

What activities can I do as a transaction facilitator?

Transaction facilitation services you can provide include:

- helping the buyer and seller negotiate an agreement
- giving the buyer and seller property statistics and information, including comparative information from listing services and local databases
- providing and preparing agreements of purchase and sale, and other relevant documents according to the buyer and seller’s instructions
- giving the buyer and seller the names of real estate appraisers, mortgage brokers, lawyers, surveyors, building inspectors, lenders, insurance agents, architects, engineers, and other professionals, but not recommending any specific service provider

The above facilitation services are in addition to your requirement to:

- act honestly
- present all offers and counter-offers to and from both parties, even when the seller has accepted another purchase contract
- pass on all information to a party that the other party wants them to know
- hold money you receive in accordance with the terms of trust
- keep the buyer and seller informed of progress
- tell the parties what information you have given to the other side
- tell the parties all information you receive while the agreement is in effect, especially:
 - o to the buyer, all material latent defects affecting the property
 - o to the seller, all material facts about the buyer's ability to buy the property

In addition to the facilitation services you provide, you can also provide general information and alternatives to address your client's questions. The following strategies may help:

Provide clients with general information:

- clients may access information in the public domain. Public domain information offers a variety of general and specific property information that may be helpful to clients. The Alberta Land Titles' online database (i.e. SPIN) allows searches of a wide range of property-related documents, such as property titles, condominium documents, survey plans, etc. Additionally, municipalities often make community data, land use descriptions, permit requirements, and property taxation/assessment information available to the public
- clients may have specific needs to consider before making a decision, such as proximity to schools or transit. Brokerages or individual real estate professionals can provide clients with contact information for organizations that may be able to provide them with information that addresses their questions or concerns (e.g. school boards, transportation services, recreation facilities, childcare facilities)
- clients may have questions that are beyond the expertise of a real estate professional (e.g. cost of renovations, legal advice). Real estate professionals may provide clients with a list of qualified service providers who may address their

questions or concerns. However, clients must decide which service provider(s) to contact, must contact the service provider(s) directly, and choose to hire them on their own

Provide clients with brokerage information:

Brokerages and/or real estate professionals may develop supplementary materials or resources for clients in order to help them make real estate decisions. These may include:

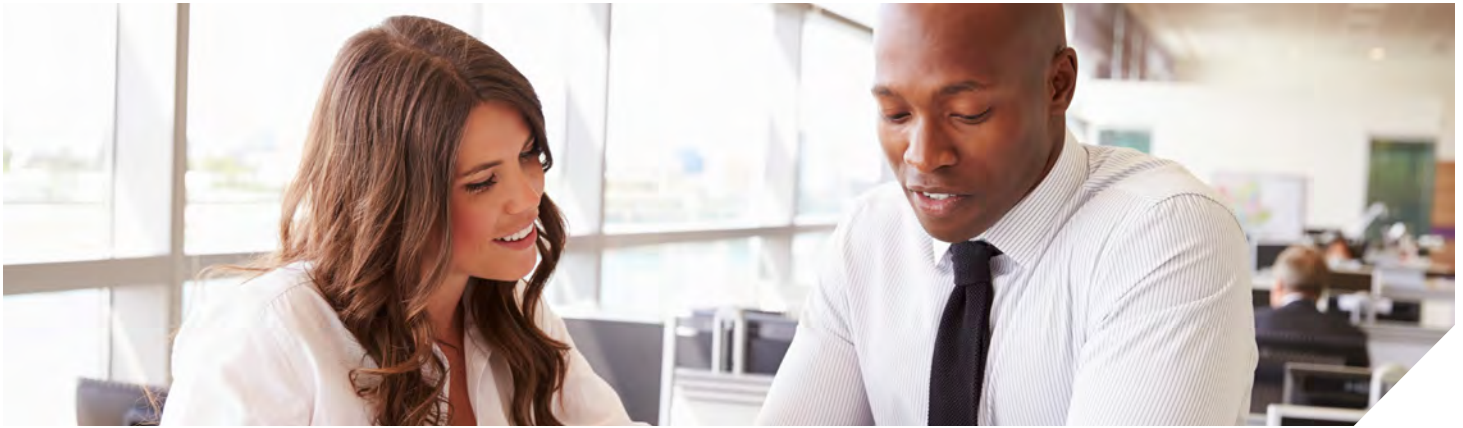
- materials about the buying and selling process generally
- property inspection request form
- materials that focus on specific topics (i.e. multiple offers, material latent defects). Ensure that any materials you develop are consistent with brokerage policies, and that your broker or broker delegate approve them

