

DISCLAIMER: This publication is intended for EDUCATIONAL purposes only. The information contained herein is subject to change with no notice, and while a great deal of care has been taken to provide accurate and current information, UBC, their affiliates, authors, editors and staff (collectively, the "UBC Group") makes no claims, representations, or warranties as to accuracy, completeness, usefulness or adequacy of any of the information contained herein. Under no circumstances shall the UBC Group be liable for any losses or damages whatsoever, whether in contract, tort or otherwise, from the use of, or reliance on, the information contained herein. Further, the general principles and conclusions presented in this text are subject to local, provincial, and federal laws and regulations, court cases, and any revisions of the same. This publication is sold for educational purposes only and is not intended to provide, and does not constitute, legal, accounting, or other professional advice. Professional advice should be consulted regarding every specific circumstance before acting on the information presented in these materials.

© Copyright: 2024 by The University of British Columbia, through its Sauder School of Business, Real Estate Division 2024. ALL RIGHTS RESERVED. No part of this publication may be reproduced, transcribed, modified, distributed, republished, used in any information storage and retrieval system, or otherwise used in any form or by any means, without the prior written permission of the publisher. For permission to use material from this text or product, contact UBC Real Estate Division at info@realestate.sauder.ubc.ca or 1-888-776-7733.



CHAPTER 12

LAW OF AGENCY

Learning Objectives

After studying this chapter, a student should be able to:

- Identify the reasons why an agent may be used
- Define agency and dual agency
- List and explain the three major ways in which a licensee can provide trading services in British Columbia
- Explain the model of designated agency and its use in the real estate industry in British Columbia
- Explain the prohibition/ban on dual agency and why such a decision was made
- Describe the narrow exception for the practice of dual agency
- Discuss the use and value of standard forms in the real estate industry in British Columbia
- Describe how an agency relationship is created and terminated
- Explain the various types of agency authority
- Discuss how and when an agent becomes personally liable to a third party
- Explain the duties an agent owes to their principal and apply them to a real estate agency relationship
- Discuss the two ways in which a conflict of interest between two of a licensee's current clients may be addressed
- Explain the duties a principal owes to their agent
- Identify the sections in the Rules that deal with a licensee's duties to clients and others
- List and explain the three key disclosures relating to the agency relationship in British Columbia
- List and explain the two key disclosures relating to the remuneration of a licensee in British Columbia
- Describe the purpose of the disclosure of interest in trade, the disclosure of latent defects, and the notice relating to contract assignments

INTRODUCTION

As you learned in Chapter 2: “The Real Estate Services Act”, the *Real Estate Services Act* (“RESA”) states that a person must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is licensed under RESA or exempted from the requirement to be licensed. Acting on behalf of another is captured within a legal concept called “agency”. The purpose of this chapter is to give you a basic understanding of agency law: the law that applies whenever one acts as an agent on behalf of another.

Why do people hire agents? There are a variety of reasons why people use the services of an agent:

- **The agent possesses knowledge, skills, and abilities that the principal does not.** For example, a person may hire a lawyer to negotiate a settlement to a dispute that they are having with another person because the lawyer has knowledge and experience with the legal issues involved and has negotiation experience with settlements. Alternatively, a person may hire a real estate agent to help them locate a new house because the particular agent has knowledge of the desired neighbourhood, has relationships with developers and other agents, and can access data relating to listings of properties.
- **Due to geographical or other limitations, the agent is able to perform a certain action that the principal cannot.** For example, a person may ask a friend to sign certain documents on their behalf while out of town on vacation. Similarly, a person may hire a real estate agent to help locate a new house in another province where they are being relocated for work.
- **The principal does not have the time or desire to perform certain actions.** For example, a person may hire a rental property manager to manage their rental property because they work long hours and do not have the time to manage the property effectively.

THE AGENCY RELATIONSHIP

An *agency* relationship can be defined as a relationship in which one person, the *agent*, is granted the authority to represent and act for another person, the *principal*, in dealings with others. There are two key parties to an agency relationship: the agent and the principal. An agent is a person authorized to act on behalf of another person; that person is called the principal. When acting on behalf of the principal in dealing with third parties, the agent is essentially making a promise or guarantee to those third parties that the agent has the appropriate authority from their principal to act. This is known as the *warranty of authority*. Ideally, the agency relationship is created by a written contract where the authority of the agent is clearly laid out.

Generally speaking, an agent has the power to bind (or commit) the principal to do certain things. For example, if the agent is empowered to sign a contract with a third party on behalf of the principal, the parties to the contract will be the principal and the third party. The agent is not a party to the contract (and will not have any rights or obligations under the contract).¹ This is a very important concept to keep in mind. The authorities to bind another person to certain things, represent another person in dealings with others, and act on behalf of another person in dealings with others are powerful rights that the law takes seriously. The duties of an agent in exercising these powerful rights form a large part of this chapter.

In many agency relationships, the agent has the power (or authority) to enter into contracts on behalf of the principal. However, in the typical real estate agency relationship in British Columbia, the agent does not possess this power. While the agent may represent and perform certain actions on behalf of the principal in dealings with others, in a typical real estate agency relationship in British Columbia, the agent does not have the authority to sign contracts on behalf of the principal. If the principal would like to provide this authority to the agent, they must do so in writing. This will be discussed in more detail later in the chapter.

agency

a relationship in which one person (the agent) is granted the authority to represent and act for another person (the principal) in dealings with others

agent

at common law, an agent is any person who contracts to act for or on behalf of another, who in turn, is known as the principal

principal

at common law, the person for whom an agent has contracted to act for, and for whose benefit the agent is required to perform and make decisions

warranty of authority

an agent's promise or guarantee to third parties that their actions fall within the scope of authority given by the principal. An agent acting outside of the scope of authority breaches the warranty of authority

¹ In legal terms, it is said that an agent does not have privity of contract with respect to the contract they enter into on behalf of the principal with the third party.

Example

Chan has just purchased a new home and has hired Stella, an interior designer, to design and furnish the ground level of the home according to a number of agreed upon design elements and to spend no more than \$50,000 in doing so. At law, Chan is known as the principal, while Stella is known as the agent. When Stella performs her duties, such as entering into contracts with painters or purchasing furniture, she is doing so on Chan's behalf, as his representative. Therefore, in a contract with a painting company for the painting of the ground level of Chan's home, for example, Chan is ultimately liable to pay the painters because the parties to the contract are Chan and the painting company, not Stella (despite the fact that Stella may have physically signed the contract); however, Stella must ensure that she signs this contract with an indication that she is signing it as an agent for her principal, Chan (otherwise, Stella may be personally liable under the contract). The correct procedure for signing documents, such as contracts, on behalf of a principal, is discussed later in this chapter.



As a Licensee...

The law recognizes that those hiring agents place their trust and confidence in their agents to represent them fairly and according to their wishes. The power to represent another, enter into contracts on another's behalf, and bind or commit another to certain obligations is a power that the law does not treat lightly. Because principals may be particularly vulnerable to their agents' misconduct, the law puts rules into place to ensure that agents do not abuse their position for their own interests or the interests of someone other than the principal. In most agency relationships, the most important set of obligations or duties that agents must observe when acting on behalf of their principals is known as "fiduciary duties." A discussion of the full range of duties that an agent owes to their principal forms a major part of this chapter; however, it is useful to know the basic duties now so that they are always in your mind when examining topics relating to agency. As a licensee, your duties as an agent should guide all of your conduct when acting for the consumer.

The overarching "umbrella" fiduciary duty that an agent owes to their principal is the duty of loyalty. This requires that the agent act solely for the benefit of the principal and put the principal's interests ahead of all others, including the agent's own personal interests. The potential commission that an agent may earn, the rewards or incentives that the agent may receive from someone other than the client, or the saving of the agent's time or money in getting the transaction finished quickly, must not interfere with the key purpose of the agent: to achieve the best result for their principal. Other key fiduciary duties include the duty to keep confidential the principal's information and affairs and the duty for the agent to avoid putting themselves in a conflict of interest (i.e., a situation in which the agent has the temptation to act in a way that is not consistent with the duty of loyalty to the principal). As mentioned, keep these duties in mind as you work your way through the rest of this chapter.

REAL ESTATE AGENCY IN BRITISH COLUMBIA

Historical Development of Real Estate Agency in British Columbia

It is important to relate the general agency law concepts discussed in this chapter to the reality of acting as a licensee under RESA. Therefore, this chapter will link general agency law concepts to the practice of a real estate trading services licensee. Before doing so, one must generally understand how licensees provide real estate services in British Columbia.

listing brokerage

the brokerage hired by an owner/seller of a property to list the property for sale and represent the seller in the sale

listing agent

the individual licensee working for the listing brokerage that carries out most of the duties of the brokerage to list and sell the property for the owner/seller

Over the past few decades, the model of how real estate agency has been offered in the context of real estate trading services has evolved. Historically, most real estate agents were hired by, and acted on behalf of, owners of real property to assist in the sale of their property under the terms of a contract between the seller and a real estate brokerage. These agents' authority came from a listing contract. Sellers hired an individual agent's brokerage to represent them, and the individual agents within the brokerage would carry out the duties of the brokerage and work to sell the property. The brokerage was known as the *listing brokerage* and the individual agents were known as *listing agents*. For ease of reference, we will simply refer to the brokerage and individual

agents of the brokerage collectively as "agents".

Agents focused on expanding their business by identifying new sellers and listing more and more properties for sale through their brokerage. Over time, agents developed relationships with people within their communities. Because of these relationships, agents often knew of people within their communities (e.g.,

current clients, former clients, friends, acquaintances, etc.) who were interested in purchasing property. Local real estate associations also began forming, where agents came together to cooperate and help each other market their listings. This cooperative effort became known as the Multiple Listing Service® (MLS®). As described by the National Association of REALTORS®:

In the late 1800s, real estate brokers regularly gathered at the offices of their local associations to share information about properties they were trying to sell. They agreed to compensate other brokers who helped sell those properties, and the first MLS was born, based on a fundamental principle that's unique to organized real estate: Help me sell my inventory and I'll help you sell yours.²

Prior to 1994, in line with the development of the MLS®, most residential real estate agents in British Columbia operated under the “assumed seller sub-agency” model (Figure 12.1), whereby all of the agents involved in the transaction, even those bringing the buyer into the transaction or working with the buyer, worked together to sell the listed property. As such, the agent working with the buyer was known as the “selling agent/brokerage”. In the listing contract, selling agents were referred to as “cooperating brokerages/agents”, to reflect the fact that their focus was on assisting the listing agent sell the property. At law, the selling agent was assumed to be a sub-agent of the seller (unless otherwise agreed). As a sub-agent of the seller, to compensate the selling agent for their efforts in assisting to sell the property, the listing agent would split or share the commission payable under the listing contract with the selling agent. Therefore, selling agents did not normally ask for any direct compensation from the buyer.

