

SERVICE AGREEMENTS FOR BUYERS - DESIGNATED BROKERAGES

Purpose: This bulletin explains the requirement for written service agreements in designated agency brokerages, exclusive and non-exclusive representation agreements and mandatory content and minimum requirements.

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

Are written Buyer Representation Agreements mandatory in designated agency?

Yes. In a designated agency brokerage, the contract is between the brokerage and the client. The agency and fiduciary relationship is between the designated agent of the brokerage and the consumer. In a common law brokerage, the contract and agency and fiduciary relationship is between the brokerage and client. Another difference is the designated agent's knowledge is not attributed to the brokerage or to its designated agents representing other buyers or sellers. To implement the changes in the common law, the parties must document the relationship and agree in writing.

The key benefit of designated agency over common law agency is that it removes the conflict of interest where two industry professionals from the same brokerage represent both the buyer and seller in the same transaction. The disclosure of relevant facts is limited to the buyer's designated agent. Consumer focus group research confirms that consumer believe these points to be true.

In designated agency, does the Buyer Representation Agreement have to be an exclusive right to represent?

No. Consumers should make an informed choice about the type of relationship they wish to have with a real estate professional. They should understand the implications of the options available to them. Real estate professionals should have a clear understanding of their obligations.

What is the difference between an exclusive and a non-exclusive buyer representation agreement?

In an **exclusive** buyer representation agreement, the buyer agrees to only use the services of that brokerage to represent and assist them in the purchase a property.

A **non-exclusive** buyer representation agreement is different from an exclusive right to represent. The buyer can enter into multiple non-exclusive buyer representation agreements with other brokerages at the same time.

Are there specific forms I must use when representing a buyer?

The answer to this question will depend on two factors:

1. Will you be representing a buyer who is interested in a residential property?
2. Will you be entering into an exclusive buyer representation relationship?

If the answer to **BOTH** of these questions is “yes”, the agreement must contain the mandatory content as contained in RECA’s Exclusive Buyer Representation Agreement. That Agreement is found on RECA’s website under Industry Professional Tools.

If the service agreement does not relate to residential real estate **OR** is non-exclusive, you are not required to use the mandatory content. However, written agreements must meet the minimum requirements of the *Real Estate Act* Rules (Rules).

Can a brokerage or designated agent change the mandatory content in an Exclusive Buyer Representation Agreement?

The industry professional must not directly or indirectly change this mandatory content. In addition to the mandatory content, additional content may be included. This added content must not alter the meaning or effect of the mandatory content and must not alter the obligations or requirements of industry professionals. At the request of a client, industry professionals may amend the forms by having the parties agree to and initial the changes. If a different form is used, the form must contain the mandatory content.

Practice tip for Non-Exclusive Buyer Representation Agreements

Industry professionals may use the forms posted on RECA’s website under Industry Professional Tools. These forms meet the minimum standards as set out in the Rules.

A brokerage may decide to develop its own non-exclusive buyer representation agreement. Brokerages may include additional terms and/or clauses as appropriate for their chosen business model and the needs of the consumers they represent. These agreements must meet the minimum standards as set out in the Rules.

Related information

Legislation

- *Real Estate Act* - section 1(1)(w.1)
- *Real Estate Act Rules* – sections 43(2), s.44(1), s.48, s.55(1)(2)(3), s.56, s.58, s.58.1(1)(3), s.60.1, Schedule 1

Guides

- Designated Agency Guide for Industry Members
- Exclusive Buyer Relationship Agreements
- Non-Exclusive Buyer Relationship Agreements

Information bulletins

- Service Agreements - Real Estate Brokerage

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BULLETINS

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