

# PERSONAL TRADES IN REAL ESTATE

**Purpose:** This bulletin describes the disclosures when real estate professionals directly or indirectly trade in real estate and when they must not represent a buyer or seller.

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

## Personal trades in real estate

Real estate professionals have above-average knowledge of factors affecting trades in real estate including property values and market performance. Through their work, they will come across properties they are interested in buying or decide it is a good time to sell a property they own. Real estate professionals can trade in real estate on their own behalf depending on their brokerage policy. If they have a direct or indirect interest in any real estate transaction, they are required to make certain disclosure to the other parties in the transaction.

## Timing of disclosures

Real estate professionals must make written disclosures at the earliest practical opportunity and before presentation of an offer.

## Written disclosures to an unrepresented buyer or seller

When a real estate professional wishes to buy a property from an unrepresented seller, or, to sell a property they own to an unrepresented buyer, they must disclose in writing:

- any direct or indirect interest they have in the transaction
- the name of their brokerage and they are authorized to trade in real estate
- complete details of any negotiations for a future trade of the real estate or the real estate professional's interest in it to another person
- any information the real estate professional is aware of that could materially affect the value of the real estate

## Written disclosure to a represented buyer or seller

When a real estate professional wishes to buy a property from a represented seller, or, to sell a property they own to a represented buyer, they must disclose in writing:

- they hold a real estate licence with RECA
- the name of their brokerage they have a licence to trade in real estate with

## Written disclosures to acquire a property listed for sale or managed by their brokerage

When any person employed by or associated with the brokerage wishes to acquire a property listed for sale or managed by the brokerage, the brokerage must immediately disclose:

- the conflict of interest
- the name of the buyer and what their relationship is to the brokerage
- any confidential information of the seller that buyer may have already received
- who will be representing the buyer in the transaction
- provide the seller with an opportunity to seek legal and independent advice

These disclosure responsibilities apply when the buyer of the property is a real estate professional, director, shareholder, official or employee of the brokerage or an immediate family member of that individual. Immediate family members include an industry member's parents, sibling(s), children and spouse. It also includes their spouse's parents, siblings and children.

## Real estate professional attempts to represent a buyer or seller in a personal trade

When real estate professionals are buying and selling property for themselves, they are not trading in real estate under the *Real Estate Act*, therefore:

- when an real estate professional is selling their own property, they cannot represent the buyer
- when an real estate professional is buying a property, they cannot represent the seller

The Real Estate Insurance Exchange (REIX), does not provide errors and omissions insurance for personal trades.

The conflict of interest is so significant that a real estate professional, who is a party to the transaction, cannot represent the other party in their own transaction.

Although a personal trade is exempt from the *Real Estate Act*, RECA and the courts retain the authority to review the actions of the industry professional. How would a RECA hearing panel or a court of law view the actions of a real estate professional where they claim to represent the best interests of the client at the same time as they act for themselves?

## Examples

1. A real estate professional is making an offer on a property that they plan to resell later if a land assembly for a large retail complex comes together. When making his offer the real estate professional discloses he is an associate with ABC Realty and that he may resell the property later. This is not an adequate disclosure, as the real estate professional must disclose that there is a land assembly for the development of a possible retail project. The seller must be aware that the land could be worth much more at a future date if the project goes forward. This is required in order to prevent real estate members using "inside information" for their own benefit or even being perceived to be doing that.
2. A real estate professional with ABC Realty owns 25 per cent of a company. The company wishes to purchase a property listed with XYZ Realty. The real estate professional has an indirect interest in the purchase and must provide proper disclosures in writing. XYZ Realty represents the seller of the property. The buying real estate professional must disclose they are a real estate professional licensed with ABC Realty. The timing of the disclosure is as possible prior to the seller considering the offer.
3. A real estate professional's mother-in-law is interested in purchasing commercial building for sale with the real estate professional's brokerage. The brokerage must disclose, in writing to the seller, there is a conflict of interest because the buyer is the mother-in-law of a brokerage professional, disclose any of the seller's confidential information that the buyer already has and disclose who represents the buyer. The seller should have an opportunity to seek legal and independent advice.
4. A non real estate professional, who owns 25 per cent of the shares in a commercial (non-publicly traded) real estate brokerage, wishes to buy a strip mall that is for sale with the brokerage. The brokerage must disclose in writing to the seller of the strip mall that there is a conflict of interest as the buyer is a shareholder in the brokerage, the buyer's name, any seller's confidential information that the buyer already has and who represents the buyer. The seller should have an opportunity to seek legal and independent advice.
5. A real estate professional is selling a house they own through a private for sale. A neighbour the real estate professional knows expresses interest in the property and wishes to write an offer. They know the real estate professional works in real estate and ask him questions as to what they should include in a purchase contract so that there are no problems. If the real estate professional gives this advice, they may

unintentionally be representing the buyer. The real estate professional must not represent another party in a personal trade in real estate of the real estate professional.

### Related information

#### Legislation

- *Real Estate Act* Rules - sections 41(f), s.62

#### Information bulletins

- Conflict of Interest – Buying a Client’s Property