Real Estate Council Alberta

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Conflict of Interest - Representing Competing Buyers

RECA Resource
Information Bulletins

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Purpose

This bulletin applies to all real estate licensees. It explains your duties when representing multiple buyer clients interested in purchasing the same property.

Regulatory status: Information Bulletins provide guidance on how RECA interprets and applies existing legislative requirements. They do not create new legal requirements or amend the *Real Estate Act* or the *Real Estate Act* Rules.

Licensees' requirements

Licensees must disclose to their clients, at the earliest practical opportunity, any conflict of interest they may have in their dealings with a client. When a brokerage represents a buyer, it is responsible for finding the best property that meets the buyer's needs and price range and must act in the buyer's best interests.

Common law brokerage

In a common law real estate brokerage, if one licensee represents a client, every licensee at the brokerage represents that client. If two licensees at the same brokerage represent two different clients who both want to purchase the same property, the licensees and the brokerage conflict of interest.

Designed agency brokerage

In a designated agency brokerage, when a licensee represents a client, only that licensee represents the client, not the brokerage. At a designated agency brokerage, two different licensees, each representing a different client who wants to buy the same property, have no conflict of interest, and neither does the brokerage. A conflict of interest would arise only if the same designated agent represents more than one buyer-client in the same transaction.

Conflict of interest

When a common-law brokerage or a designated agent has two or more clients interested in purchasing the same property, the brokerage or designated agent has a conflict of interest. How can the brokerage or designated agent act in one client's best interests in obtaining the

best property when another client wants to buy that same property? The brokerage and designated agent share responsibility for finding the best possible property for both clients. Still, the clients cannot buy the same property, so the brokerage and designated agent cannot act in the best interests of both.

The danger arises because the brokerage or designated agent knows each client's confidential information. When looking to buy a home, the most important confidential information is usually the maximum price a client is able or willing to pay. This becomes a problem when two clients compete for the same property and their respective licensees know the maximum prices. A licensee is responsible for submitting the best possible offer for their client, giving that client the best chance of getting the property, but a licensee cannot do that for two competing clients at once.

What the Rules require

Timing of disclosure. As with other conflict-of-interest situations, disclosure must happen as soon as the conflict arises, and the situation must continue to be managed for as long as it exists:

- **When the conflict arises**. Tell your clients that you have a conflict of interest, why the conflict exists, and what their options are. Before a client decides how to proceed, you must allow them to obtain independent legal advice.
- **While the conflict continues**. If both clients agree that the brokerage or designated agent can continue representing them, the nature of that representation changes, and this must be documented (see below). The brokerage or designated agent must not disclose one client's confidential information to the other, even if doing so would help that client get the property.

Once you disclose the conflict, it is the client's decision how to proceed. Sometimes it may be in both clients' best interests for the brokerage or designated agent to no longer represent either of them in the purchase of that property.

Documenting the agreement

If a brokerage or designated agent represents competing buyers and all parties agree to continue, that agreement should be in writing. The designated agent or brokerage should obtain independent legal advice to draft a written agreement for these situations. Without a written agreement, it will be difficult for the brokerage or designated agent to prove they had the clients' consent to continue representing them, and equally difficult to prove what each client understood and agreed to.

Related Information

Legislation	Relevant Sections
Real Estate Act Rules	ss. 1(1)(f), (g.1), 41(d), 43(1), 44, 57(e), 58(e)
Additional Resource: Information Bulletins	Client - Real Estate Brokerage Conflict of Interest Disclosure - Condominium Managers Conflict - Buying a Client's Property Conflict of Interest Conflict - Representing Buyer and Seller