

This is not a service agreement and does not impose any contractual obligations. This is a disclosure document only.

Responsibilities of buyers and sellers—As a buyer or seller you should carefully read all documents and understand what you are signing. If you need specialized advice, consult other professionals, such as lawyers, accountants, home inspectors, contractors, engineers and surveyors. Always obtain written confirmation about details you and your licensee feel are pertinent to a successful transaction. Licensees must ensure that they provide and explain disclosures in accordance with the By-law, and in accordance with any agreement/ acknowledgement with a client or an unrepresented party. Before entering into a service agreement with a brokerage, make sure you have a conversation with the licensee about their availability and your expectations. If their availability is limited, make sure this is reflected in the service agreement.

TWO AGENCY MODELS

There are two different agency models practiced by brokerages in Nova Scotia: common law agency and designated agency. The licensee reviewing this agency form with you will indicate which model their brokerage uses.

COMMON LAW AGENCY

Under common law, agency is with the brokerage. All agents licensed with the brokerage represent all of the clients of the brokerage and are deemed to know all relevant information about those clients. For example, when any agent at a common law brokerage enters into agency with a buyer/seller, every agent at the brokerage is immediately considered to be a representative of that buyer/seller and owes that buyer/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 substantially limit their duties to each party and employ transaction brokerage or refer to another brokerage or treat one party as an unrepresented party.

DESIGNATED AGENCY

Under designated agency, the agency relationship is only with the designated agent(s) specified in the brokerage agreement, not with the brokerage, and not with any other agent licensed with the brokerage. Unlike common law, when any agent(s) at a designated agency brokerage enters into agency with a buyer/seller, only the agent(s) specified in the brokerage agreement as the designated agent(s) represents the buyer/seller and owes that buyer/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(s) does not communicate any information prejudicial to the interests of clients to other licensees of the brokerage. This is how a designated agency brokerage can represent a buyer and a seller in a single transaction with full agency representation to both parties, as long as both parties have different designated agents.

DEFINITIONS

The following terms are used in most NSREC mandatory forms.

Brokerage—the real estate company under which the individual salesperson, associate broker, managing associate broker or broker is licensed.

Buyer—a person acquiring or attempting to acquire an interest in real estate by purchase.

Client—a Buyer/Seller who has engaged a brokerage/designated agent(s) in an agency relationship to act for them, and on their behalf, either to buy or sell real estate.

Facilitation Services—services that do not require the exercising of discretion or judgment, giving confidential advice or advocating on behalf of either the buyer(s) or the seller.

Material Latent Defect—a defect that cannot be discerned through a reasonable inspection of the property, including, but not limited to, any of the following:

- a defect that renders the real estate dangerous or potentially dangerous to the occupants, unfit for habitation, or unfit for the purpose for which a party is acquiring it if the party has made that purpose known to the licensee or the licensee has otherwise become aware of that purpose;
- a defect that would involve significant expense to remedy, such that it would reasonably be seen to have impacted the decision of a buyer to purchase the property;
- any outstanding notices, directives, or orders with respect to the property, that are not a matter of public record; or
- a lack of appropriate municipal building and other permits respecting the real estate.

Purchase—includes any trade, exchange, option, lease or other acquisition of an interest in real estate.

Sale—includes any trade, exchange, option, lease or other disposition of an interest in real estate.

Seller—a person disposing or attempting to dispose of an interest in real estate by sale.

Trade or Trading—includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, commercial lease or rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt.

Transaction Brokerage—a relationship in which a brokerage and/or a designated agent provides facilitation services to the buyer and the seller in the same trade.

Unrepresented Party—a person who is engaged with a brokerage in a non-agency relationship to buy or sell real estate.

CLIENT RELATIONSHIP

Real estate representatives work with clients in a legal relationship called agency. As the client, the agency relationship exists between you and the brokerage under common law agency, or between you and the designated agent(s) under designated agency. The essence of the agency relationship is that the brokerage and/or the designated agent(s) has the authority to represent you as a client in real estate dealings with others.

Brokerages and/or designated agents are legally obligated to protect and promote your interests. Your agent has the following duties:

- ✓ to protect and promote your negotiating position at all times;
- ✓ to disclose all relevant facts about a property or a transaction, including material latent defects and per by-law 733, conflicts of interest;
- ✓ to obey all your lawful instructions;
- ✓ to provide undivided loyalty;
- ✓ to act in your best interest;
- ✓ to maintain your confidential information;
- ✓ to exercise reasonable care and skill in performing all assigned duties; and
- ✓ to account for all money and property placed in their possession while acting on your behalf.

Your agent will also:

- ✓ explain real estate terms and practices;
- ✓ provide and explain forms used;
- ✓ identify and estimate service costs of other professionals involved in a transaction;
- ✓ assist you with negotiation;
- ✓ prepare offers and counter offers at your direction;
- ✓ present all offers promptly;
- ✓ give you true copies of all agreements;
- ✓ advise you to obtain expert advice when necessary; and
- ✓ keep you fully informed regarding the transaction.

CONFLICT OF INTEREST

Brokerages or designated agents must not provide real estate services, including representation, to a prospective client or client or continue to provide services to a client where the interests of the licensee conflict or may conflict with the interests of the client unless the licensee has:

- disclosed to the client or prospective client any transaction or relationship that gives rise to or could reasonably be expected to give rise to a conflict of interest;

- b) advised the client or prospective client to seek professional advice with respect to the disclosure may under subsection (a);
- c) taken all reasonable steps to ensure that the client or prospective client has demonstrated a reasonable understanding of the conflict or prospective conflict of interest; and
- d) obtained informed consent from the client or prospective client, in writing, to the provision of services by the licensee despite the conflict or prospective conflict of interest.

