

TRANSACTION BROKERAGE – NOT ALWAYS APPROPRIATE

Purpose: To explain it may not be appropriate when you act as a transaction facilitator. This may include when a client may need sole agency representation or a conflict of interest exists.

This bulletin applies to a real estate brokerages, brokers, associate brokers or associates who act as transaction facilitators.

Representing the buyer and seller is not appropriate when:

- the clients need sole representation to negotiate
- the industry professional's conflict of interest, or perceived conflict of interest, cannot be resolved to the satisfaction of all parties

Client may need sole representation

If the brokerage were of the opinion that sole agency representation is in the client's best interest, then the *Agreement to Represent Both Buyer and Seller* (Agreement) or customer status would not be appropriate options for that client. Examples of when a client may need sole agency representation include:

- a client with mental or physical limitations
- a client of advancing age
- a client who is a new immigrant
- a client who is unfamiliar with the English language

Although these individuals have the capacity to enter into a contract, they may have a limited level of knowledge of real estate transactions and it may be more difficult for them to access information on their own.

You should refer a client who requires sole agency representation to another brokerage or, if it is a designated agency brokerage, to another designated agent in your brokerage.

Conflict of interest and ethical issues may persist

Acting as a transaction facilitator

The Agreement requires the brokerage and industry professional to act as a facilitator in the transaction. You must treat the interests of both the buyer and seller in an even-handed, objective and impartial manner. You must disclose any advice or information you give to one party to the other party. You must not do anything to benefit the buyer or seller to the prejudice of the other. This role of impartiality, objectivity, and not advocating for the interests of one party over the other is very important.

If an industry professional anticipates not being able to remain neutral in the face of a conflict of interest, then representing the buyer and seller is not appropriate.

Personal conflicts of interest

In some situations, an industry professional will face personal conflicts of interest. For example, an industry professional may represent a family member, relative, co-worker, another associate with the brokerage, close friend, long-term client, or business associate. They must disclose these conflicts to all clients in the transaction. Is it realistic to expect the industry professional can remain neutral under these circumstances? Really?

A personal conflict can also arise when industry professionals are in personal real estate trades. For example, an associate owns a property listed for sale with the common law brokerage that also represents the buyer client. Alternatively, the associate wants to buy a property listed by their brokerage. The brokerage, through its associates, is required to disclose these conflicts to their clients. Again, it would be unrealistic for industry professionals to remain neutral under these circumstances. An industry professional must not represent the interests of a party to a transaction where the industry professional is the other party.

Brokerage policy and procedures for personal trades

Brokerages must have a policy for personal trades by their associates. Associates must adhere to brokerage policies and it may affect the options they offer clients. For example, a brokerage may require full representation for clients in a personal trade with their associates. Transaction brokerage and customer status may not be suitable options. Common law brokerages might offer to refer the client to another brokerage for this transaction and designated agency brokerages might offer to refer the client to another designated agent or another brokerage.

You must meet the legal and regulatory standards for these situations but they may also pose an ethical dilemma. Is it ethical to proceed in a situation where a person's loyalty clearly lies, or there is a feeling it lies, with one of the parties in the transaction? One of the clients to the transaction may believe that due to their relationship with the industry professional, the industry professional will elevate their interests over those of the other party's.

You should discuss all of these difficult situations fully with the broker in advance of making a decision. The broker should decide the appropriate options to offer such clients. If the decision is to refer the client, you should give the reasons the brokerage chose not to engage in transaction

brokerage or customer relationship with the client in question to the new brokerage or designated agent.

Related information

Legislation

- *Real Estate Act* Rules: sections 41(a)(d)(e)(f), s.43, s. 55, s. 57 (e)(g), 58(e)(g), s. 59(3), s.59.1(3), s.62

Guides

- Designated Agency and Transaction Brokerage

Information Bulletins

- Conflict – Representing Seller and Buyer
- Disclose – Conflicts of Interest
- Personal Trades in Real Estate

INFORMATION
BULLETINS

Last Revised April
2014

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