The key consequence of the assumed seller sub-agency model was that, as a sub-agent of the seller (rather than an agent for the buyer), the selling agent owed all agency duties (e.g., the duty of loyalty, the duty of confidentiality, etc.) to only the seller. The listing agent also owed all agency duties to the seller. This model of agency was very confusing for the typical buyer, who in most cases, mistakenly believed that the selling agent was the buyer’s agent and was acting in the buyer’s best interests. At times, the confusion was contributed to by the selling agents themselves, some of whom talked and acted as though they were agents of the buyer, when, in reality, they were not.

As a result of two court decisions in the early 1990s³ that challenged the assumed seller sub-agency model, and to avoid confusion about the legal position of the selling agents, the industry in British Columbia and elsewhere across Canada adopted a new system in 1994 called “assumed buyer agency” (Figure 12.2). In this system, the selling agent was assumed to be the agent for the buyer (rather than a sub-agent of the seller), unless otherwise agreed. This meant that selling agents owed their agency duties to the buyer, which is what many buyers had expected, and perhaps assumed, prior to 1994. Therefore, even though they were still referred to as a cooperating agent in the real estate transaction, the selling agent worked exclusively for the buyer, advocating on their behalf and working to ensure that the buyer’s best interests were achieved. This change assisted in the trend for buyers to hire their own agents when purchasing real property.

Despite this change, however, the industry practice of the listing agent sharing or splitting its commission with the selling agent continued and still continues today (i.e., in many cases, a buyer will not directly pay any form of compensation to their agent).

FIGURE 12.1: Sub-Agency Relationships

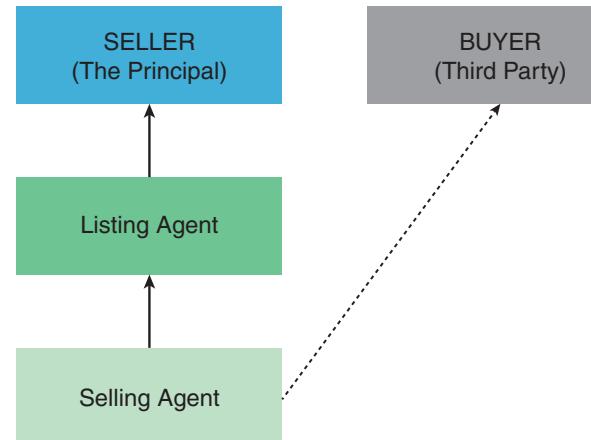
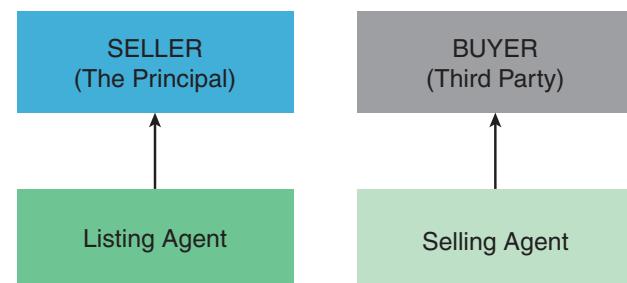


FIGURE 12.2: Assumed Buyer Agency Relationship



² “Multiple Listing Service (MLS): What Is It?” www.nar.realtor/nar-doj-settlement/multiple-listing-service-mls-what-is-it

³ These two decisions also emphasized the fact that, whether a particular relationship is a fiduciary relationship depends upon the circumstances and each relationship must be examined individually to determine whether the test for the existence of a fiduciary relationship is met.



As a Licensee...

As a result of the custom that the selling agent is paid their remuneration through a splitting or sharing of the listing agent's commission, buyers in British Columbia are often very reluctant to pay any form of commission to their agents from their own pocket because they believe that it is the seller who should be paying the commission to all agents involved in the transaction.

In both the assumed seller sub-agency and assumed buyer agency models, the agent was not the individual licensee who acted for the client, but rather the brokerage under which the licensee was licensed. This system

was known as *brokerage agency*. Under RESA, individual licensees provide real estate services on behalf of their brokerage. Therefore, the signatories and parties to the agency contract were the client (seller or buyer) and the brokerage. The consequence of the brokerage being the agent meant that all of the licensees within the brokerage were considered at law to be agents of the clients. For example, in a brokerage of 50 licensees, even though the client had only ever dealt with 1 particu-

lar licensee, the other 49 licensees, even if they had never met or did not know of the client, were expected to act in that client's best interests. In reality, this is not what the average client expected. The client simply expected that the licensee who provided the real estate services to them would owe agency duties to them. Because of this legal reality, in the assumed buyer agency model, a brokerage could not act for multiple clients within a single transaction (e.g., a buyer and a seller or two buyers interested in purchasing the same property) without being in a conflict of interest, even if each client worked exclusively with different licensees within that brokerage. A conflict of interest occurs whenever an agent's duties to one party conflict with the agent's duties to another party.

Example

Atticus and Miguel are licensees at ABC Brokerage Ltd. ("ABC"). Atticus was hired by Jane to list her home for sale. Miguel has been hired by Lee, a buyer, to help find him a new home. Miguel takes Lee to Jane's home during an open house. Lee loves the house and would like Miguel to assist in preparing an offer.

In this example, ABC is in a conflict of interest. On one hand, ABC and all of its related licensees (including both Atticus and Miguel) are required to act in the best interests of the seller, Jane, but on the other hand, ABC and all of its related licensees (including both Atticus and Miguel) are also required to act in the best interests of the potential buyer, Lee.

Under brokerage agency, the only way in which the brokerage could act for both parties in this conflict of interest was through a form of limited representation to both parties (with their consent) called *limited dual agency*.

Dual agency refers to a situation where a brokerage represents, in a single transaction, two or more clients whose interests are in conflict. For example, a typical situation may be when a brokerage represents a property seller and a prospective buyer for that property. In order to make dual agency "workable" in a real estate transaction, the agent(s) will have the clients sign an agreement that limits some of the duties normally owed to each client. This agreement is called a limited dual agency agreement. Limited dual agency involves treating both parties impartially (equally) and

limited dual agency

an agency relationship where a brokerage or licensee acts for multiple parties in a single trade in real estate (e.g., a buyer and a seller or two buyers), but because the duty of loyalty cannot be fulfilled to both clients, the clients agree to a limited form of agency representation

disclosing all relevant information to both (with some exceptions). In essence, rather than focusing on fulfilling the key fiduciary duty of loyalty to the client, where the agent advocates for the client so that the client obtains the best result, a limited dual agent focuses on following the instructions of each client, providing relevant information, and assisting the clients to enter into a binding trade in real estate.

Example

In the preceding example, Atticus and Miguel contact their clients and let them know that there is a conflict of interest for ABC and that the only way in which ABC can act for both of them is if they agree to a limited dual agency arrangement. Under the limited dual agency agreement in common use in British Columbia, Atticus is required to treat both the seller (Jane) and the buyer (Lee) equally (and not favour one over the other), and Miguel is required to treat both the seller (Jane) and the buyer (Lee) equally (and not favour one over the other). Furthermore, aside from some exceptions, such as the maximum/minimum price each party is willing to pay/accept, the motivation of each party, and the personal information of each party, all information about each party has to be shared with the other. Because Jane wants to continue working with Atticus and Lee wants to continue working with Miguel, they both agree to limited dual agency.

Limited dual agency was also required when the same individual licensee wished to act for multiple parties in a transaction, for example if Atticus wanted to represent both Jane (as a seller) and a buyer interested in purchasing Jane's property.

In reality, licensees tended to only be concerned with the clients for whom they personally served and with providing those clients with the best service possible. They were less concerned with the clients of the other licensees within their brokerage because they neither knew nor provided any services to those clients. Therefore, within a particular transaction where the brokerage was in a limited dual agency relationship with the seller and buyer, even though the brokerage (and the licensees involved) were supposed to be acting in a limited dual agency capacity (by providing equal service to both clients), this often did not occur in reality. Each licensee treated their own client as if in a sole agency relationship.

Example

In the preceding example, despite ABC entering into a limited dual agency arrangement with Jane and Lee for the sale of Jane's house to Lee, Atticus continues working solely with Jane in trying to negotiate the highest sale price, while Miguel continues working solely with Lee in trying to negotiate the lowest sale price. Atticus is not concerned with serving Lee (because he does not know Lee and knows that Lee is being served by Miguel) and Miguel is not concerned with serving Jane (because he does not know Jane and knows that Jane is being served by Atticus). Both clients are happy because they feel that their licensee is acting solely for them and in their best interests.

As demonstrated in this example, even though the licensees within the brokerage were not acting in accordance with a limited dual agency arrangement, but rather each acted in the sole interests of the client with whom they served, such conduct was consistent with what most consumers actually expected (since most consumers did not truly understand the full implications of a limited dual agency arrangement). Furthermore, as brokerages evolved into larger and larger organizations, sometimes with hundreds of licensees, conflicts of interest (and limited dual agency arrangements) became more common.

Given the reality of the expectations by consumers in the marketplace, combined with the business practices of brokerages and licensees in the industry, it was time to adjust the standard model of agency, brokerage agency, to reflect the reality, which prompted the move towards designated agency in June of 2012.

