

Buying or selling a property can be one of the most significant financial decisions you make in your lifetime and your REALTOR® will play a key role in assisting you. That's why it's important to consider how you will work with your REALTOR® to ensure you get the most value from your relationship.

Please read this guide thoroughly. Ask your REALTOR® questions until you are satisfied you fully understand your responsibilities, those of your REALTOR® and the different types of relationships you can form.

What is Agency?

Agency is a relationship established when two parties agree to have one party act on behalf of the other. If you decide to have a REALTOR® act on your behalf, the agency relationship exists between you (the client) and the Agent (the brokerage and its REALTORS®, including the broker, associate brokers and associates).

When you first contact a REALTOR®, you are not in an agency relationship with the brokerage. You should be careful to make a conscious decision whether or not you wish to have the brokerage work on your behalf before you take any action that would imply the brokerage works for you.

Responsibilities of the Agent



The complex and important nature of a real estate transaction requires the Agent to exercise discretion and judgment when carrying out duties on your behalf. Agents are obligated to protect and promote the interests of their clients as they would their own. Specifically, your Agent owes you the following duties:

- **Undivided loyalty**
The Agent must act solely in your best interests, always putting your interests above their own interests and above the interests of other parties.
- **Confidentiality**
The Agent must keep your confidences. Confidential information includes any information concerning you, the property or the transaction that is not required by law to be disclosed, but which, if disclosed, could be used by another party to your disadvantage. The duty of confidentiality continues after your agency relationship ends.

Responsibilities of the Agent *(continued)*

- Full disclosure**
 The Agent must inform you of all facts known to the Agent that might affect your relationship or influence your decision in a real estate transaction. This includes any conflicts of interest the Agent might have in the course of providing services to you.
 (An exception to full disclosure to you is confidential information your Agent received in a previous agency relationship. The confidential information of a previous client will not be disclosed to you unless the previous client agrees to this in writing.)
- Obedience**
 As long as instructions are reasonable and ordinary under the circumstances, the Agent must obey all of your lawful instructions.
- Reasonable care and skill**
 The Agent must exercise reasonable care and skill in performing all assigned duties.
- Full accounting**
 The Agent must account for all money and property placed in their hands while acting for you.

Your Responsibilities as the Client

In an agency relationship you have duties towards your Agent, which include the following:

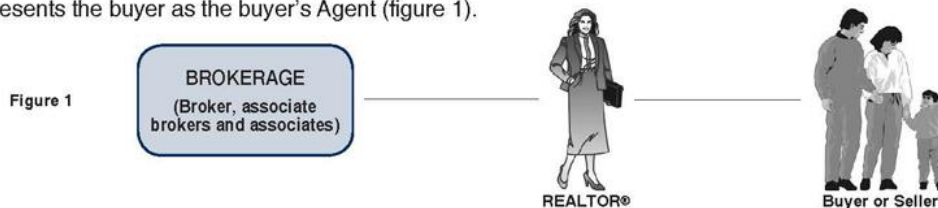
- compensating the Agent for expenses incurred as a result of carrying out responsibilities on your behalf;
- paying any agreed-upon remuneration (fee) outlined in a signed service agreement; and
- disclosing to your Agent matters that could affect the transaction, including material facts that must be passed on to the third party in the real estate transaction. Note that sellers are required by law to disclose the existence of known material latent defects, which are defects that are structurally dangerous or a health hazard and cannot be detected by a visual inspection.

It's also your responsibility to read all documents carefully and ensure you understand what you are signing. If you feel you need assistance or advice, you always have the option to consult a professional such as a lawyer, accountant or inspector.

Types of Agency Relationships

Sole Agency

Sole agency occurs when one brokerage (including its broker, associate brokers and associates) represents the seller as the seller's Agent, and another brokerage (including its broker, associate brokers and associates) represents the buyer as the buyer's Agent (figure 1).