Refer clients to available property information:

You should refer the buyer to marketing information available about the property (e.g. brokerage/real estate professional's website, feature sheet, listing database)

Ask probing questions: This will likely prompt the client to consider various issues and options. Just ensure your questions are neutral and unbiased, and that they do not lead the client to a certain conclusion. Probing questions simply seek to understand what is important to a client and why it is important. By asking probing questions, you draw the client's attention to the need for specific information.

Obligations and fiduciary duties: Sole agent vs. transaction facilitator



General Obligations	Sole Agent	Transaction Facilitator
Exercise care and skill <ul style="list-style-type: none"> • keep client informed on progress of transaction • recommend relevant experts • draft legally binding documents 	✓ ✓ ✓ ✓	✓ ✓ ✓ ✓
Act honestly	✓	✓
Negotiate favourable terms	✓	X
Maintain confidentiality	✓	✓
Disclose information <ul style="list-style-type: none"> • disclose other party's motivation, if known • disclose other party's confidential information • disclose material latent defects affecting the property • disclose buyer's ability to purchase the property 	✓ ✓ ✓ ✓ ✓ ✓	X X X ✓ ✓ ✓
Act in person	✓	✓
Obey lawful instructions	✓	✓
Perform mandate <ul style="list-style-type: none"> • write offers and counter-offers • present offers/counter-offers • convey information client wants communicated to others 	✓ ✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓
Fiduciary duties	Sole Agent	Transaction Facilitator
Utmost loyalty <ul style="list-style-type: none"> • promote the interests of your client • provide confidential advice on relevant matters 	✓ ✓ ✓	X X X
Avoid conflicts of interest	✓	✓
Disclose conflicts of interest	✓	✓
Not make secret profits	✓	✓
Handle confidential information properly	✓	✓
To account for all funds the parties place in your care	✓	✓

1. Information previously obtained from clients must remain confidential. You must disclose new information equally to all clients to the trade.
2. You must disclose new information to all parties to the trade. This does not apply to information provided by clients previously in sole agency.
3. Provided the lawful instructions of one client to the trade is not in conflict with the lawful instructions of the other client.

Transaction brokerage process overview



1

Educate clients early about the potential for conflict of interest

2

Recognize potential conflicts of interest before they occur

3

Disclose conflicts of interest in a full and timely manner to all parties

4

Present clients with options to resolve the conflict

5

Seek clients' direction on their preferred means to resolve the conflict*

6

Obtain clients' timely and informed consent through a signed transaction brokerage agreement

7

Act as a transaction facilitator

8

Proceed with the transaction

*if they choose not to proceed with transaction brokerage, review page 13 of the Guide

Working with buyers and sellers



Working with buyers as a transaction facilitator

Writing offers (Purchase Contracts) with buyers is part of transaction facilitation. The transaction facilitator must encourage the buyer to make informed decisions, but not advocate for a particular decision. Below are some examples of questions to consider, and information you should discuss with and/or disclose to the buyer when working as a transaction facilitator:

- are any licensees involved (direct or indirect) in the transaction (e.g. personal trade)?
- if so, did you disclose the involvement?
- is there any strong relationship with the seller (relative, business associate, long-time friend, other associate in the same brokerage, etc.)?
- if so, did you disclose it?
- did you disclose all potential and actual conflicts to the buyer?
- how did you disclose the conflicts? What was the buyer's response?
- did the buyer review and sign the Agreement to Represent Both Buyer and Seller?
- did you use the appropriate Agreement to Represent Both Buyer and Seller form (e.g. common law or designated agency)?
- did you disclose all known material latent defects?
- how did you document these disclosures?
- is there a lack of appropriate municipal building permits or inspections (e.g. un-permitted home business, un-permitted building development, un-permitted or un-inspected plumbing and heating installations, etc.)?
- are there any environmental issues with the building(s) or the land?
- did you review the marketing and property information with the buyer?
- is the buyer concerned about property dimensions or measurements?
- Did you review the property title with the buyer and answer any questions?
- did you review the Real Property Report with the buyer and answer any questions?
- is the buyer aware of any easements, caveats, and utility rights of way?
- are there any encroachment issues? If so, did you deal with the issues in the offer?
- is there unauthorized land use or building use that does not conform to the land use district (zoning) for the property (e.g. unauthorized rental suite, etc.)?
- are there any proposals to construct or expand existing roadways that might affect use or enjoyment of the subject property?
- are there any proposals to amend land use that might affect use or enjoyment of the subject property?
- are there potential expropriations that might affect use or enjoyment of the subject property?

Working with sellers as a transaction facilitator

Reviewing offers (Purchase Contracts) with sellers is part of transaction facilitation. The transaction facilitator must encourage the seller to make informed decisions, but not advocate for a particular decision. Below are some examples of questions to consider and information you should discuss with and/or disclose to the seller when working as a transaction facilitator:

- are any licencees involved (direct or indirect) in the transaction (e.g. personal trade)?
- if so, did you disclose the involvement?
- is there any strong relationship with the buyer (relative, business associate, long-time friend, other associate in the same brokerage, etc.)?
- if so, did you disclose it?
- have you disclosed all potential and actual conflicts to the seller?
- if so, how did you handle it? What was the seller's response?
- has the buyer reviewed and signed the Agreement to Represent Both Buyer and Seller?
- did you use the appropriate Agreement to Represent Both Buyer and Seller (e.g. common law or designated agency)?
- has the seller disclosed any material latent defects to you?
- did you disclose all known material latent defects to the buyer?
- if so, how did you document the disclosure for the benefit of all parties?
- is there a lack of appropriate municipal building permits or inspections (e.g. un-permitted home business, un-permitted building development, un-permitted or un-inspected plumbing and heating installations, etc.)?
- are there any environmental issues with the building(s) or the land?
- did you review the marketing and property information with the seller?
- have you reviewed property title with the seller and dealt with any questions?
- is there any consent an issue? If so, can you secure the missing signature(s)?
- are all of the sellers involved in reviewing the offer to purchase?
- have you reviewed the Real Property Report with the seller? Is it current?
- are there easements, encroachments, caveats and utility rights of way?
- will any items affect the sale (e.g. lis pendens)? Have you disclosed this to the buyer?
- is there unauthorized land use or building use that does not conform to the land use district (zoning) for the property (e.g. unauthorized rental suite, etc.)?
- are there any proposals to construct or expand existing roadways that might affect use or enjoyment of the subject property?
- are there proposed land use changes that may affect property use or enjoyment?
- are there potential expropriations that might affect property's use or enjoyment?
- if the property is a condominium, does the seller have all the documentation?
- If it is a condominium, is it a conventional or bare land? If it is a bare land condominium, does the seller have a current Real Property Report?
- did you disclose to the seller any issues regarding the buyer's ability to complete the transaction?

Transaction brokerage odds and ends



What if both parties do not agree to transaction brokerage?

If either party declines to enter into a transaction brokerage agreement, the parties have a number of options to resolve the representational conflict.

Parties Reach Agreement on Representation:

The buyer and the seller agree which party the brokerage will continue to represent; the other party will seek representation with another brokerage (common law brokerage) or from another designated agent (designated agency brokerage), or will proceed with customer status.