The Move Towards Designated Agency

In June 2012, the industry moved away from brokerage agency and adopted *designated agency*. Under designated agency, while the client still signs a services contract with a brokerage, the client agrees that the brokerage will appoint one or more specific licensees (rather than all of its related licensees) to act as the sole agent(s) of the client. Therefore, it is the designated agent(s), rather than the brokerage as a whole, that provides the real estate services and owes the fundamental agency duties to the client. The brokerage and its licensees, other than the designated agent(s), do not owe any agency duties to the

designated agency

a model of agency whereby the brokerage appoints one or more specific licensees to act as the sole agent(s) of the buyer or seller, and it is the designated agent who owes the fundamental agency duties to the buyer or seller, while the brokerage and its other licensees, do not.

client. Under section 32 of the *Real Estate Services Rules* (the “Rules”), a brokerage providing designated agency has three key responsibilities:

1. It must supervise the designated agent or agents to ensure they fulfill their duties to their client appropriately
2. It must not disclose any confidential information concerning a client to any other person unless authorized by that client or required by law
3. It must treat the interests of all clients in an even handed, objective and impartial manner

Because the designated agent(s) act(s) as the sole agent(s) of their respective client, designated agency eliminates the conflict of interest that previously arose when two licensees within the same brokerage each represented a different party in the same trade in real estate (e.g., one licensee represents the seller, while another licensee of the same brokerage represents a potential buyer). Under the designated agency system, limited dual agency was permitted and still continued to be utilized by licensees if a single designated agent (or team of designated agents) wished to represent multiple adverse parties in a trade in real estate (e.g., a buyer and a seller, or two buyers interested in acquiring the same property).

The duties that are owed by the parties to an agency relationship will be discussed later in this chapter; however, it is important to note now that the key provision within the Rules relating to the duties owed to clients begins with “...if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following...” (s. 30). Many of the duties within section 30 are agency and fiduciary duties. To permit the designated agency model whereby it is the individual licensee(s) (i.e., the designated agent(s)) that owe(s) the core agency duties (rather than the brokerage as a whole), the Rules were amended to allow the brokerage and the client, by written agreement, to agree that the duties within section 30 will only be owed to the client by the designated agent(s) and not any of the other related licensees of the brokerage or the brokerage as a whole. These modifying provisions can be found in sections 31 and 32 of the Rules.

While the models of agency previously discussed were/are used by the majority of those in the industry, brokerages are free to offer their services through alternative models of agency, provided they comply with RESA.

The Prohibition/Ban on Dual Agency

Despite the introduction and widespread use of the designated agency model throughout brokerages in British Columbia, some licensees still engaged in a form of dual agency called limited dual agency. Sometimes, limited dual agency was offered in situations where it was not appropriate. On June 15, 2018, as a result of initiatives by the provincial government to enhance consumer protection within the real estate sales industry, the Rules were amended to prohibit the practice of dual agency in real estate trading services, with one narrow exception (discussed shortly).

“Dual agency” is defined in the Rules as the agency representation, by the brokerage, of clients who have conflicting interests in respect of a trade in real estate. Parties with conflicting interests in a given trade in real estate include:

- a buyer and a seller;
- a lessor and a lessee;
- an assignor and an assignee; and
- two or more buyers, lessees or assignees who are interested in the same property.

Example

ABC Brokerage Ltd. (“ABC”) was hired by Jane to list her Vancouver home for sale. ABC designates Atticus as the designated agent for Jane. While hosting an open house for Jane, Atticus is approached by Ravi, who is interested in making an offer to purchase Jane’s house. Ravi is new to the city and has never worked with either ABC or Atticus. Ravi is not working with a brokerage/licensee and asks if Atticus can also represent him in making an offer for Jane’s house.

In this example, if Atticus acts as Ravi’s designated agent, Atticus (and his brokerage, ABC) are engaging in dual agency and may be subject to professional discipline for a breach of the Rules.

Example

In the preceding example, when Ravi inquires with Atticus on whether Atticus can represent Ravi in making an offer to purchase Jane's house, Atticus tells Ravi that, while his brokerage, ABC, can act for him, Atticus cannot act as his designated agent because Atticus is already acting for Jane, and Jane's interests (as a seller) are clearly in conflict with Ravi's interests (as a potential buyer for Jane's house). ABC must designate a different licensee from ABC to act as Ravi's designated agent.

While the definition of dual agency refers to the representation by the brokerage of multiple clients with conflicting interests in a single trade in real estate, the Rules clarify that dual agency does not occur if different designated agents within the brokerage act for each of the clients. That is because the designated agency system shifts the obligation to fulfil all agency duties to the client from the brokerage and all the brokerage's licensees to only the designated agent(s) of the client.

Example

In the preceding example, when Ravi inquires with Atticus on whether Atticus can represent Ravi in making an offer to purchase Jane's house, Atticus tells Ravi that he has a number of options if he would like to utilize the services of a licensee:

- **Option #1:** Ravi can hire ABC to represent him, and ABC will designate a licensee other than Atticus to act as Ravi's designated agent;
- **Option #2:** Ravi can hire ABC and Atticus can assist him in a no agency relationship and provide limited services to Ravi as an unrepresented party, such as:
 - preparing and presenting any offers and counter-offers for Ravi, at Ravi's direction;
 - explaining real estate terms, practices, and forms; and
 - identifying and estimating the costs involved for Ravi in purchasing Jane's house.
- **Option #3:** Ravi can hire a different brokerage altogether to represent him.

As mentioned previously, the prohibition against dual agency prevents a single designated agent (or team of designated agents) from acting as an agent for two or more parties with conflicting interests in a trade in real estate. Despite this, licensees are permitted to provide limited trading services to consumers outside of an agency relationship. Such a relationship was traditionally referred to as a "customer relationship" (in contrast to a "client relationship", whereby the licensee would be an agent of the consumer); however, it is more appropriate to think of such a relationship as a "no agency" relationship. In a "no agency" relationship, the licensee does not owe any agency duties to the consumer, who will be known as an "unrepresented party". Importantly, the licensee will not be obligated to look after the unrepresented party's interests above all else nor owe the unrepresented party the duty of confidentiality, among other things. In Option #2, the Rules require that the licensee must, in addition to providing the Disclosure of Representation in Trading Services form (as required by section 54 of the Rules), also provide the unrepresented party with the Disclosure of Risks to Unrepresented Parties form under section 55. This form advises the unrepresented party of the risks involved in being an unrepresented party in a trade in real estate and recommends that the unrepresented party seek independent professional advice on the matter. The disclosure requirements on brokerages and licensees will be discussed later in this chapter.

Rationale Behind the Prohibition/Ban on Dual Agency

The changes to the Rules (effective June 15, 2018) were prompted by the recommendations of a report compiled by the Independent Advisory Group ("IAG").⁴ The IAG was comprised of a group of experts from a range of public and private organizations and was initiated by the Real Estate Council (the "Council") in February 2016. The IAG was tasked to review the conduct requirements in place for real estate licensees in BC, and to make recommendations to enhance protections for real estate consumers. The IAG Report noted the following:

The IAG found limited dual agency to be a significant source of existing and potential conflicts of interest.
The ability of licensees to serve parties with potentially divergent or conflicting interests runs contrary to the

⁴ "Report of the Independent Advisory Group on Conduct and Practices in the Real Estate Industry in British Columbia," June 2016. www.recbc.ca/wp-content/uploads/IAGReport_June2016.pdf

fundamental concept of agency. It changes the nature of the established agency relationship by limiting the obligations originally owed by a licensee to [their] client, in order to enable the licensee to offer services to another party to the transaction.

While we acknowledge this change in relationship can only be effected with the consent of both parties, it creates a very real potential for conflicts of interest between the parties which could compromise the ability of licensees to act in accordance with the duties owed to both.

...

Notwithstanding these considerations, the IAG determined the risks to consumers of continuing to allow dual agency outweigh its limited advantages. We believe that continuing to allow dual agency has the potential to erode clear expectations and strong enforcement of licensee conduct and ethics because it is fundamentally inconsistent with a licensee's duties and responsibilities to their client.

In summary, the IAG found that, because the fundamental duty of loyalty cannot be fulfilled when practicing dual agency, the risks to consumers of licensee misconduct within such a relationship are too great to endorse dual agency. The practice of limited dual agency raised a number of concerns for consumers, including that:

- a licensee may not be able to be completely loyal and impartial to two clients with competing interests
- a licensee may not be able to properly advise those clients without improperly disclosing their confidential information to each other
- a licensee acting as a dual agent might prioritize their own interest in earning the whole commission, rather than acting in the best interest of [their] clients.

The Narrow Exception for Dual Agency in Remote Locations that are Under-Served by Licensees

Under section 64 of the Rules, a brokerage may engage in dual agency only in a very limited circumstance: the trade in real estate must be in a remote location that is under-served by licensees and it is impracticable for the parties to be provided trading services by different licensees.

The former Real Estate Council interpreted “remote” and “under-served” narrowly and strictly in keeping with the goal of imposing broad restrictions on dual agency. Therefore, the circumstances in which the exception for dual agency will be triggered will be rare.



As a Licensee...

In determining, with your managing broker, whether a particular circumstance falls within the exception to provide services through a dual agency relationship, consider the following:

What does “impracticable” mean in Rule 64?

Impracticable means “not capable of being done.”

Impracticable is different than simply “inconvenient.”

Before offering limited dual agency under the exception in section 64, ask yourself:

- Is there no way another licensee could provide the parties to the trade with independent representation?
- What steps have you taken to satisfy yourself that dual agency is the only available option?

If a licensee or a managing broker is unsure if the exemption applies to their circumstances, it is recommended that they seek legal advice regarding the specific details of their transaction.

In the rare cases in which dual agency may be offered to the parties in a trade in real estate, the Rules require that, before providing any trading services to the parties, the licensee must first provide all parties with a prescribed disclosure form known as the Disclosure of Risks Associated with Dual Agency form (Appendix 12.7), which must be signed by the managing broker. This form sets out generally why the brokerage believes the exception for dual agency is triggered, the duties owed to the parties by a dual agent, and the risks associated with a dual agency relationship. Secondly, the licensee needs to enter into a written agreement of dual agency with each party to whom the dual agency services will be provided. The dual agency agreement is not a form or agreement that is prescribed by BC Financial Services Authority (BCFSA). Providing dual agency requires the consent of both clients. Both clients must agree that the licensee acting for each of them will not

owe either a duty of loyalty but rather will treat each equally when providing them with real estate services. The Disclosure of Risks Associated with Dual Agency form will be discussed later in this chapter.