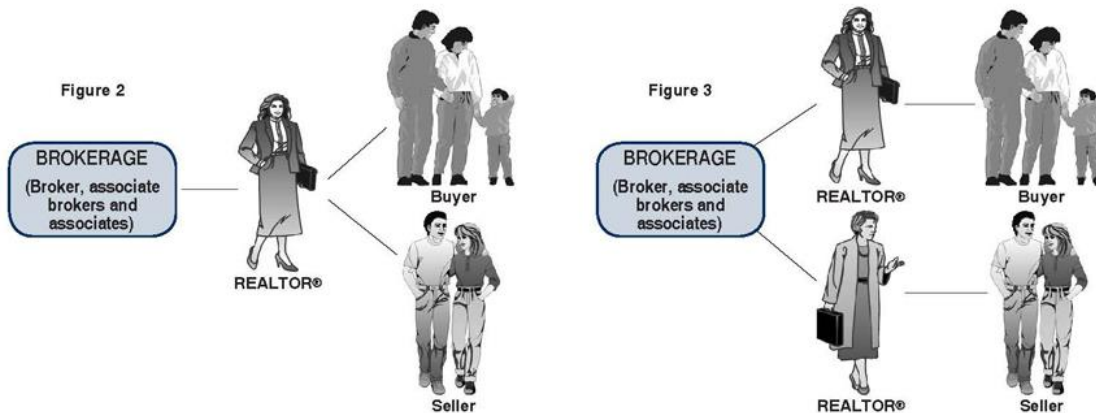


Transaction Brokerage



A potential conflict of interest occurs when one brokerage is representing both the buyer and the seller in a single transaction. An example would be if you wanted to make an offer on a home listed by the same brokerage representing you – or if a buyer represented by the same brokerage as you wanted to make an offer on your home. By representing both you and the other party in the transaction, the brokerage's ability to fulfill agency duties to you (and the other client) are limited, particularly the duties of undivided loyalty, confidentiality and full disclosure.

Under these circumstances, a different relationship called transaction brokerage can be formed. The relationship applies whether one REALTOR® represents both parties (figure 2), or two different REALTORS® in the same brokerage each represent a client in the transaction (figure 3).



Transaction brokerage is only permitted with the fully informed and voluntary consent of both the buyer and the seller. The brokerage will obtain this consent through the use of a Common Law Transaction Brokerage Agreement, which must be signed by the buyer before an offer is made, and by the seller before the offer is presented. The agreement allows the brokerage (including its broker, associate brokers and associates) to act as a Transaction Facilitator to help you and the other party reach a mutually acceptable agreement.

The Transaction Facilitator will treat the interests of both the buyer and the seller in an even-handed, objective and impartial manner and will ensure that any advice or information given to one party is disclosed to the other.

However, the Transaction Facilitator **cannot** disclose any information received in confidence, and in particular **cannot** disclose:

- that the buyer may be prepared to offer a higher price or agree to terms other than those contained in the offer to purchase;
- that the seller may be prepared to accept a lower price or agree to terms other than those contained in the Seller Brokerage Agreement;
- the motivation of the buyer or the seller wishing to purchase or sell the property; and
- personal information relating to the buyer or the seller.

Customer Status (Non-Agency)



If you do not want to be in an agency relationship but want to work with a brokerage, you will be asked to choose customer status. When you have customer status, the brokerage is not your Agent and does not owe agency duties to you. Duties are limited to honesty, reasonable care and skill and not negligently or knowingly providing you with false or misleading information. The brokerage will provide you with forms to help you complete a transaction, perform services needed to help you complete a transaction, but will not provide you with advice or advocate on your behalf.

The brokerage might recommend customer status when a conflict of interest will affect its ability to fulfill agency duties to you. For example, if the brokerage is representing a seller with whom it has a long-standing relationship (like a developer or a relative of a brokerage representative), you (as the buyer) should be in a customer relationship with the brokerage.

If a brokerage recommends customer status for a certain transaction but you would prefer to have an agency relationship, you should opt to work with another brokerage.

Making an Informed Choice

Your REALTOR® is responsible for explaining your relationship options. Be sure you understand the duties owed to you and the limitations that exist or might exist with each type of relationship. Don't hesitate to ask your REALTOR® questions and ensure you're satisfied with the answers before you make your decision.

Please note:

Under new federal legislation, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), real estate agents are required to collect personal information in order to identify individuals conducting large financial transactions, such as buying or selling property.

For more information, visit the **Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)** website www.fintrac.gc.ca.



Acknowledgment

This acknowledgment confirms that you have received the information you need to make an informed decision about your relationship with your REALTOR®. It is not a service agreement and does not impose contractual obligations on you.

I, _____, acknowledge that I have
Your first and last name
received the *Agency Relationships* guide from the brokerage representative named below and have obtained satisfactory answers to my questions.

Name of brokerage

Name of broker, associate broker or associate

Your signature of acknowledgment

Today's date

In accordance with the disclosures made to me:

- I choose to enter into a sole agency relationship with the brokerage.
(One entire brokerage represents the buyer; another entire brokerage represents the seller.)
- I choose to enter into a sole agency relationship with the brokerage and consent to the brokerage pursuing transactions that could lead to transaction brokerage.
(You would consider participating in a transaction where the brokerage represents both the buyer and the seller. Should a transaction brokerage situation arise, you will be asked for written consent to a change in representation. You are not obligated to consent to transaction brokerage at any time.)
- I choose to enter into a customer status relationship with the brokerage.
(The brokerage does not act as your Agent. Due to the limitations of customer status, you will be asked to complete a Customer Status Acknowledgment form.)