Determine Which Party was a Client of the Brokerage First:

If parties don't reach agreement, the brokerage must determine which party was a brokerage client first. The client whose written service agreement pre-dates the other, will remain a client of the brokerage. The client who will no longer be represented by the brokerage can proceed with customer status or can seek representation from another brokerage (common law brokerage) or from another designated agent in the same brokerage (designated agency brokerage).

Real estate professionals should be familiar with all written service agreements and their provisions for a change in representative capacity:

[Exclusive Seller Representation Agreement \(Common law\) Clause 7](#)

[Exclusive Buyer Representation Agreement \(Common law\) Clause 6](#)

[Exclusive Seller Representation Agreement \(designated agency\) Clause 8](#)

[Exclusive Buyer Representation Agreement \(designated agency\) Clause 7](#)

If Client Chooses Customer Status:

If one party chooses customer status, the other party can remain a brokerage client. The party that becomes a customer will need to sign a [Customer Acknowledgement \(Buyers and Sellers\)](#) to confirm their change in representation with the brokerage. Although the brokerage will not represent that party or advocate on its behalf, the brokerage can provide customer services that include providing real estate statistics, standard real estate forms, drafting offers and counter offers, and will keep the party informed on the progress of the transaction. If the specific transaction does not come together, the customer returns to client status according to their written service agreement with the initial brokerage (common law brokerage) or designated agent (designated agency brokerage). The requirement to maintain confidentiality of a client's personal information continues when the client becomes a customer.

If Client Chooses Referral:

If customer status is not acceptable, real estate professionals may refer the client to another brokerage for representation (common law)

or to another associate in the same brokerage (designated agency). If the specific transaction does not come together, the client will return to the first brokerage or designated agent according to the written service agreement.

How do brokers provide advice to associates in transaction brokerage?

Brokers are responsible for supervising all associates and associate brokers registered with their brokerage. The broker must remain neutral, and act in the same even-handed, impartial, and objective manner as the associate. If an associate or associate broker, working as a transaction facilitator, asks their broker for assistance, the broker 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 working as a transaction facilitator. The broker's role is to help

ensure the transaction facilitator works in an even-handed, objective, and impartial manner.

The broker may refer the associate(s) to prior information, such as brokerage policy or procedures, brokerage checklists for writing offers or counter-offers, or this Transaction Brokerage Practice Guide. The broker may also ask probing questions without giving discretionary advice to an associate that may favour one client over the other.



Appendix: Purchase Contract Clauses



Buyers: Residential Real Estate Purchase Contract Clauses

It is important to remember the information or materials you provided to your buyer clients before you became a transaction facilitator. You can use this information to help the buyer make decisions during the offer process. The following is a review of some key discussion points and questions, answers to which will help you facilitate the offer with the buyer.

Buyer Identifies Chattels - Inclusions and Exclusions

The buyer should identify the items they want included/excluded with the purchase.

- what chattels does the buyer want included/excluded in the offer?
- is the buyer aware of the inclusions/exclusions on the property feature sheet?
- are there items the buyer wants excluded? The seller will have to remove them.

Buyer's Purchase Price

Buyers will know the listing price of the property from the marketing material. When writing an offer as a transaction facilitator, it is the buyer's sole responsibility to determine their offer price. You may give statistical information on comparable sales and active listings, and remind the buyer of comparable properties they viewed. Once the buyer decides their offer price, ask them how they plan to come up with the necessary funds. You can draft the offer based on the information and instructions the buyer provides

- did you discuss price with the buyer?
- did you give the buyer any current statistics or recent comparable sales?
- how will the buyer pay for the property?
- is the down payment currently available?
- is some of the down payment a gift?
- if financing is involved, does the buyer have pre-approval for the amount and terms?
- when does the buyer's mortgage pre-approval expire?
- are some funds coming from the sale of the buyer's current home?

Buyer's Deposits

The buyer must decide their deposit amount. You can give general input on the purpose of deposits, how the seller may view the deposit size, and the advantages and disadvantages to both parties, but you must not give advice to the buyer on the strategy to adopt or the deposit amount. You may talk in general terms from your experience.