The Use of Standard Forms

In the sale of real estate, licensees often use “standard forms”, a number of which relate to the agency relationship between a brokerage/licensee and a consumer. An important distinction needs to be made between BCFSA forms that are prescribed and mandatory standard forms that licensees must use in their practice, versus the other standard forms that are provided by BCFSA, which are not mandatory, and other organizations such as the British Columbia Real Estate Association (BCREA), which may or may not be mandatory according to the rules of the organization. Both categories of forms are often referred to in the industry as “standard forms”, which can be confusing.

BCFSA Prescribed Standard Forms

The first category of standard forms is forms that are prescribed by BCFSA for use by licensees. The requirement to use these particular forms can be found in RESA and the Rules. Because these are prescribed forms, licensees must use the exact form as provided by BCFSA in the manner specified in RESA or the Rules, and must not alter the form in any way. Some examples of prescribed forms include:

- the Disclosure of Interest in Trade forms (under section 53 of the Rules);
- the Disclosure of Representation in Trading Services form (under section 54 of the Rules); and
- the Disclosure of Risks to Unrepresented Parties form (under section 55 of the Rules).

These prescribed forms, and a number of other prescribed forms, will be discussed later in this chapter.

Other Standard Forms

There are other standard forms that are made available to licensees by BCFSA (which are not mandatory) and other organizations (which may or may not be mandatory according to the rules of the organization). Various organizations create and provide these forms to help licensees comply with their obligations under RESA and the common law because they have been reviewed by legal professionals, thus saving licensees time and money in having to create these forms themselves.

The largest provider in British Columbia of standard forms is BCREA. One of the core functions of BCREA is to provide its members (REALTORS® [i.e., members of one or more of the local real estate boards]) with standard forms for use in their day-to-day practice. Some of these forms were specifically designed as a way to fulfil a particular regulatory requirement, although a licensee may choose to use a different form to fulfil that regulatory requirement instead.

BCREA has a Standard Forms Committee made up of trading services licensees, lawyers, and other individuals to oversee these standard forms and ensure that they remain accurate, relevant, and useful. The standard forms are generally distributed by the local real estate boards for their member REALTORS® through the WEBForms database.

The core agency standard form contracts for use in British Columbia are created by BCREA. It created the Multiple Listing Contract for use when acting for a seller of property and listing the property for sale on the Multiple Listing Service® (Appendix 11.1), and the Buyer's Agency Exclusive Contract and the Buyer Agency Acknowledgement for use when acting for a buyer of property (Appendices 12.1 and 12.2). These standard forms are the documents that create the designated agency model currently in use by organized real estate in British Columbia.

Licensees may be provided with non-mandatory standard forms from sources aside from BCREA. For example, BCFSA provides licensees with disclosure of remuneration forms to comply with sections 56 and 58 of the Rules. A licensee may use these forms or any other form of their choosing, provided that the form contains the information required by the Rules. Certain brokerages may also provide their licensees with brokerage or deal specific forms to use. Finally, some clients may insist that the licensees they hire use a client created standard form. For example, a large real estate developer may insist on using its own form of agency contract when working with a licensee and brokerage.



As a Licensee...

While many licensees will almost exclusively work with the BCREA standard form agency contracts (particularly those involved in residential real estate), you must be aware that other agency contracts can be used in the industry and that such practice is acceptable, as long as all applicable regulatory requirements are followed. While references will be made to these standard form agency contracts in the balance of this chapter, always keep in mind that you may see other forms of agency contracts, and may be required to use other forms of agency contracts, in your practice as a licensee.

CAPACITY TO ACT AS AN AGENT

Capacity at Common Law

Generally speaking, at common law, any person of sound mind can act as an agent. Remember, because an agent is not a party to the contract between the principal and a third party, the agent does not need the capacity to contract. For example, an infant (i.e., a person under the age of majority, which is 19 in British Columbia) may act as an agent.

Travelers Guarantee Company of Canada v. Farajollahi, 2012 BCSC 1283

In *Farajollahi*, the Court found that the defendant had entered into a binding contract with the plaintiff. The contract was effectively a loan allowing the defendant and others to purchase a strata property that was still under construction. The defendant, who was out of the country at the time, had asked his 14 year-old daughter, over the telephone, to sign the contract on his behalf. The Court confirmed that a minor of sound mind may act as an agent and may bind a principal to a contract, despite the limited ability of minors to enter contracts on their own behalf.

However, when an agent signs a contract on their own behalf, such as when entering into a contract to provide agency services to another (i.e., an agency contract), they need to possess the capacity to contract because they will be a party to the contract; therefore, infant agents may use their own incapacity to terminate or cancel their own agency contract.

Capacity under the Real Estate Services Act

RESA provides additional requirements beyond the common law rules for those wanting to offer their services as an agent in providing real estate services to or on behalf of another. The key requirement is that the agent must be licensed under RESA (or exempt from the requirement to be licensed). There are a number of requirements that one must fulfil in order to obtain a licence under RESA which were discussed in Chapter 2. The key requirements are that the individual successfully complete the required educational requirements, be at least 19 years of age, and be of good reputation.

AGENT'S APPOINTMENT AND AUTHORITY

Creation of Authority

An agency relationship exists whenever a principal empowers an agent to act on their behalf in dealings with others. Appointing or empowering an agent can be done in a number of different ways. An agency relationship is normally created expressly (orally or in writing); however, an agency relationship may also be created by implication, as a result of the doctrine of estoppel, or by ratification by the principal of the agent's acts done on the principal's behalf.

Agency by Express Contract

agency contract

an agreement under which the agent is given authority to perform actions on behalf of the principal, in return for remuneration

Most agency relationships are created by an *agency contract* or express contract. Ideally, the agreement will be in writing; however, oral agreements are also common.

The Multiple Listing Contract (Appendix 11.1) is an example of an agency relationship being created by express contract. In section 1 of the Multiple Listing Contract (Designated Agency), the Seller agrees to enter into a relation-

ship with the Listing Brokerage by agreeing to exclusively list their property with the Listing Brokerage for a certain amount of time (unless renewed by writing). In section 7 of the Multiple Listing Contract (Designated Agency), the type of relationship formed between the parties involved is clarified. Within section 7, the Listing Brokerage designates one or more of its licensees to act as the sole agent(s) of the Seller. This is where an individual licensee's name will appear (s. 7A). This section also makes it clear that an agency relationship will only exist with the Designated Agent(s) of the Listing Brokerage and not the Listing Brokerage itself or any of its other licensees (s. 7C(i)). The Listing Brokerage still has an agency relationship with the Seller, although it is only for a very limited purpose: listing the property with the Multiple Listing Service® (s. 7C(iii)). Therefore, it is the Designated Agent(s) that will owe all of the common law and statutory agency duties discussed later in this chapter.

With respect to acting for buyers, section 1 of the Buyer's Agency Exclusive Contract (Appendix 12.1) creates a relationship between the parties where the Buyer appoints the Buyer's Brokerage and the Designated Agent(s) to find a property for the Buyer to purchase and to assist the Buyer in negotiating the terms of purchase. In section 2, the Buyer's Brokerage designates one or more licensees to act as the Designated Agent(s) and sole agent(s) of the Buyer (s. 2A) and makes it clear that an agency relationship exists only with the Designated Agent(s) and not the Buyer's Brokerage or any of its other licensees (s. 2C(i) and (iii)). As mentioned earlier in this chapter, the custom for sellers to pay both the agent acting for the seller and the agent acting for the buyer (through a splitting of the listing agent's commission) continues to this day, and as a result, some buyers are reluctant to sign the Buyer's Agency Exclusive Contract due to its mention of possibly paying remuneration to the buyer's brokerage. BCREA has also developed the Buyer Agency Acknowledgement (Appendix 12.2). This Acknowledgement makes it clear that the buyer will not pay the buyer's brokerage any remuneration (unless otherwise agreed to by the parties).



As a Licensee...

While at common law, agency contracts can be oral, you must be aware that section 43 of the Rules requires a written service agreement between a brokerage and an owner/seller of real estate, unless this is waived by the client. Accordingly, unless waived by the client, this section of the Rules means that all listing agreements must be in writing (listing agreements are discussed later in the chapter). Further, while a listing contract is not an agreement for the sale of land, it may be considered to be an agreement "respecting land" and therefore may be subject to section 59 of the *Law and Equity Act* which generally requires it to be in writing. This point has not yet been determined. Therefore, the least risky practice is to insist that a listing agreement be signed by both the brokerage and the owner/seller.

Section 43 of the Rules also sets out the minimum information that must be included in a written service agreement, and this includes a general description of the services to be provided by the brokerage.

Note that the requirement in section 43 of the Rules relates to acting for the owner/seller of real estate; however, it does not include an agency relationship whereby a buyer of real estate hires a brokerage to assist them. Nevertheless, it is prudent to always have written services agreements with clients and many brokerages have policies requiring such a practice (regardless of whether they are listing a property or assisting a buyer). Many brokerages acting for buyers utilize BCREA's Buyer's Agency Exclusive Contract (Appendix 12.1) or Buyer's Agency Acknowledgement form (Appendix 12.2). Licensees should confirm their intended practice on this matter with their brokerage.

Finally, licensees must keep in mind that section 44 applies in any case where a written services agreement is signed by the client. Section 44 states that, if a brokerage provides real estate services under a written agreement, the brokerage must deliver a copy to the client immediately on execution of the agreement. This requirement ensures that the client is fully informed of their contractual rights and obligations when working with the brokerage. With respect to the use of the word "client" within section 44, in the case where the brokerage is working as a listing brokerage and the property is owned by more than one person (as joint tenants or tenants in common), a separate copy should be given to each owner.



As a Licensee

In the real estate sales industry, the contract whereby an owner of property hires a brokerage to advertise (or “list”) their property for sale is known as a “listing contract” or “listing agreement”. There are three common types of listing contracts: the exclusive listing, the multiple listing, and the open (or general) listing. Regardless of the type of listing contract used by the brokerage, Rules 43(3) and (4) require that the agreement be signed by both the client and an authorized signatory of the brokerage and that the following specific items be included: **The parties:** the names of the owner/seller and the listing brokerage.

