

Designated agency

FAQ about real estate teams

Q: Why is there a difference between what teams are required to do under common law and under designated agency?

A: Under common law, agency is with the brokerage. All industry members licensed with the brokerage represent the clients of brokerage and are deemed to know all relevant information about those clients. For example, when any industry member at a common law brokerage takes a listing, every industry member at the brokerage is immediately considered to be a representative of that seller and owes that seller undivided loyalty, advice and advocacy. This is why a common law brokerage that represents a buyer and a seller in a single transaction must limit their duties to each party, employing transaction brokerage or treating one party as a customer.

When it comes to teams under common law, team members can freely share information about brokerage clients amongst themselves, because industry members at common law brokerages have always been free to share information about brokerage clients.

Under designated agency, agency is with the designated agent specified in the brokerage agreement only, not the brokerage, and not with any other industry members licensed with the brokerage. Unlike common law, when any industry member at a designated agency brokerage takes a listing, only the industry member specified in the brokerage agreement as the designated agent represents the seller and owes that seller undivided loyalty, advice and advocacy. It is the brokerage's job to put policies and procedures in place to protect the confidential information of all brokerage clients and ensure the designated agent does not communicate any information prejudicial to the interests of clients to other industry members of the brokerage. This is why a designated agency brokerage can represent a buyer and a seller in a single transaction with full agency representation to both parties.

When it comes to teams under designated agency, team members must be specified as a designated agent on brokerage agreements, because industry members (designated agent) are prohibited from sharing client information with other industry members at the brokerage. If an industry member at a designated agency brokerage shares client information with another industry member at the brokerage who is not specified on the brokerage agreement as the designated agent, it violates the terms of the brokerage agreement and the agency relationship with the client. This is why all team members must be specified as the designated agent on designated brokerage agreements.

Q: As broker, what documents do I need in place for each team operating with my brokerage?

A: You must create a written brokerage/team contract for each team and their respective team members. The brokerage/team contract must state the team name and list the team members agree to work together on the team as one designated agent. The brokerage/team contract must be signed and dated by each member of the team and the broker. Maintain the brokerage/team contract as long as the team operates at your brokerage. If there is any change to the team, a new brokerage/team contract must be executed. A sample brokerage/team contract is provided on page 4.

Q: If I have a licensed assistant, do we have to advertise as a team?

A: No. A team is two or more industry members who:

1. Work together on a regular basis to provide real estate brokerage services;
2. Represent themselves to the public as being part of one entity; and
3. Designate themselves by a collective name, such as team or group.

Q: For service agreements and related documents, for example, amendments to seller/buyer designated brokerage agreements, that I prepare, who needs to sign them?

A: If your brokerage/team contract identifies you as being authorized to sign service and service-related agreements on behalf of your team, you must sign them. If you are not identified as a team member who can sign on behalf of a team, another team member who has signing authority must sign agreements that you prepare.

Q: When I am preparing service agreement and documents related to service agreements how do I fill out the section that identifies who the brokerage designates?

A: You must write in all the names of the industry members on the team and the team name.

Example 1: Seller designated brokerage agreement, small team

2. Appointment of Designated Agent

- 2.1 The Brokerage designates John Doe, Jessie Doe, The Does Team (the Designated Agent) to serve as sole agent for the Seller and, subject to clause 18, will designate other members of the Brokerage to serve as sole agents of any buyers also represented by the Brokerage who are interested in the property.
- 2.2 If for any reason, the Designated Agent ceases to be licensed with the Brokerage, the Brokerage will designate another member of the Brokerage to serve as the sole agent for the Seller.
- 2.3 The Brokerage will not appoint another brokerage on behalf of the Seller as a sub-agent without the Seller's prior written consent.

Q: What if I'm part of a large team and so there isn't enough room on the brokerage designate section?

A: You must write the name of your team and followed by an attachment reference. The attachment to the service agreement must be a written document (i.e. schedule or addendum) that identifies all the team members of your team.