- how much of a deposit will the buyer provide?
- do they have the funds necessary to provide a deposit with the offer?
- is the buyer aware the brokerage or a third party will cash the deposit cheque and hold the funds in trust?
- Is the buyer aware that they may possibly receive interest on their deposit?
- the buyer and the seller must agree where the deposit is held

Buyer's Possession Date

The buyer should determine the best possession date for them. If they are currently renting, you can use probing questions to determine the details of their tenancy. The lease they have, if any, will determine how much notice of tenancy termination they need to give to their landlord. On the other hand, if the buyer has a property to sell in order to buy the subject property, they should allow enough time for this to happen. This scenario will have a direct bearing on the preferred possession date for the buyer.

- what is the best possession date for the buyer?
- how did the buyer determine their preferred possession date?
- if the buyer is currently a renter, is their lease periodic or fixed term?
- what is the time required for terminating the buyer's lease?
- does the buyer's preferred possession date consider this?
- are tenants currently occupying the subject property?
- does the buyer want to use the subject property as a revenue property or occupy it as a residence?
- will the buyer (or seller) need time to terminate tenancies so the buyer can occupy?
- if the buyer is a homeowner, do they need to sell their current home in order to buy?
- if they need to sell their current home, how much time do they need for that?

Buyer's Terms

Terms are items to which the buyer and seller agree. Although terms cannot impede the transaction, they include important information. The "Buyer's Terms" section of the Offer to Purchase can include the buyer's expectations of the seller. Depending on the buyer's terms, consider the following:

- is an Addendum required to include the buyer's expectations of the seller?
- if the buyer is assuming the seller's mortgage, does the offer include a Financing Schedule?
- if the seller is providing financing, does the offer include a Financing Schedule?
- if the owner rents out the property, does the offer include a Property Schedule?
- is the property is a country residence, does the offer include a Property Schedule?
- for condominiums, does the offer include a Condominium Property Schedule?
- did you complete all Schedules with the buyer according to their instruction?

Buyer's Conditions

Buyer conditions address items that might prevent completion of the sale, such as financing or a home inspection. You can refer to information that you have previously provided to the buyer, such as the Property Inspection Report Request form. The form, available on RECA's website (www.reca.ca), is a buyer information tool and not a substitute for the applicable Schedule(s) intended to accompany the Purchase Contract.

Financing

You will know the buyer's financial situation by writing the financial data in the offer. You may also know the buyer's financial situation from information they provided at the beginning of your relationship, when you were representing them in sole agency. Buyers should know if they have the necessary funds to purchase a property, if they have a mortgage pre-approval, and their budget limitations. If a buyer does not know how long it will take to obtain financing, you can indicate the typical time to obtain mortgage approval based on your experience in their marketplace and draft a clause to that effect.

- if financing is involved, does the buyer have pre-approval for the amount and terms?
- how long does the buyer need to arrange for mortgage approval?
- which financial organization is funding the buyer's home purchase?
- does the buyer have to sell a property before they can proceed with the purchase of the seller client's property? How will they address this in the offer?

Property Inspection

As a best practice, you previously provided information to your buyer client on the types of inspections and reports that are available. You should refer the buyer to this prior information and ask if they understood it, and answer any of their general questions about available inspections and reports. You can outline the advantages and disadvantages associated with including a property inspection condition.

You can also ask the buyer if they want to include a property inspection condition, and then draft the offer according to the buyer's instructions. If the buyer wants to have a property inspection, you should provide them with a Property Inspection Schedule and ask them to indicate which inspection report option they want reflected in the offer to purchase.

Condominium Document Review

You can outline the advantages and disadvantages of including a condition to review the condominium documents review condition in the offer. If the buyer wants to include this condition, you should provide the buyer with a Condominium Property Schedule and review the form with them.