- **The property:** the address of real estate (typically the civic address of the property, the legal description, and Parcel Identified (PID) are included).
- **The listing term:** the length of time for which the brokerage is hired to list the property for sale, along with the effective date of the agreement.
- **The agent’s authority:** a general description of the services to be provided by the brokerage (which will include the authority given by the owner to the listing brokerage in listing the property for sale and the desired sale price and conditions of sale [e.g., must close before a certain date, seller willing to provide a vendor take-back mortgage, etc.]).
- **The remuneration to be paid by the seller to the listing brokerage:** how much remuneration (commission) will be paid by the seller and when the obligation to pay remuneration is triggered.
- **How the client’s personal information will be handled:** provisions respecting the use and disclosure of personal information.

The following is a brief description of the three common types of listing contracts.

1. **Exclusive Listing.** In British Columbia, an exclusive listing is usually an “exclusive right to sell”, although it might be more accurate to say “an exclusive right to market” where the listing brokerage (through its designated agent) has the sole authority to “sell” the property for a specified period such as 60 or 90 days. During the term of the listing, if the property is sold, the owner must pay commission to the listing brokerage, even if the listing brokerage was not the reason for the sale, for example if the owner found a buyer themselves. Since the listing is “exclusive”, brokerages working with potential buyers typically contact the listing brokerage to put forth an offer and negotiate a sale. As such, the buyer’s brokerage becomes what is known as a “cooperating brokerage”. To entice and encourage other brokerages and designated agents to bring their buyer clients to the property (and thus “cooperate”), the listing brokerage offers to share some of its commission with any cooperating brokerage that brings a successful buyer. Note that the authority for the listing brokerage to work with cooperating brokerages and share its commission is provided for in the listing contract.
Sometimes, an owner may require that an exclusive listing contract be amended to permit the owner to find a buyer without paying commission to the listing brokerage. In this case, the brokerage, through its designated agent, will have a true “exclusive listing” (rather than an “exclusive right to sell”). In other words, the listing brokerage and its designated agent no longer have an exclusive right to sell because the owner may sell the property, but the brokerage has the only listing on the property which makes it still an “exclusive listing”.
2. **Multiple Listing.** A multiple listing contract is the standard for use within the real estate boards in British Columbia. The standard form Multiple Listing Contract (found at Appendix 11.1) is created by BCREA for the use of the individual real estate boards. A multiple listing is “an exclusive right to sell” and is a type of exclusive listing. It is different from the ordinary exclusive listing because the listing contract permits the listing brokerage to list the property with the Multiple Listing Service® of the listing brokerage’s real estate board and any other real estate board that the listing brokerage has access to, and to cooperate with other brokerages acting for a prospective buyer.
3. **The Open (or General) Listing.** An open listing authorizes a real estate brokerage, through its designated agent, to list the property; however, it does not prevent the seller from employing a number of other brokerages to also represent the seller through their designated agents. A commission is paid to the listing brokerage who, through the designated agent, is the effective cause of the sale, and the sale of the property automatically terminates the authority of all other brokerages and their designated agents. If the seller sells their property to a buyer not introduced by any of the listing brokerages, the seller does not pay any of the listing brokerages a commission.

Agency by Implication

An agency can also be *implied* by conduct. If one party has impliedly authorized another to act on their behalf, and the agent accepts this authority (even without realizing the consequences), the courts may determine that an agency relationship has been created by conduct. This type of agency is less common in the context of providing real estate services, but can still arise if a licensee is not careful in their dealings with consumers.

agency by implication

an agency relationship that is established by the actions and conduct of the parties, rather than by express contract between the principal and the agent



ALERT

When acting as a listing licensee, you must be very careful when dealing with unrepresented buyers. Despite being an agent for the seller, you are permitted to offer limited trading services to an unrepresented buyer, such as:

- providing the unrepresented buyer with general market information, standard form contracts, and other relevant documents;
- assisting the unrepresented buyer fill out standard form contracts (without providing advice on appropriate terms); and
- presenting the offers and counter-offers from the unrepresented buyer to the seller (and vice versa).

However, if your actions with respect to the unrepresented buyer “cross the line” into services typical of an agent to their client, you may unknowingly have entered into an implied agency relationship with that unrepresented buyer. Services to an unrepresented party that may result in an implied agency relationship include:

- giving the unrepresented buyer advice;
- negotiating on behalf of the unrepresented buyer; and
- disclosing confidential information about their client to the unrepresented buyer (e.g., their client's bottom line price point) unless authorized to do so by the client or required to do so by law.

If it is found that you have an implied agency with an unrepresented buyer, you will owe fiduciary duties to that buyer, which will be impossible to fulfil given the fiduciary duties that you owe to the seller (e.g., the duty of loyalty and duty to avoid conflicts of interest). This may result in civil proceedings against you in court. Furthermore, you will also be in contravention of section 63 of the Rules which prohibit dual agency, and you may be subject to serious disciplinary penalties.

Agency by Estoppel

Agency by *estoppel* arises where one person (the principal) acts in such a way as to lead a third party to believe that another person (the agent) has authority to act on behalf of the principal. The requirements for agency by estoppel are:

- **a representation by the principal**, where there is clear and unequivocal evidence that the principal has, by words or conduct, held out another person as having authority to act on the principal's behalf;
- **reliance by the third party** on the representation; and
- **an alteration of the third party's position** resulting from such reliance.

estoppel

a legal principle that prevents someone from denying or contradicting a set of facts that they have previously expressly or impliedly asserted to be true

Scope of an Agent's Authority

Once an agency relationship has been established, it is necessary to examine the scope, or breadth, of the agent's *authority*. A principal will be bound to a third party only by acts which are within the agent's authority, unless the principal ratifies those acts. If an agent acts outside their authority, the agent may be liable to the principal for breach of the agency contract, or to a third party for breach of implied warranty of authority (explained later in this chapter). The authority of an agent may be actual or apparent.

authority

in the context of agency law, the granting by a principal to an agent of the power to act on their behalf in certain specified ways

Actual Authority

Actual authority is given to the agent by the principal in the agency agreement. Remember, the agency agreement can be oral or in writing. There are three key types of actual authority:

1. **Express Authority:** Express authority is created and limited by the terms of the contract. For example, in the Multiple Listing Contract (Appendix 11.1), the listing brokerage's listing authority is dealt with in the first clause of the contract. In part, it states that the seller:
 - authorizes the listing brokerage to advertise the property and show it to prospective buyers during reasonable hours;
 - agrees to allow the listing brokerage to place "For Sale" and "Sold" signs upon the property; and
 - agrees to allow other brokerages (known as "cooperating brokerages") to show the property to prospective buyers.
2. **Implied Authority:** An agent may find themselves in circumstances that are not covered by the words of the express authority. It may be possible to imply (from the precise words used) authority if the contemplated act is necessary in order to enable the agent to carry out the express authority and is incidental to that authority. In general, every agent has implied authority to do anything necessary for, and ordinarily incidental to, carrying out the express authority granted.

Example

Agatha hired Lee to list her vacant investment property for sale. Agatha lives in Vancouver but the investment property is in Kamloops. Agatha and Lee's brokerage sign a Multiple Listing Contract. A few days into the term of the listing, Lee hosts an open house on the property. Agatha is furious because she only wanted Lee to show the property privately, since she felt this was the best way to communicate the uniqueness of the property to buyers. While the Multiple Listing Contract authorizes the Listing Brokerage to "show" the property to prospective buyers, it does not specifically address if this includes hosting an open house. Therefore, it may be open for Agatha to argue that Lee did not have the express authority to host the open house. However, Lee may be able to claim that he had the implied authority to do so because hosting an open house is incidental to the express authority to "show" the property to prospective buyers.

3. **Usual or Customary Authority:** When an agent is engaged by the principal to act in a particular transaction that is governed by "customs of the trade", the principal is considered to have consented to the agent acting in accordance with such customs as long as they are lawful and reasonable and the principal has not indicated otherwise. In the preceding example involving Agatha and Lee, in addition to implied authority, Lee may also be able to argue that he had usual or customary authority to host the open house.

Apparent Authority

Apparent authority is different from actual authority. Apparent authority results from the operation of the legal doctrine of estoppel in circumstances where a reasonable third party would consider, from the conduct or statements of the principal and agent, that the agent did, in fact, possess authority. Agency by estoppel was discussed earlier in this chapter.

Agency by Ratification

Sometimes an agent's authority can be granted retroactively. Ratification by the principal means that the principal agrees with the performance of the action undertaken by the previously unauthorized agent.⁵ For example, an agent enters into a contract on behalf of the principal but the contract is beyond the agent's authority. If the principal later consents to be bound by the unauthorized acts of the agent, the principal has ratified the contract. The result is that the principal is bound by the contract just as if the agent had been authorized to make the contract in the first place. Ratification of agency can apply whether an agent has acted without authority or in excess of authority. Clearly, licensees should not act for others without express authority with the hope that their conduct will later be ratified, as this practice carries a great deal of risk, the key risk being that the licensee becomes personally liable to perform the action(s) undertaken on behalf of the principal if the contract is not ratified.

⁵ Fridman, G. 2012. *Canadian Agency Law* (2nd ed). LexisNexis Canada Inc. p. 41.



As a Licensee...

As noted in the beginning of this chapter, in many agency relationships, the scope of the agent's authority includes the power of the agent to enter into contracts on behalf of the principal. However, in the typical real estate agency relationship in British Columbia, this authority is not normally included within the scope of authority granted.

For example, in the Multiple Listing Contract (Appendix 11.1), the listing brokerage is authorized to "advertise the Property and to show it to prospective buyers during reasonable hours" (s. 1B(ii)) and agrees to use "reasonable commercial efforts to market the Property" (s. 8C). However, once an offer is received, under section 30 of the Rules, the brokerage and designated agent must communicate all offers to the client in a timely, objective and unbiased manner. The seller agrees in the Multiple Listing Contract to "accept an offer made during the term of this Contract by a person ready, willing and able to purchase on the terms set out in the Contract" (s. 10B). In other words, only the owner is entitled to sign the contract of purchase and sale.

You may be requested to sign contracts on behalf of clients in the course of performing real estate services. In these circumstances, you must be absolutely certain that you have received proper authorization from your clients and have followed the correct procedure. Ensure that you consult your managing broker about the risks and benefits of this course of action in advance.

