

CONFLICT OF INTEREST – REPRESENTING BOTH SELLER AND BUYER

Purpose: To explain how you work in transaction brokerage when you represent a buyer and seller in the same transaction.

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

In a common law brokerage, conflict of interest arises when:

- one brokerage real estate professional represents the seller and a different brokerage real estate professional represents the buyer in the same transaction or potential transaction
- when the same brokerage real estate professional represents both the buyer and seller in the same transaction or potential transaction

In a designated agency brokerage, conflict of interest arises when:

- a brokerage real estate professional is the designated agent for both the buyer and seller in the transaction or potential transaction

Your obligation is to disclose the conflict of interest to both clients as soon as the conflict of interest arises and then discuss options with each party to resolve the conflicts before proceeding further with the transaction.

Resolving the conflict of interest using transaction brokerage

Transaction brokerage allows you to facilitate the purchase and sale of a property between the seller and buyer. **Before** you can proceed to act as a transaction facilitator and facilitate a transaction, you must:

- disclose the conflict of interest
- discuss the options to resolve the conflict of interest
- give both the buyer and seller the opportunity to review the transaction brokerage agreement
- give both the buyer and seller the opportunity to request further information about the content of the agreement and the description of the new relationship before signing the agreement
- if the parties agree, enter into a written transaction brokerage agreement

If the parties do not agree to enter into a transaction brokerage agreement, the brokerage will continue to represent the party with whom it first entered into an agency relationship. This is subject to any other conflict of interests the brokerage may have with the clients.

In a common law brokerage, you will offer the option to the other party to either treat them as a customer or refer them to another brokerage.

In a designated agency brokerage, there is another option when the buyer and seller do not agree to transaction brokerage. This option is to refer one of the parties to another designated agent of the brokerage.

Your role as a transaction facilitator

- your role is that of an intermediary to assist the clients in reaching a mutually acceptable agreement
- you do not place the interests of one client over the other
- you do not direct the parties toward an agreement you believe is fair
- you must remain neutral and treat the interests of both the buyer and seller in an even-handed, objective and impartial manner
- you **must not** use your discretion or judgment to favour one client over the other
- it is your obligation to share any information or advice you give to one party with the other party to the transaction

Facilitation services

You can assist your buyer and seller to achieve a successful real estate transaction using facilitation services. They may include:

- assist the buyer and seller to negotiate a mutually acceptable agreement
- give real estate statistics and information on property including comparable property information
- give agreements of purchase and sale, lease or other relevant documents
- prepare all necessary documents in accordance with the instructions of the buyer and seller
- give the names of real estate appraisers, mortgage professionals, surveyors, building inspectors, lenders, insurance agents, architects, engineers and the like (without recommending any particular professional)
- present in a timely manner, all offers and counter-offers to and from the buyer and seller
- tell the buyer and seller in a timely manner all information that either wishes to communicate to the other
- keep the buyer and seller fully informed regarding the progress of the transaction

A transaction facilitator **may** exercise a degree of discretion or judgment when:

- you use discretion or judgment in choosing the comparable sales to show the buyer. You would give the same information to the seller
- you are aware the buyer will need to obtain a mortgage, you can point out to the buyer they may include a condition in the offer to obtain financing
- a buyer requires financing and asks how much time they will require to get mortgage approval, you can tell the buyer the typical amount of time it takes in their community to arrange financing or a range of time based on previous experience working with buyers
- a tenant occupies a property, and a buyer intends to use the property for their personal residence, you can outline the requirements for notice under the *Residential Tenancies Act*.
- a buyer submits an offer on a rural property and asks for a water quality and quantity test, you can give a list of companies to do the tests that qualify based on your previous experience

A transaction facilitator **should not** exercise discretion or judgment when you:

- give advice or to negotiate to convince a seller to sell for a lower price or the buyer to pay a higher price
- suggest or imply the other party accept anything other than what is in the offer (without permission)
- recommend action that would benefit one party over the other e.g. not including a condition in an offer that, as a result, benefits the buyer or seller
- only give information to a client to assist them in making the decision **you** want them to make
- withhold relevant information to facilitate the transaction such as the extension of a Light Rail Transit line by the property. This could be negative or positive for the buyer
- arrange for a property inspection and not discuss the matter with the buyer
- fail to inform the seller when you are made aware the buyer is unable to secure financing from one lender and is already making arrangements with another lender

Confidentiality of client information

Confidential information means "any information concerning the client including the client's financial or personal situation, the client's real estate and the transaction involving the client."

You must not disclose confidential information, property or transaction information to another person unless you receive consent from the client or required by law.

If you were in sole representational relationship with a seller or buyer **before** acting in a transaction brokerage role, all information you receive in confidence must remain confidential.

Unless you have informed written consent from either a buyer or a seller, you must not disclose confidential information. Examples:

- that the buyer may offer a higher price or terms other than those in the offer to purchase or the exclusive buyer brokerage agreement
- that the seller may accept a lower price or terms other than those in the offer to purchase or the exclusive seller brokerage agreement.
- the motivation of the buyer or seller for the purchase or sale of the property
- personal information relating to the buyer or the seller and other information either discloses at any time in confidence to the brokerage

Publicly available information about a client

You may consider information that is available to the public “confidential information” under the *Real Estate Act* and “personal information” under privacy legislation but given the public nature of the information, it is available to use without consent, for example legal description, tax assessment.

In addition to the obligations in the *Real Estate Act* Rules, you should be aware of the requirements and obligations of the *Personal Information Protection Act of Alberta* and the federal government’s privacy legislation, the *Personal Information Protection and Electronic Documents Act*.

Additional obligation to disclose certain information

Transaction facilitators must disclose the following information to their respective clients:

- all material latent defects affecting the property known to the brokerage; and
- to the seller: all material facts relevant to the buyer’s ability to purchase the property known to the brokerage

Practice tip

Explaining your role in the real estate transaction and the client’s preparation for different role possibilities will assist sellers and buyers with the transition to transaction brokerage.

Related information

Legislation

- *Real Estate Act* Rules - sections 1(1)(g.1), s.41(f), s.44, s.59, s.59.1

Guide

- Designated Agency Transaction Brokerage Practice Guide

INFORMATION
BULLETINS

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