

CUSTOMER – REAL ESTATE BROKERAGE

Purpose: This bulletin defines a customer relationship and explain the obligations you owe to a customer and optional services.

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

Customer defined

The *Real Estate Act* Rules (Rules) defines a customer as:

“a person who has contacted, but not engaged or employed, an industry member to provide services.”

In the context of a real estate brokerage, a customer is a person who approaches a real estate professional and is seeks information or assistance regarding their real estate needs. In the context of agency relationships, the term “customer” identifies the third party, that is, the “outsider” to a particular agency relationship.

A person may want to be a customer for various reasons including:

- they simply want to view a property through a brokerage or attend an open house
- they did not decide if they are serious about selling or buying property
- they are unsure if they wish to hire a brokerage to represent them
- they may have the experience or sophistication in real estate matters to represent themselves
- an industry professional may have a conflict of interest and is only able to represent one party to a transaction

In some cases, a brokerage may have a property listed and can only represent the seller. A brokerage may represent a new homebuilder but the builder prohibits the brokerage to represent buyers on the builder’s listings. In this case, the brokerage will treat all potential buyers as customers. Customers may seek representation by another brokerage.

Informed consent

The nature of the business relationship is an important issue for industry professionals and consumers. It is the responsibility of industry professionals to ensure their role is clear to customers at all times and that there is no pressure to direct a particular type of relationship when they are dealing with consumers and third parties.

Real estate professionals should have a clear understanding of their obligations to clients and customers. While consumers should make an informed choice about the type of relationship they wish to have with a real estate broker, they should also understand the implications of the options available to them.

Customer acknowledgment form

A real estate professional must present a customer acknowledgement form to the customer. While clarifying matters for consumers, the form also gives protection for real estate professionals. This form may help avoid representation disputes.

The customer acknowledgement requirements include the following:

- recognition that the customer has chosen to forgo any agency representation
- that the real estate broker does not owe the customer any agency obligations including fiduciary obligations
- that the customer understands the real estate broker will not give services that require discretion, the exercising of judgment or the providing of confidential information

Customer – mandatory obligations

Customers must understand whom the real estate professional represents. The real estate professional will not give any services to the customer that require discretion or judgment, confidential advice or advocate on their behalf.

A brokerage does not owe any agency or fiduciary obligations to a person who does not engage the services of the brokerage and chooses to be a customer.

A real estate professional still has important obligations to a customer. Those obligations are to act honestly, ensure any information provided is correct, exercise due care and skill at all times, and hold any monies received from the customer in trust in accordance with the legislation.

Customer – optional services

At their discretion, the real estate professional may provide a customer with certain services as outlined in the Rules. Examples of services a real estate broker may give to a customer include the following:

- give real estate statistics and information on a property (including comparables)
- give agreements of purchase and sale, lease or other relevant documents and prepare all necessary documents in accordance with the instructions of the customer

- give the names of real estate service providers (but not recommend any particular provider)
- present in a timely manner, all offers and counter-offers to and from the customer
- convey to the seller in a timely manner all information that the customer wishes to communicate to the seller
- keep the customer informed regarding the progress of the transaction

Related information

Legislation

- *Real Estate Act* Rules – sections 1(1)(i), s.60, s.60.1, Schedule 1 (Forms 8 and 9)

Guides

- Consumer Relationship Guide