1. Obtain Written Authorization

Section 45 of the Rules requires licensees to have written permission from their clients before signing contracts on their behalf. Because the standard form contracts used in the real estate industry do not grant this authority, licensees cannot assume that they have written permission to sign contracts just because a service or agency agreement has been executed by their client. It is often necessary for the licensee to receive written permission from the client in a separate document. Beyond this requirement, licensees should also insist upon receiving clear instructions from the client describing the specific purpose and limits of the authority to sign. As a new licensee, when you have received instructions from a client to sign a contract on their behalf, it is best to speak to your managing broker before moving forward.

Failing to obtain written authority can have serious consequences for licensees. In one disciplinary case, a licensee signed three offers to purchase property on behalf of her client. The licensee had been given clear oral instructions to do so by her client, and she acted within the scope of authority granted by these instructions at all times. Nevertheless, after their relationship became strained, the client refused to complete the contracts entered into on his behalf by the licensee, claiming that the licensee never had proper authority. The former Real Estate Council disciplined the licensee for failing to obtain written authorization to sign on the client's behalf, as required by section 5-3(1) of the Rules (now section 45 of the Rules). The licensee received a reprimand and was ordered to complete remedial education and pay enforcement expenses of \$1,250 (2012 CanLII 82611 (BC REC)). The message is clear: licensees cannot sign contracts on behalf of clients without written authority to do so, regardless of how clear the client's oral instructions may be.

2. Follow the Correct Procedure

Once licensees have received written authority to sign contracts on behalf of their clients, they must follow the correct procedure to ensure that the client, and not the agent, is legally bound. Licensees must sign their own names, not the names of their clients. Moreover, licensees must include a written indication that they are signing as an agent for the client either next to or below their own signature. For example:

Mary Smith _____ as agent for Jane Jones
(your signature) _____ (client's name)

In another disciplinary case, a licensee signed an addendum to a contract on behalf of her client. Instead of signing her own name and indicating her role as an agent next to the signature, the licensee simply copied the client's signature onto the document. She also failed to obtain proper written authority to sign on behalf of the client. As a result, the former Real Estate Council ordered the licensee to pay enforcement expenses of \$750 and suspended her licence for seven days (2008 CanLII 75141 (BC REC)).

TERMINATION OF AUTHORITY

Methods of Termination

The agency relationship is a voluntary relationship that depends upon the mutual consent of the principal and the agent; therefore, either party can terminate the relationship at will. Once terminated, any authority to act will be revoked. For example, if a principal terminates their agency relationship with the agent, the agent's

authority to act on behalf of the principal will end (i.e., authority is revoked). There are three ways in which the agency relationship (and authority) can be terminated:

- 1. Express Termination:** The principal or agent can terminate the relationship expressly, orally or in writing. This is sometimes known as the revocation of agency authority.

Example

Satvir is acting as the listing agent for Marcelo's oceanfront property. Over the course of the listing term, Marcelo is increasingly getting frustrated because Satvir has not conducted an open house, there have been very few showings of his property, and Satvir does not return his calls. As a result, Marcelo writes an email to Satvir terminating the agency relationship and revoking Satvir's authority to act as the listing agent for his property. At this point, Satvir would be required to return the keys to the property to Marcelo (if applicable) and remove signage and take down advertising that suggest Satvir is the listing agent for Marcelo's property.

- 2. Termination by Conduct:** An act of the principal that is inconsistent with the continuation of authority can terminate the agency relationship.

Example

Ming is acting as the listing agent for Darcy's property. The listing term is three months. After two weeks of intensive marketing by Ming, Darcy receives multiple offers for his property and accepts the highest offer. Three weeks later, the transaction completes.

As you can see, even though there is still time left under the listing term (approximately seven weeks), the agency relationship is terminated by conduct upon the sale of the property.

- 3. Operation of Law:** Through a provision within the agency contract (if one exists) or the death, mental incapacity, or bankruptcy of either the principal or the agent, the agency relationship can be terminated.

Keep in mind that many agency relationships are created by express contract. Therefore, if an agency relationship is terminated in a way that is not permitted by the contract, the terminating party may still be liable for damages. For example, if an owner/seller terminated their listing contract with a brokerage before the expiry of the listing term, the brokerage may have a right to claim damages (likely for its lost commission), if it makes the decision to pursue a legal remedy against the owner/seller. Express contract or not, there may also be equitable remedies for the party where the other improperly terminates the agency relationship.



As a Licensee...

Most agency contracts contain provisions dealing with methods of termination, including the agency contracts typically used in the real estate sales industry in British Columbia. For example, section 14 of the Multiple Listing Contract (Appendix 11.1) provides that the listing contract will terminate in one of six ways:

- upon the expiry of the listing term (as specified in the listing contract);
- earlier than the expiry of the listing term, but only if mutually agreed to, in writing, by the seller and the listing brokerage;
- upon a completed sale of the property;
- immediately, if the listing brokerage's licence is suspended, cancelled or rendered inoperative under the *Real Estate Services Act*;
- upon the bankruptcy or insolvency of the listing brokerage or if it is in receivership; and
- two of a licensee's current clients have interests that conflict in a given trade in real estate and the licensee must cease acting for one or both of the clients under section 65 of the Rules.

Section 10 of the Buyer's Agency Exclusive Contract (Appendix 12.1) contains similar termination provisions.

Both the Multiple Listing Contract and the Buyer's Agency Exclusive Contract go even further and specify what is to occur if the contract is terminated. For example, the Multiple Listing Contract states that, upon termination, the listing brokerage and designated agent will immediately:

- remove the property from the Multiple Listing Service® as an active listing;
- cease (stop) all marketing activities on behalf of the seller;
- remove all signs from the property; and
- if requested by the seller, return all documents and other materials provided by the seller.

Risks After Termination

Once an agent's authority is terminated, the agent will no longer have the authority to act on behalf of the principal. However, this does not mean that the agent can no longer bind the principal to certain conduct. If conduct of the principal and agent continue to suggest that the agent has the appropriate authority, there is a risk that, in reliance on this conduct, a third party continues dealing with the agent as a representative of the principal, which could lead to agency by estoppel.

In most circumstances, a principal is required to give notice to a third party with whom the agent has been dealing of the termination of the agent's authority. Otherwise, the principal may be bound by the acts of the agent where third parties are relying on the apparent authority.

RELATIONSHIP BETWEEN THE AGENT AND THE THIRD PARTY

When a properly empowered agent acts on behalf of a principal in entering into a contract with a third party, the agent is not a party to the contract (and will not have any rights or obligations under the contract). Despite this general principle, there are three situations at common law where an agent may be personally liable to a third party.

No Disclosure of Agency

Where an agent does not disclose to a third party that they are acting as an agent, the agent may be held liable as if they were the principal. This is only fair, because the third party has been led to believe that it is making a contract with the agent personally, and might not have been willing to contract with the principal of whom the third party was never told. The injured party may choose to sue either the principal or the agent.

Example

Sam Shopper wishes to buy Blackacre, but he knows that Omar Owner will not sell to him. Sam employs Al Agent to buy the property for him in Al Agent's name. Omar Owner agrees to sell to Al Agent, unaware of the arrangement between Al Agent and Sam Shopper. However, before completion of the sale, Sam Shopper goes bankrupt and is unable to produce the funds to enable Al Agent to complete. Al Agent will be liable for breach of contract if he does not complete because he was the party to the contract. If Al Agent later discloses that he was acting only as agent for Sam Shopper, Omar Owner can choose to make a claim against the assets of Sam Shopper under the general principles of agency. Since Sam Shopper is bankrupt, Omar Owner may choose to sue Al Agent instead.

No Authority or Insufficient Authority

Earlier in this chapter, the concept of warranty of authority was introduced. An agent who makes a contract with a third party on behalf of the principal is presumed at law to have warranted or "guaranteed" that the agent has appropriate authority to do so. A third party can rely on this warranty. Therefore, if an agent makes a contract with a third party on the principal's behalf without having the authority to do so, the agent may be liable to the third party for damages for breach of warranty of authority.

Torts Committed by the Agent

A *tort* is a private wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages. Examples of torts are negligence, trespass, misrepresentation, etc., and were discussed in Chapter 5: "The Professional Liability of Real Estate Licensees". Agents who commit torts against third parties cannot defend their actions by saying that the tort was committed on behalf of the principal or that the principal authorized the actions.

tort

a private wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages

Example

Frankie is the designated agent for Simran, the owner of a home in Kamloops, British Columbia. Simran tells Frankie that her home has had numerous problems with leaks, moisture, and mould in the basement, but instructs Frankie not to disclose this to any potential buyer (since she does not want to scare any buyers away). When Uma, a potential buyer, contacts Frankie to ask him some questions about Simran's property, she asks Frankie whether there have been any water issues in basement. Frankie tells her that, to his knowledge, there have not been any water issues in the basement.

If Uma were able to prove that Frankie knew about the water issues, Uma could sue Frankie for the tort of fraudulent misrepresentation.

Principals are responsible for the actions of their agents; therefore, if their agent commits a tort, that principal may also be liable to the third party. In the previous example, Simran, as the principal, may also be liable for damages to Uma according to this concept (and also because she expressly authorized the misrepresentation).

The liability of a principal for an agent's actions is so strict that, even if a principal instructs the agent to disclose relevant information to a third party, but the agent fails to do so, the principal may be held vicariously liable to the third party for any damages resulting from the agent's misconduct.

Example

Mr. Isley was the seller of a house which had been infested with cockroaches and fumigated before its sale. He instructed his agent to disclose these facts to any potential buyers but the agent failed to do so. Result? The new buyer, Mr. Rowley, will probably be successful in a lawsuit against Mr. Isley. In turn, Mr. Isley will be granted damages by a court against the agent for the full amount of damages and court costs which he must pay to Mr. Rowley.

THE DUTIES OF THE AGENT TO THE PRINCIPAL

The law places a number of duties on agents when acting on behalf of a principal, with the most common consideration being that, because an agent possesses a great deal of power to impact the interests of the principal, an agent's duties must be exercised responsibly. An agent's common law duties and responsibilities to the principal can generally be categorized into three types: contractual duties, tort law duties, and agency duties. Real estate licensees also owe a number of additional duties under the Rules when offering real estate services to the public.

Common Law Contractual Duties

An agent has a duty to comply with the agency agreement, if one exists. An agency agreement, whether it is made orally or is in writing, is a contract. Therefore, the agent has a duty in contract law to fulfil their contractual obligations, and a failure to do so can result in a claim for breach of contract.



As a Licensee...

