

## DEALING WITH UNREPRESENTED SELLERS – REAL ESTATE

**Purpose:** To assist real estate professionals to understand the process of working with sellers who do not have representation from a real estate professional.

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

It is very important for real estate professionals to ensure that unrepresented sellers and third parties clearly understand the real estate professional's role. The client and third parties must know the services they will receive from the buyer's brokerage or just as important, what services they will not receive from the brokerage.

### Consumers with no representation

A consumer may wish to work with a real estate professional for a particular real estate transaction and does not want a real estate professional to represent them. Examples of this include:

- the real estate professional represents a landlord of a large shopping centre and a potential tenant has an interest in a space in the mall
- the real estate professional has a written buyer brokerage agreement in place and attempts to sell a property where the owner is representing themselves
- the seller has chosen a mere posting option without representation to sell their residential property
- a real estate professional represents a new home builder exclusively and a potential buyer shows interest in the builder's property
- a real estate professional is a tenant representative and approaches a landlord on behalf of a potential tenant

### Mere posting seller

The Consent Agreement between the Competition Bureau and the Canadian Real Estate Association states:

*A "Mere Posting" listing means a listing on a Member Board's MLS® System in respect of which the Member has chosen or agreed not to provide services to the Seller other than submitting the listing for posting on a Member Board's MLS® System. A listing REALTOR® brokerage must act as agent for the seller to post, amend or remove a property listing*

*in a Board's MLS® System. The nature of any additional services to be provided by the listing REALTOR® brokerage to the seller is determined by agreement between the listing REALTOR® brokerage and the seller.*

A client is a person that enters into a service agreement with a real estate professional. A customer is a person who has made contact with a real estate professional but does not engage them to provide services.

In the situation where the real estate professional represents the buyer and the seller is selling their home through a mere posting listing, the buyer's real estate professional will treat the seller as a customer and provide sole agency representation to the buyer. This means they will give administrative services to the seller and full representation services to the buyer.

### Disclosure of role and services to the unrepresented seller

**It is important for real estate professionals to disclose that the buyer's brokerage:**

- does not represent the seller
- represents the buyer
- must be loyal to the buyer and always act in their best interest
- does not owe any agency obligations, and in particular, any fiduciary obligations, to the seller
- will not give any services to the seller that require the exercise of discretion or judgement, or the giving of confidential advice, or the brokerage advocating on behalf of the seller
- will communicate to the buyer all information from the seller, whether or not it is of a confidential nature. The exception is for confidential information the brokerage receives from the seller through a prior agency relationship with the seller
- will not give information or advice to the seller that is not in the best interest of the buyer

### Obligations to the seller

The buyer brokerage's responsibilities to the seller are:

- exercise reasonable care and skill in relation to the brokerage services
- not negligently or knowingly give the seller false or misleading information
- hold all monies the brokerage receives in trust in accordance with the provisions of the Act
- comply with the provisions of the Act, Rules, Regulations, and Bylaws

## Administrative services for the seller

When it is in the best interest of a client, the industry member may give administrative services to a customer. Real estate professionals will give these services to a customer because doing so would be for the benefit of their client and the transaction. Administrative services are at the option of the real estate professional, without creating a client relationship. The brokerage, at its sole discretion, may give the following information or services to the seller:

- real estate statistics and information on properties including comparable property information available through listing services or other local databases
- standard form agreements of purchase and sale and other relevant form documents and act as scribe in their preparation in accordance with the instructions of the seller
- the names of real estate service providers, but the brokerage will not recommend any particular service provider
- present, in a timely manner, all offers and counter-offers to and from the buyer and seller
- convey, in a timely manner, all information the seller wishes to communicate to the buyer
- inform the buyer and seller of the progress of the transaction

## Documentation

You can protect yourself when you represent the buyer and the seller does not have representation. They can:

- disclose your relationship and role with the buyer through a written service agreement
- disclose in writing your relationship and role with the seller
- disclose in writing your relationship and role with the buyer to the seller
- document the disclosures to the seller and seek their acknowledgement in writing through a Seller Customer Acknowledgement form. If you are seeking payment of your fee from the seller, use the Seller Customer Acknowledgement and Fee Agreement form.

Where you expect the seller to pay the buyer representative's fee, you should present the Seller Customer Acknowledgement and Fee Agreement before you present the buyer's offer. If you are unsuccessful in negotiating a fee with the seller, you need to have a conversation with your buyer before you present any offers. When you write the buyer's offer, you should have a conversation about the potential outcomes of their offer.

- you will successfully negotiate a fee agreement with the seller and you will then present their offer
- you may be unsuccessful in negotiating a fee agreement with the seller and you will talk to the buyer before presenting their offer

- the buyer may want to change the terms and conditions of their offer if they will be responsible for the buyer representative's fee
- the buyer may tell their representative to present the existing offer

### Represent the buyer only

Even after making all the appropriate disclosures and getting acknowledgements in writing, there is a danger that your actions will not match what you disclose to the parties. Make sure your actions match what you said you are going to do.

The danger is to fall into the trap of exercising discretion or judgement, or the giving of confidential advice, or advocating on behalf of the seller. When presenting the buyer's offer to the seller, you must take care to ensure your actions do not create an unintended agency relationship with the seller. You must only give administrative services to the seller. You may use discretion or judgement and advocate on behalf of the buyer with the seller.

The use of comparable homes for sale and those that have sold may assist the seller in understanding what the buyer thinks the seller's house is worth. You must be clear that you are providing the information on behalf of the buyer. All your comments should be on behalf of the buyer.

Sellers may ask you "What do you think my home is worth?" You must decline to tell them what you think their house is worth. You should recommend they seek independent advice. Your response should include a disclaimer that you are not giving them advice and the buyer believes the value of the home is a certain value. The buyer bases their opinion on the recent comparables.

Sellers may say they will not sign the acknowledgement and fee agreement until they have seen the offer. The buyer may not want you to present the offer before they understand what their obligations are, including any fees payable to you. The seller needs to know the buyer will not want their offer presented until the fee issue is settled. If there is agreement of the fee with the seller, the buyer's representative can present the offer. If there is a delay, the buyer may re-consider purchasing that home.

### Related information

#### Legislation

- *Real Estate Act* Rules: s.41, s.43, s.44, s.55, s.58, s.60, s.60.1, and Schedule 1

#### Information bulletins

- Client – Real Estate Brokerage

- Competent Service
- Customer – Real Estate Brokerage
- Ensure Role is Understood
- Facilitation Services
- Mere Postings

**Other resources**

- RECA Seller Customer Acknowledgement and Fee Agreement form
- RECA Customer Acknowledgement form

INFORMATION  
BULLETINS

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