TRANSACTION BROKERAGE

IMPORTANT: If you are in transaction brokerage do not provide the transaction facilitator with any information you do not want the other party to know, subject to limitations defined in other agreement(s).

Transaction brokerage occurs when a real estate brokerage or a designated agent(s) enters into an agreement, in which the brokerage or the designated agent(s) acts as an impartial facilitator for the seller and the buyer in the same trade.

As an impartial facilitator, the brokerage or the designated agent(s) treats the buyer and the seller in an even-handed and impartial manner. Under transaction brokerage, the brokerage or the designated agent(s) acts as an impartial facilitator for both parties, not exclusively in the best interest of one party as the brokerage or designated agent(s) would in a client relationship.

No one is obligated to proceed with a real estate transaction under transaction brokerage. Both the buyer and seller must be provided with an opportunity to obtain independent advice.

Either the seller or the buyer may obtain representation from another brokerage and/or designated agent(s), or be treated as a unrepresented party as an alternative to transaction brokerage. All parties must consent, in writing, to transaction brokerage before an Agreement of Purchase and Sale is prepared. Failing which, treat one party as a unrepresented party, or be referred to another brokerage/designated agent(s) to receive representation.

Under transaction brokerage, the impartial facilitator will, for both the buyer and seller include the following, but not limited to:

- ✓ explain real estate terms and practices; and
- ✓ identify and estimate service costs of other professionals involved in a transaction.

Under this relationship, the impartial facilitator cannot:

- ✗ provide utmost loyalty to the Buyer and the Seller;
- ✗ act in the best interests of either the Buyer or the Seller;
- ✗ offer advice or recommendations to either the Buyer or the Seller; and
- ✗ disclose confidential information learned in the previous relationships to either the Buyer or the Seller.

UNREPRESENTED PARTY RELATIONSHIP

IMPORTANT: If you are in an unrepresented party relationship do not provide the licensee with any information you do not want the other party to know, subject to limitations defined in other agreement(s).

A buyer or a seller may also choose to use the services of a licensee without an agency relationship. For example, this might occur when a licensee is showing you their seller client's property or when they approach a seller directly on behalf of their buyer client.

In this relationship, the licensee has a legal and ethical duty to provide accurate and honest answers to questions and can provide the following services:

- ✓ explain real estate terms and practices; and
- ✓ identify and estimate service costs of other professionals involved in a transaction.

The licensee cannot:

- ✗ provide you utmost loyalty;
- ✗ act in your best interests;
- ✗ offer you advice or recommendations; and
- ✗ if applicable, disclose your confidential information learned in previous relationships.

PRIVACY AND USE OF PERSONAL INFORMATION

Licensees respect the privacy expectations of consumers and the requirements imposed by law. Your informed consent is required for the collection, use and retention of your personal information. Making you aware of how your personal information will be used, to whom it will be disclosed and how long it will be stored forms a basis of a relationship of trust between you and your licensee.

Licensees are required by federal law to collect information that confirms the identity of buyers and sellers. In addition, to assist in the marketing and sale of a property, licensees must collect information including: listing price, purchase price, listing duration, interior and exterior photos and assessment information. Your licensee must disclose the information collected to his or her broker.

Licensees will disclose the information to other brokerages, potential buyers and interested parties during the course of marketing of the property for sale, as well as through the sales process. In addition, all or some of it will be disclosed to the Nova Scotia Association of REALTORS®, government departments, appraisers, municipal organizations and others. Some of the information will be compiled in statistics for use in comparative sales analyses by appraisers and brokerages, as well as consumers. Some or all of the information, including the purchase price, may be published and distributed in print, before the closing in accordance with MLS® rules, and made available on the internet through public websites including those maintained by licensees and brokerages, and by the Canadian Real Estate Association on realtor.ca.

I understand that the brokerage/real estate licensees have an obligation to comply with the provisions of the *Nova Scotia Real Estate Trading Act* (the "Act"), and NSREC By-law, and that this may include providing my personal information to the NSREC for the purpose of audit, inspection, review and related purposes. I consent to the disclosure of my personal information as identified above.

Retention of Information: All information is collected and retained by the brokerage for at least seven (7) years. This allows the brokerages to meet its obligations to all government and regulatory authorities.

ACKNOWLEDGEMENT

I acknowledge having received and read this agency form from the licensee named below and have obtained satisfactory answers to any questions that it raised. I understand the relationships that may occur between a Brokerage/Designated Agent(s) and me. I further understand that I may sign additional documentation acknowledging the type of relationship that I will receive.

Name of licensee: _____

Brokerage: _____

Agency model practiced: ☐ Common Law
☐ Designated Agency

Signature of Seller/Buyer: _____

Signature of Seller/Buyer: _____

Date: _____

This is not a service agreement and does not impose any contractual obligations.

If you have concerns or questions about your real estate transaction, contact the Nova Scotia Real Estate Commission

P: 902-468-3511 • 601-1595 Bedford Highway, Bedford, NS, B4A 3Y4 • www.nsrec.ns.ca • info@nsrec.ns.ca