Section 8 of the Multiple Listing Contract (Appendix 11.1) contains many of the contractual duties of the designated agent when acting for the seller of real estate. Some of the key duties within this section are that the designated agent will:

- act as the agent of only the seller with respect to the property (except for some limited circumstances);
- provide information about the property to cooperating brokerages;
- subject to some exceptions, use reasonable commercial efforts to market the property and promote the interests of the seller;
- at the earliest reasonable opportunity, advise any buyer interested in the property that they are the agent for the seller;
- fulfil the duties set out in section 30 of the Rules (section 30 will be discussed later in this chapter – for now, simply note that section 30 lists the duties owed by brokerages and its related licensees, and includes duties such as the duty to act in the best interests of the client and the duty to maintain the confidentiality of information respecting the client);
- obey all lawful instructions of the seller; and
- exercise reasonable care and skill in the performance of the contract.

Common Law Tort Law Duties

An agent has the duty of care under tort law to exercise reasonable care and skill (i.e., they cannot act negligently). This duty stems from the concept of negligence which was discussed in Chapter 5.

In the context of real estate sales, the licensee representing a seller in the sale of a property has a duty to do everything reasonably expected from a competent licensee to help the seller get fair market value for the property.⁶ Furthermore, the licensee is obligated to advise the seller, to the best of their ability, whether or not an offer should be accepted – in other words, whether the price is the highest that could reasonably be obtained.⁷ Similarly, when acting as a buyer's agent, the licensee's obligation is to negotiate for the buyer's best interest, getting the lowest price and best terms for the buyer.

Before agreeing to act for a client, the licensee should consider whether they are able to provide reasonable care and skill for that client. A licensee should decline to act when a particular transaction is beyond their expertise and, if possible, refer the client to another licensee who possesses such expertise. For example, a licensee who has worked exclusively on the sale of residential properties is likely not able to properly look after the sale of a large office tower.

The Rules also contain a similar obligation to this common law duty. Section 30(d) of the Rules states that a licensee must advise the client to seek independent professional advice on matters outside of the expertise of the licensee, while section 33 requires that licensees act honestly when providing real estate services, and section 34 states that licensees must act honestly and with reasonable care and skill when providing real estate services.

Common Law Agency Duties

At common law, an agent must personally perform the duties accepted as part of the agency relationship. In other words, the agent cannot delegate their authority to another agent, unless such delegation is expressly or impliedly permitted by the principal. It is fairly obvious that, when a principal hires an agent to act on their behalf, a major consideration for the principal is the identity of the agent. The principal selects an agent that they trust and in which they have confidence. Therefore, the law requires that any delegation must be permitted.



As a Licensee...

As you know, under the designated agency model, the brokerage will designate one or more licensees within the brokerage to act as the designated agent for the client. However, both the Multiple Listing Contract (Appendix 11.1) and Buyer's Agency Exclusive Contract (Appendix 12.1) allow the brokerage to designate an alternative licensee, in certain circumstances. For example, in the Multiple Listing Contract, section 7 states that, if the licence of the designated agent is suspended, cancelled or becomes inoperative under RESA or the designated agent is temporarily unavailable or ceases to be engaged by the listing brokerage, the listing brokerage will designate another licensee from the listing brokerage to act as the new designated agent of the seller.

Fiduciary Duties

The most important duties that an agent owes to the principal are known as "fiduciary duties". These duties flow from the fact that most (but not all) agency relationships are fiduciary relationships. The word *fiduciary* is derived from the Latin word "fiducia", which means "trust". Generally speaking, a fiduciary relationship involves the placing of trust, confidence, and reliance in the fiduciary, who has the ability to exercise their power to impact the beneficiary. In an agency relationship, the agent is the fiduciary and the principal (or client) is the beneficiary. Other common fiduciary relationships include doctor/patient, lawyer/client, teacher/student, director/corporation, and the federal government/Indigenous peoples of Canada.

fiduciary

a person who holds a position of trust with respect to someone else and is obliged, by virtue of the relationship of trust, to act solely in the other person's benefit

⁶ *Phelan v. Realty World-Empire Realty Ltd.*, 1994 CanLII 2755 (BCSC).

⁷ *DAtri v. Chilcott*, 1975 CanLII 596 (ONSC).

The law recognizes that, because principals place their trust and confidence in their agents, they may be particularly vulnerable to their agents' misconduct. As such, the law has special duties to ensure that agents do not abuse their position for their own interests or the interests of someone other than the principal. The following is a useful statement of the general duty of the fiduciary:

When one party is obliged to act for the benefit of another, and the obligation carries with it a discretionary power, the empowered party becomes a fiduciary. A relationship with these attributes, however created, is marked by confidence and trust. Once created, equity will supervise the relationship by holding the empowered party to the fiduciary's strict standard of conduct. While its specifics may vary, this standard generally requires the fiduciary to act in a loyal and transparent manner in the beneficiary's affairs...⁸

Fiduciary duties are seen as some of the most sacred and special legal duties. When a principal alleges that an agent has breached their fiduciary duties, rather than requiring the principal to prove this allegation, the law instead requires the agent to provide evidence to support the fact that they properly discharged or fulfilled their fiduciary duties. While most fiduciary duties owed by the agent toward the principal end when the agency relationship ends (e.g., the listing licensee is successful in selling an owner's property or the buyer's licensee is successful in assisting the buyer purchase a property), the fiduciary duty of confidentiality does not terminate when the transaction completes. Rather, it continues to apply until the parties agree otherwise.⁹

The Duty of Loyalty

The overarching "umbrella" fiduciary duty is the duty of loyalty, which requires the agent to act solely for the benefit of the principal and put the principal's interests ahead of all others, including the agent's personal interests. The fundamental undertaking or promise of a real estate agent is to act loyally and transparently, in the best interests of the client.¹⁰

The Supreme Court of Canada has stated that the duty of loyalty lies at the core of the fiduciary principle.¹¹



As a Licensee...

Keep the duty of loyalty in mind at all times when acting on behalf of your clients. When acting, you should frequently be asking yourself:

- Who is my client?
- Is this in the best interests of my client?
- Am I being influenced by the interests of others instead of my client's?

BCFSA and the courts treat breaches of fiduciary duties very seriously. Some of the cases in which the most severe disciplinary penalties have been ordered against licensees involved a breach of the duty of loyalty.

The Duty to Avoid Conflicts of Interest

Agents are under a duty to avoid conflicts of interest, where possible. The following is a useful definition of a conflict of interest:

A situation of conflict of interest occurs when there is a "substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person"...¹²

This definition, while stated in the context of a lawyer-client relationship, has been recognized by the courts to equally apply to the real estate agent-client relationship.¹³ Simply put, a conflict of interest arises whenever the agent has the temptation to act in their own interest or a third party's interest rather than in the sole interest of the principal. The "conflict" for the agent is between the duty of loyalty to the principal and the

⁸ *Mulligan v. Stephenson*, 2016 BCSC 1941 at para. 108.

⁹ *BC Real Estate Practice Manual*, 3rd ed. 2017. Continuing Legal Education Society of British Columbia: Vancouver. At §2.24.

¹⁰ *Mulligan v. Stephenson*, 2016 BCSC 1941 at para. 112.

¹¹ *Hodgkinson v. Simms*, 1994 CanLII 70 (SCC).

¹² *Galambos v. Perez*, 2009 SCC 48 at para. 31.

¹³ *Mulligan v. Stephenson*, 2016 BCSC 1941 at para. 114.

motivation of the agent to act for their personal gain or for the gain of a third party. If a conflict exists, the agent must fully disclose the conflict and obtain the consent/permission of the principal. Otherwise, the agent must cease acting in the conflict.

An agent may not put [themselves] in a position or enter into a transaction in which [their] personal interest, or [their] duty to another principal, may conflict with [their] duty to [their] principal, unless [their] principal, with full knowledge of all the material circumstances and of the nature and extent of the agent's interest, consents.¹⁴



As a Licensee...

Conflicts are an unavoidable aspect of the practice as a real estate licensee, and selecting the correct course of action is not always easy. At the very least, you must be able to identify a conflict of interest. Wilfully ignoring conflicts of interest or failing to spot a conflict of interest can have a significant impact on your professional career. Once a conflict of interest is identified, if unsure what to do, you should bring the issue to your managing broker for further advice. Even if you are confident in the best way to resolve the conflict of interest, it is still useful to bring it to the attention of the managing broker for a second opinion. Remember, the Rules require that managing brokers be active in the management of the brokerage, adequately supervise the licensees and employees of the brokerage, and ensure that the brokerage's business is being carried out in a competent and lawful manner.

The Knowledge Base “Conflict of Interest (Trading Services) Guidelines” provides licensees with a number of proactive steps that they can take to avoid conflicts of interest:

1. Be Proactive in Anticipating and Avoiding Conflicts of Interest

Conflicts can arise at any point during an agency relationship. Many conflicts are easily identified well in advance. As a prudent real estate professional, you have a duty to take reasonable steps to avoid conflicts of interest. This can be done through proactive planning of your professional and personal activities.

2. Communicate Early and Often with Clients About Potential Conflicts of Interest

A key means of avoiding conflicts of interest is to have transparent discussions with clients about potential conflicts of interest early and often. For example, the potential for a conflict of interest related to dual agency should be discussed at the outset of an agency relationship. The possibility of other types of conflicts of interest should also be discussed early in the relationship. On-going communication is also required to identify, at an early point, any unanticipated conflicts that may arise during course of the agency relationship.

3. Promptly Provide Clear Disclosure of Conflicts of Interest When They Arise

If, after taking reasonable steps to avoid the conflict of interest, a conflict still occurs, you must promptly disclose the conflict to your client. If it is not possible to completely avoid the conflict, you should discuss the situation with your client and present options for how to resolve the conflict. In some situations, you may not be able to maintain objectivity to fulfil your duties to your client and you may need to recuse yourself from continuing to act for them.

The following sections break down conflicts of interest into a few key categories.

Conflicts Respecting a Licensee's Remuneration

Some conflicts of interest in the real estate sales industry are virtually impossible to avoid. For example, licensees are typically entitled to their remuneration (commission) once a successful purchase contract has been executed. Therefore, licensees may have the temptation to encourage their clients to enter into certain contracts because of the personal desire to earn a commission, even if that particular contract might not be in the best interests of the client.