Example 2: Buyer designated brokerage agreement, large team

2. Appointment of Designated Agent

- 2.1 The Brokerage designates Schedule "B" Westridge Real Estate Team (the Designated Agent) to serve as sole agent for the Buyer and, subject to clause 14, will designate other members of the Brokerage to serve as sole agents of any sellers represented by the Brokerage in whose properties the Buyer is interested.
- 2.2 If for any reason, the Designated Agent ceases to be licensed with the Brokerage, the Brokerage will designate another member of the Brokerage to serve as the sole agent for the Buyer.
- 2.3 The Brokerage will not appoint another brokerage on behalf of the Buyer as a sub-agent without the Buyer's prior written consent.

A sample schedule is provided on page 5.

Q: I work for the Westridge Real Estate Team. When I prepare an agreement of purchase and sale for a buyer how do I complete the agency relationship disclosure section of that agreement?

A: You write in your brokerage name, your name and your team's name

Example 3: Agreement of purchase and sale, large team

AGENCY RELATIONSHIP

- 14. The Seller and the Buyer acknowledge having received, read and understood the brochure entitled "Working With A REALTOR*", published by the Nova Scotia Association of REALTORS* and acknowledge and confirm as follows:
 - (a) The Seller does does not have an agency relationship with Deep Harbour Realty Brokerage and Sam Harrison Brokerage Representative
 - (b) The Buyer does does not have an agency relationship with Red Hot Real Estate Ltd. Brokerage and Marie Jones Westridge Real Estate Team Brokerage Representative

Q: My team represents a buyer. I prepared the agreement of purchase and sale, but someone else on my team is finalizing the offer with the buyer, and presenting the offer to the seller's brokerage. Whose name do I write in the agency relationship disclosure section of the agreement of purchase and sale?

A: You write the team name, the brokerage name, and the name of the industry member finalizing the offer with the buyer and presenting the offer to seller's brokerage.

Q: Whose name do I write in the agency relationship section for the seller if they are represented by another brokerage?

A: If the property is listed MLS® and is not a mere posting, you write the other brokerage's name, the industry member(s) identified with the listing, and the team name if applicable.

Q: I am a licensed assistant to two industry members who are not a team. Do I need to be disclosed in and included as a signatory on service and service related agreements?

A: If you will be privy to any confidential information concerning a client of either industry member, then yes, you must to be added as a designated agent on any service (or service-related) agreements entered into by the respective industry member(s) you assist. You must also sign any service (or service-related) agreement.

Q: I want to advertise as being part of a team, but also on my own. Is this okay?

A: No. You are on team, or you are an individual, you cannot be both.

Q: Another industry member and I want to advertise our services jointly to save money. Does this make us a team?

A: No. Not unless your advertisement makes you and the other industry member appear

1. to be working together to provide real estate services,
2. to be a single entity, and
3. under a collective name, like team or group.

Q: I am not part of a team. What do I need to know about co-advertising?

A: Industry members do not have to be a team to co-advertise; however, designated agency places additional obligations on industry members to safeguard client information, including designated agency information barriers. Co-advertising must comply with the requirement for each designated agent to have a dedicated phone number, email address, and fax number, which means advertisements and websites must display individual contact information for each industry member engaging in co-advertising. As with all advertising, make sure you have your broker review and approve the ads.

Q: My for-sale sign has my brokerage name and my team name on it. Can I add a rider to the sign that has my name on it?

A: Yes.

Q: If I have an unlicensed assistant, are we a team and can we advertise as a team?

A: No. Unlicensed assistants are not counted as team members. A team must be two or more industry members. Unlicensed assistants cannot advertise directly or indirectly in real estate.

SCHEDULE “ _____ ”

Attached to and forming part of the Designated Brokerage Agreement dated the ____ day of _____, 2014

BETWEEN:

Buyer(s) or

Seller(s): _____

AND

Brokerage: _____

This agreement is further subject to the following Terms and Conditions:

1. It is understood and agreed to by the Buyer(s) or Seller(s) that the members of the _____ Team are as follows:

2. It is further understood that any member of the team is authorized to act on behalf of the Buyer(s) or Seller(s) as the Designated Agent.

Signed and delivered this ____ day of _____, 20____.

Signature of Buyer/Seller _____

Signature of Witness _____

Signature of Buyer/Seller _____

Signature of Witness _____

Signature of Designated Agent _____