

# CONFLICT OF INTEREST – COMPETING BUYER CLIENT INTERESTS

Purpose: To explain your duties when representing more than one buyer client who are interested in purchasing the same property.

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

Industry members must disclose to their clients, at the earliest practical opportunity, any conflict of interest they may have in the course of their dealings with a client. When a brokerage represents a buyer, the brokerage is responsible to find the best property possible that meets the client's needs and price range and you must act in the buying client's best interests.

## Common law brokerage

In a common law real estate brokerage, if one real estate professional represents a client, this means that every industry professional in the brokerage represents the client. If two real estate professionals in a brokerage represent two different clients who want to purchase the same property, the real estate professionals and the brokerage are in a conflict of interest.

## Designated agency brokerage

In a designated agency real estate brokerage, when a real estate professional represents a client, only that industry professional represents the client. The brokerage does not. In a designated agency brokerage, two different real estate professionals who have two different clients that want to buy the same property have no conflict of interest. Neither does the brokerage. There would only be a conflict of interest if the same designated agent represents both clients.

## Conflict of interest

When a common law brokerage, or a designated agent, has two or more clients who are interested in purchasing the same property, the brokerage or designated agent is in a conflict of interest. How can the brokerage or designated agent act in one client's best interests in obtaining the best property for their client when another client wants to buy the same property? The brokerage and designated agent have the same responsibility to find the best property possible for both clients. This creates a problem if the best possible property for both is the same property.

Both clients cannot buy the same property. This is why the brokerage and designated agent are in a conflict of interest. They cannot act in the best interests of both of its clients in this case.

The danger arises because the brokerage or designated agent knows the client's confidential information. When looking for a house to buy, the most important piece of confidential information is usually the maximum price that the client is able or willing to pay. There is a problem when two clients compete for the same house and the maximum price that both will pay for the property is known by their respective real estate professionals. A real estate professional is responsible to submit the best offer possible for your client so that your client has the best chance possible of getting the property.

### What do you do if you have a conflict of interest?

Tell your clients that you have a conflict of interest, why you have a conflict and their options. Once you tell your client that you have a conflict of interest, it is their decision how to proceed. Before the client decides what to do next, you must give him the chance to get independent legal advice.

If both clients agree that the brokerage or designated agent can continue to represent both of them, the representation of the clients will change. The brokerage or designated agent cannot tell one client's confidential information to the other client even if it will help them get the property. Sometimes it may be in both clients' best interest that the brokerage or designated agent no longer continues to represent either of them for the purchase of that property.

If a brokerage or designated agent represents competing buyers, and all parties agree, the agreement should be in writing. The designated agent or brokerage should get independent legal advice to draft a written agreement to use in these cases. Without a written agreement, it will be difficult for a brokerage or designated agent to prove that they had the clients' consent to continue to represent them. It will also be difficult for the brokerage or designated agent to prove what the client understood and was agreeing.

### Related information

#### Legislation

- *Real Estate Act Rules* - sections 1(1)(f)(g.1), s.41(d), s.43(1), s.44, s.57(e), s.58(e)