Sale of the Buyer's Home

If the buyer wants their purchase subject to the sale of their current home, you may provide them with a Sale of Buyer's Home Schedule to indicate what arrangements for this condition they want you to reflect in their offer to purchase.

Does the buyer:

- understand the seller's home remains on the market
- know they gain a right of first refusal should the sellers accept a new offer
- understand that the subject property may get other offers
- understand how the seller will handle their offer to purchase in the event they get other offers
- know they must proceed with marketing their home by a certain date
- understand they must proceed with addressing all other conditions

Other Buyer Conditions

Buyers may have other issues that require a condition in the offer, such as the ability to build a garage on the lot, or testing water or septic systems for rural property. If you recommend a condition(s) or draft the wording, the seller could perceive this as using discretion to the buyer's advantage. You can comment on the pros and cons of each clause/condition, but you may not advocate for any particular one.

Timing of Buyer's Offer

You should discuss the pros and cons associated with the duration of an offer to purchase, and ensure the buyer understands the process and flow. You may share your general understanding of the pace of the market at the time (e.g. sellers', buyers' or balanced market). If the seller is temporarily away or out of town, this information will help the buyer decide on the length of time to leave the offer open for the seller's consideration.

- how long is the offer open for acceptance?
- is the seller accessible? Are they on holidays or have they moved away?
- does the buyer understand the offer/counter offer process and flow?
- does the buyer know that you may need to reach them quickly?
- can you reach all of the buyers included in the contract quickly?
- what are the market conditions?

Consider doing a final review of the Purchase Contract with the buyer.

Sellers: Residential Real Estate Purchase Contract Clauses

It is important to remember the information or materials you provided to your seller clients before you became a transaction facilitator. You can use this information to help the seller make decisions during the offer/counter offer process. The following is a review of some key discussion points and questions, answers to which will help you facilitate the completion of any counter offers on the seller's behalf.

Seller Reviews Chattels – Inclusions and Exclusions

Sellers should identify the chattels they want included/excluded in the sale. Sellers should also be aware they must specifically exclude any items attached to the property that they wish to keep.

- what chattels does the seller want included/excluded?
- does the offer match the items the seller excluded in the listing contract?
- are any included chattels rented, leased to own, or financially encumbered?
- how will the seller deal with this in the offer?
- are the included chattels in good working condition?
- if not, will the seller repair them or declare them sold "as is"?
- whichever option the seller chooses, is it reflected in the offer?

Seller Reviews Offered Purchase Price

It is the seller's sole responsibility to determine the price to counter offer or accept. While the seller may have the comparative market analysis (CMA) you did when you listed their property, they may need it updated with the most recent comparable sales and active listings to help them with their decision. The transaction facilitator can ask probing questions to draft the counter offer based on the seller's instruction.

- did you discuss the counter-offer price with the seller?
- did you provide the seller with any current market statistics and recent comparable sales?
- how does the seller want to reflect the additional funds in the offer (e.g. more deposit, more financing, more down payment, or a combination thereof)?
- if financing the sale, does the buyer have pre-approval for mortgage amount, rate, and term?
- does the seller know the buyer's ability financially to complete the transaction?
- are some of the buyer's funds coming from the sale of their current home?

Seller Reviews Buyer Deposit

You can give general input on the purpose of deposits, and the advantages and disadvantages of the deposit size to both parties. You can talk in general terms from your experience, but must not give advice to the seller on which strategy to adopt or what deposit amount to require from the buyer.

- how much of a deposit did the buyer provide?
- is there a deposit accompanying the buyer's offer?
- did you talk to the seller about deposit practices for this type of property?

Seller's Possession Date

The property marketing material likely includes the seller's preferred possession date. If the buyer indicates a different possession date, the seller needs to decide if the buyer's date will work. If not, the seller needs to decide on a date that works for them and hopefully for the buyer. If the seller plans to build, re-buy, or rent, they should allow time for this to occur when selecting a possession date.

