

# GUARANTEED SALES AGREEMENTS

**Purpose:** This bulletin explains the requirements to offer and enter into a guaranteed sale agreement.

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

Only a brokerage may represent to a seller that the brokerage will guarantee a specific sale price for real estate within a specific time except under the terms of a written guaranteed sale agreement.

The brokerage may delegate this authority to the broker, associate brokers and associates on behalf of the brokerage. The brokerage guarantees to purchase the real estate for a specific price as of a specific date.

When a brokerage enters into a guaranteed sale:

- a purchase contract must be drawn up between the brokerage and the owner that outlines the purchase price, date of possession and terms and conditions of the sale
- the brokerage must place 5% of the total purchase price into a separate trust account and release it from trust upon completion of the transaction
- the brokerage must hold the money in trust for the seller
- the brokerage cannot charge a commission on the guaranteed sale

The legislation states that only a brokerage can enter into a guaranteed sale agreement. The brokerage guaranteed sales program, should be part of its office policy and procedures.

Brokerages that offer guaranteed sales agreements as an incentive must ensure the advertisements do not mislead. Guaranteed sale program advertisements often do not include how the brokerage calculates the price. The implication is the purchase price is based on the listing price or the property's market value.

If the brokerage calculates the purchase price using a formula where the commissions, legal fees, carrying cost and commission on the resale are offset from the purchase price, the brokerage:

- must disclose the purchase price formula or
- include the purchase price formula in the advertisement or
- direct the seller where it may be viewed at the brokerage's website or available via fax, etc.

Additionally brokerages may not charge commissions or deduct commissions from the purchase price on guaranteed sale agreements.

Relocation companies can be involved in guaranteed sales. Their involvement with the corporate client in the guaranteed sale can be as a power of attorney on behalf of their client, in which case they are not directly involved in a guaranteed sale and the legislation governing guaranteed sales would not apply.

Where the relocation company is directly involved in guarantee and paying the employee for the property, the relocation company is trading in real estate. The relocation company must be licensed with RECA and comply with the legislation requirements.

There is a difference between a guaranteed sale by a brokerage and an industry member purchasing property on his/her own behalf.

An industry professional must not tell his seller that he or someone on his behalf will purchase the seller's home for a certain amount of money within a certain time-period. "If your house hasn't sold within two months, Mr. Seller, then I'll buy it myself." This would be misleading to a seller as it implies a guaranteed sale of his property. The seller, on the strength of that misleading guarantee, might negotiate a purchase contract on another property and suffer financial loss.

INFORMATION  
BULLETINS

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### Related information

#### Legislation

- *Real Estate Act* - sections 19 and 20
- *Real Estate Act Rules* - sections 57(e), s.57(g), s.63

#### Information bulletins

- Conflict of Interest – Buying a Client's Property.
- Incentives
- Inducements