



Representation

The *Real Estate and Business Brokers Act, 2002* (the “Act”) contains a number of provisions related to disclosures registrants must make to the buyers and sellers they represent in real estate transactions. In general, registrants are required to be clear about the nature of services they are providing when they enter into agreements to represent or provide services to others in real estate transactions.

Three definitions that registrants need to fully understand to meet their obligations toward buyers and sellers are the definitions of “*client*”, “*customer*” and “*representation agreement*”. Under the Act a client is someone who is represented under a representation agreement with a brokerage. With respect to brokers and salespersons, persons are clients if the person has a representation agreement with the brokerage that employs the broker or salesperson and they are providing services to the person or representing the person on behalf of the brokerage in the transaction.

Representation agreements can be written, oral or implied. The key determinant is that the brokerage and the person have agreed that the brokerage will represent the person in respect of the trade. Although, the Act and its regulations do not define the term “*represent*” explicitly, it is meant to apply to situations when the registrant is acting as a fiduciary “*agent*” of the person from the perspective of the common law. In other words, the registrant has fiduciary obligations toward the person and is acting in their best interests in the transaction in terms of the advice and services that are provided. A customer is a person who has entered into a service agreement with a brokerage related to a real estate transaction, but who is not being represented by that brokerage as a client. This might apply to a situation in which a brokerage has entered into an agreement with a person to facilitate a real estate transaction, but the brokerage or its representatives are not providing any financial or fiduciary advice to the person as part of that agreement.

Although agreements with buyers and sellers can be written, oral or implied, registrants are required under the Act’s regulations to reduce these agreements to writing and submit them to buyers and sellers for signature.

Sec. 10 of the Code of Ethics (Ont. Reg. 580/05) establishes minimum disclosures that must be made to buyers and sellers prior to entering into agreements with them. Registrants are required to describe the services that will be provided and the alternatives available to the potential client or customer. With respect to multiple representation, registrants are required to inform prospective buyers and sellers about the possibility of multiple representation, including a description of the services the brokerage would provide in those situations. Registrants also have to make it clear to buyers and sellers that they cannot represent multiple clients in a transaction unless all of the potential clients consent in writing to that representation.

Sec. 16 of the Code, requires further disclosures regarding multiple representation at the point in time where a registrant might enter into a multiple representation situation. Registrants are obligated to describe how the services provided to the client will differ from a single representation situation including any differences in the

disclosure of information made to the client. Sec. 17 of the Code requires the registrant to make these disclosures at the earliest practical opportunity and in all cases before an offer to purchase is made.

Sec. 10, 16 and 17 of the Code operate in conjunction with Sec. 22 of Ont. Reg. 567/05 (GEN) which states:

MULTIPLE REPRESENTATION

- 22.** A registrant shall not represent more than one client in respect of the same trade in real estate unless all of the clients represented by the registrant in respect of that trade consent in writing.

At the point that a registrant wishes to represent more than one client with respect to a real estate transaction, it must obtain the written consent of all of the parties it is representing. This written consent is required in situations where a single brokerage represents two parties to a trade even if different salespersons or brokers are representing the two parties to the trade. Given that the brokerage has a fiduciary relationship with more than one party to a trade, it must be clear to those parties about how information will be exchanged related to the transaction and how services will be provided in such a situation.

Consent to multiple representation is required not only when a brokerage is representing both the buyer and seller in a transaction, but in situations where the brokerage is representing multiple buyers in a single transaction. In the case of multiple buyers, it may not be clear that a single brokerage is representing multiple buyers until one or more buyers have expressed interest in the same property. In such situations, consent to the multiple representation would be required when the brokerage becomes aware that it is operating in a multiple representation situation.

In situations where a client or clients refuse to consent to a multiple representation, the brokerage must release one or more of its clients to seek alternate representation with respect to the transaction. The registrant cannot represent more than one party to a trade without the written consent of all parties it is representing.

With respect to services provided to customers, Sec. 10 of the Code requires registrants to disclose to buyers and sellers that they may represent more than one customer in a transaction. A brokerage does not require a customer's or client's written consent to provide services to an additional customer in a transaction. However, both Sec. 10 and 17 of the Code require registrants to clarify for all parties the nature of services they are providing to each party in situations where: a brokerage is providing services to more than one party in a transaction; or representing a client and providing services to a customer in the same transaction.

Sec. 11 of the Code also identifies minimum information that must be contained in agreements between registrants and buyers and sellers. Required information includes effective dates, amounts of remuneration or commission and a description of the services the brokerage is providing under the agreement. Sec. 12 of the Code requires brokerages to give copies of these agreements to buyers and sellers. Sec. 13, 14 and 15 of the Code require brokerages to reduce representation and service agreements to writing and submit them to buyers and sellers for signature.

A multi-media presentation explaining representation agreements is available under the 'Registration' tab at www.reco.on.ca.