- which is the best possession date for the seller? How was it determined?
- were the seller's plans for the future taken into consideration (e.g. build, buy or rent)?
- has the seller already purchased another property?
- does the buyer's preferred possession date work for the seller?
- are there tenants currently occupying the subject property?
- will the seller (or buyer) need time to terminate tenancies so the buyer can occupy?

Seller's Review of Buyer Terms; Seller Terms

Terms are items to which the buyer and seller agree. Although terms cannot impede the transaction, they include important information. The "Buyer's Terms" section of the Offer to Purchase can include the buyer's expectations of the seller. The seller needs to review the buyer's terms and may add terms describing their expectations (e.g. seller to remove swing set 30 days after possession, etc.).

- if an Addendum is part of the offer, did the seller review it?
- does the seller require an Addendum to include their expectations of the buyer?
- if the seller is providing financing, did the seller review the Financing Schedule?
- if the owner rents out the property, did the seller review the Property Schedule?
- if the property is a country residence, did the seller review the Property Schedule?
- if the property is a condominium, did the seller review the Condominium Property Schedule?
- does the seller need to include any other Schedules with their counter offer?
- did you review all the appropriate Schedules with the seller, and changed or completed them according to their instruction?

Seller Review of Buyer Conditions

Buyer conditions deal with issues that are important to them, such as financing or inspections. Review all buyer conditions with the seller. In determining the seller's response, you may refer to prior information you gave to the seller, such as the Property Inspection Report Request form, which is available on RECA's website (www.reca.ca). Additionally, you need to determine if the seller has any conditions to add to the Purchase Contract.

Financing

You will know the buyer's financial situation from completing the financial portion of their offer to purchase. You must disclose to the seller any facts regarding the buyer's ability to purchase the subject property.

- if financing is involved, does the buyer have pre-approval for the amount and terms?
- how long does the buyer need to arrange for mortgage approval?
- did you discuss the buyer's ability to purchase the property with the seller?

Property Inspection

As a transaction facilitator, you can refer the seller to any information you already provided. This might include information on property inspection options at the start of the relationship. The transaction facilitator can answer any general questions about property inspections, as well as outline the advantages and disadvantages of including a property inspection condition and the specific property inspection option the buyer has chosen.

Condominium Document Review

It is the seller's responsibility to provide the condominium documents. Ideally, the seller will have them at the time of listing and share them with you then. You should explain the buyer's condition for condominium document review with the seller, and go over the list of documents so the seller understands the need to secure missing documents in a timely manner.

Sale of the Buyer's Home

If the buyer chooses to have their purchase subject to the sale of their home, you may provide the buyer with a Sale of Buyer's Home Schedule to indicate what arrangements for this condition they want reflected in the offer to purchase.

- does the seller understand that their home remains on the market?
- does the buyer understand that the seller may receive other offers on the property?
- does the seller know that they give the buyer a right of first refusal?
- does the seller understand how they will handle other offers in that event?
- does the seller know that the buyer must proceed to address all other conditions?

Other Buyer Conditions

The buyer may have other issues that require a condition in the offer. Sellers should also review these conditions to the same extent, review any related Schedules, and determine how they may affect the transaction.

Seller's Condition(s)

Sellers may want to add a condition as part of their counter offer. A seller condition might deal with securing additional information, taking action, or waiting for action by others. For example, sellers may want to confirm their mortgage information, complete a purchase contract on another property, or have a lawyer review the contract. If you recommend or create the wording, the buyer could perceive this as using discretion to the advantage of the seller. You can comment on the pros and cons of each seller clause, but may not advocate for any particular one.

Counter Offer Timing

You should discuss the pros and cons associated with the length of time of a counter offer, and ensure the seller has an understanding of the process and flow. You may also share your general understanding of the pace of the market at the time (e.g. sellers', buyers' or balanced market).

- how long is the offer open for acceptance?
- does the seller understand the offer/counter offer process and flow?
- does the seller know that you may need to reach them quickly?
- can you reach all sellers quickly?

Consider doing a final review of the Purchase Contract with the seller.