Example

Zdeno is acting as the listing agent for a property owned by his client, Zeus. Zdeno lists the property for sale on the Multiple Listing Service® for \$500,000 on a Tuesday, with plans to host an open house on the upcoming Saturday. The next day (Wednesday), Zdeno is contacted by an agent working for a buyer named Asta, who submits an offer for \$495,000 that will expire in 48 hours. While Zdeno believes that the offer is fair, he is not sure that it is the highest offer attainable because the property has not been on the market for very long, nor has the open house occurred. In an effort to save the time and expense in hosting an open house, and because he would love to earn a quick commission, Zdeno advises Zeus that he should accept Asta's offer for \$495,000.

¹⁴ *Bowstead and Reynolds on Agency*, 17th Ed.2001. Sweet & Maxwell: London. At Article 46, 6-055, cited with approval in *DeJesus v. Sharif*, 2008 BCSC 1100 (CanLII) and *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2009 BCCA 224 (CanLII).

In the preceding example, a conflict of interest is present. There is a temptation for Zdeno's actions to be motivated by an interest other than his client's best interests. In this case, Zdeno has the temptation to advise Zeus to accept the offer for \$495,000 because it will save him time and money and will result in a guaranteed commission. This is an example of a conflict of interest that cannot be avoided. However, agents must remember that, when placed in a conflict of interest, the duty of loyalty must prevail and the agent's actions must solely be motivated by the principal's best interests. Any advice that Zdeno provides Zeus with respect to Asta's offer must only be based on what is best for Zeus. In this case, Zdeno should advise Zeus that, while Asta's offer is a fair offer (in his professional opinion), it is possible that the upcoming open house may result in other possibly higher offers. Further, having multiple offers may result in a "bidding war" that could result in a higher sale price. On the other hand, Zdeno should also advise that waiting for the open house is risky because Asta's offer will lapse/expire before the open house, and that any offer as a result of the open house may be for less than \$495,000. Once Zdeno has provided Zeus with his honest assessment of Asta's offer, Zeus is in the best position to make an informed decision.

In the real estate sales industry, because of the practice whereby the listing brokerage shares or splits its commission with the brokerage acting for the buyer, and the commission is typically based on a percentage of the sales price, the agent acting for the buyer may have the temptation to advise the buyer to offer a price that might be higher than necessary just to ensure that the offer is accepted and the agent earns their commission. Clearly, this is a breach of the agent's duty of loyalty.

The conflicts of interest discussed here are often unavoidable. Therefore, they must be acknowledged and managed by the agent with the duty of loyalty in mind. In these situations, the principal/client must be presented with all of the relevant information and must consent.



As a Licensee...

You should have an honest and open conversation with your client, before agreeing to act as their agent, as to how you will be compensated for your efforts. Your client should understand the source of your compensation and how your compensation is triggered. A licensee who sets the appropriate expectations early in the relationship is likely to avoid client complaints later on in the relationship.

As you will see shortly, section 54 of the Rules requires licensees to make a disclosure and have a conversation about the nature of their representation of a client, which includes information about compensation.

Conflicts Respecting Current Clients

Conflicts can also arise when a licensee's clients' interests conflict with each other in a given transaction. These clients' interests may not have initially been in conflict when the licensee began working with them; however, circumstances may change. For example, a licensee is in a conflict of interest when two buyer clients become interested in purchasing the same property. Similarly, a licensee is in a conflict of interest when a buyer client becomes interested in purchasing a seller client's property.

When such conflicts of interest arise, a licensee must respond to the conflict appropriately. It is clear that, unless the situation falls within the very narrow exception to providing dual agency, continuing to act for both buyers, or for both the buyer and the seller, is not permitted. Doing so would be engaging in dual agency, which has been effectively prohibited. Furthermore, licensees have a duty to act in their clients' bests interests, but when their clients' interests conflict, this becomes impossible.

To assist licensees faced with conflicts of interest when acting for multiple clients, section 65 of the Rules states that, if providing trading services to or on behalf of multiple clients in a real estate transaction would result in dual agency (and the situation does not fall into the under-served remote location exemption), the conflict must be addressed in one of two ways, with the ultimate decision being in the hands of the clients in the conflict:

1. **The licensee can stop providing trading services to both clients in respect of the particular trade in real estate.** Furthermore, the licensee cannot continue to work with either client as an unrepresented party, and should either refer the clients to separate licensees or instruct the clients to find separate representation themselves.
2. **The licensee can continue to represent only one client, if the licensee obtains a written agreement to do so by all of the clients.** In this case, the licensee is required to enter into an Agreement Regarding Conflict of Interest Between Clients with both clients. The Agreement Regarding Conflict

of Interest Between Clients is a standard form agreement that is created by BCFSA and can be found at Appendix 12.3. This Agreement must be obtained at the time the conflict arises.

The Agreement Regarding Conflict of Interest Between Clients is a three-way agreement between:

1. the licensee;
2. the “Continuing Client”; and
3. the “Released Client”.

After providing the clients with a brief summary of conflicts of interest and the two options available to address the particular conflict, the Agreement Regarding Conflict of Interest Between Clients discusses the details of what it means to be a Continuing Client and a Released Client.

- **Continuing Client:** The Continuing Client is the client who will continue to be represented by the licensee. The Continuing Client will continue to receive the fiduciary duties owed to them by the licensee (e.g., loyalty, confidentiality, avoiding conflicts of interest, etc.). Despite this, the licensee cannot disclose to the Continuing Client any of the confidential information that they received from the Released Client while representing the Released Client, including maximum/minimum price and preferred contract terms.
- **Released Client:** The Released Client is the client who will no longer be represented by the licensee. This means that the licensee will no longer be able to provide advice to the Released Client, nor will the licensee owe the Released Client the majority of fiduciary duties typically owed to clients, with the exception being the duty of confidentiality. The licensee cannot disclose any of the Released Client’s confidential information to the Continuing Client (or anyone else). As a result of being released, the Released Client can choose to be represented by a different licensee in the transaction or to be unrepresented.

Before the signatures section of the Agreement, the clients are strongly advised to read the entire Agreement and seek independent professional advice before signing. It is a licensee’s responsibility to ensure that all clients in the transaction fully understand the risks of entering into the Agreement, and to recommend that all clients seek independent professional advice. This means that a licensee should not be asking for their clients to sign this Agreement without having a fullsome discussion beforehand.

Example #1

John is the designated agent for Pilar, a buyer. Pilar asks John to show her a property for which John is the listing agent. **What should John do?**

Strictly speaking, John showing one of his listings to another client (Pilar) is a conflict of interest and amounts to dual agency. Despite this, BCFSA recognizes that requiring licensees to stop representing clients in these situations would be unreasonably disruptive – to consumers and to licensees. In many cases, a buyer client may view the property and decide that they are not interested in pursuing it. That would end the conflict immediately. Therefore, BCFSA permits John to show Pilar the property, as long as he does the following:

- John must disclose to the Pilar that he is in a conflict of interest because Pilar and his seller client have conflicting interests in the property.
- John can show Pilar the property and give general factual information about the property; however, if Pilar wants any further trading services with respect to the property (e.g., she wants to write an offer, or wants advice or specific information) John must comply with section 65 of the Rules, meaning that John must either stop representing both clients in the transaction, or continue representing one client only, but only if both agree to sign an Agreement Regarding Conflict of Interest Between Clients. If Pilar or the seller client choose not to sign this Agreement, John must stop acting for both clients.

Example #2

Suppose that, instead, Pilar and another one of John’s clients, Steve, want to make an offer on the same property. John is not the listing agent for that property. **What should John do?**

John has two options:

- **Option 1:** Stop acting for both Pilar and Steve.
- **Option 2:** Continue acting for one buyer and stop acting for the other, if both clients agree in writing using the Agreement Regarding Conflict of Interest Between Clients. If one, or both, of the clients do not sign this Agreement, John must stop acting for both of them.



As a Licensee...

The Multiple Listing Contract (Appendix 11.1) explicitly addresses conflicts of interest between current clients. To summarize, it states that if the designated agent's current buyer client becomes interested in the seller's property, the designated agent may request consent from the seller and the buyer to continue to represent either the seller or the buyer in the transaction. The consent will be sought through the use of the Agreement Regarding Conflict of Interest Between Clients. If the arrangement involves ceasing to act for the buyer, the seller agrees that the designated agent may continue to act as an agent for the buyer in respect of a different property. If the arrangement involves ceasing to act for the seller, the listing brokerage may designate another licensee of the listing brokerage to act as the designated agent of the seller, or if this is not possible, the listing brokerage may refer the seller to another brokerage for representation; however, the seller will not be obligated to accept such a referral. Furthermore, the seller acknowledges and agrees that acting for the buyer going forward will change the nature of duties owed to the seller and doing so is not a breach of duty to the seller by either the listing brokerage or the designated agent, including a breach of the Rules or any breach of a common law agent's duty of loyalty or contractual or statutory duty.

The Buyer's Agency Exclusive Contract contains similar wording with respect to conflicts of interest between current clients.



As a Licensee...

The conflicts of interest that arise when your clients' interests conflict can be a common occurrence, especially if you are a well-established licensee with many clients or practice real estate in a relatively small community. Your brokerage should develop and have policies and procedures in place respecting how conflicts of interest will be addressed. These policies should be communicated with your clients at the outset of an agency relationship so that the correct expectations can be set.

For example, while you may agree to act for a particular buyer client, you may tell the client that, in the event that they become interested in a property in which you are the designated agent for the seller, you may ask the buyer if they will agree to find alternate representation because you may want to continue acting for the seller in listing the property. You may tell the buyer that, if this situation arises and both the buyer and seller agree to allow you to continue representing the seller, you will provide a referral to another licensee that can assist them. Furthermore, you may advise the buyer that, if such a situation occurs, you will not disclose any of the buyer's confidential information to the seller. Similarly, a licensee could foresee wanting to continue working with the buyer instead of the seller in the event of a conflict, in which case a similar conversation may be had with the seller at the time the listing agreement is entered into.

Despite these conversations with clients, **a licensee is always required to obtain a written agreement from all clients at the time that the potential conflict arises**. This means that the buyer (and the seller) in the preceding example must sign an Agreement Regarding Conflict of Interest Between Clients once the conflict arises (i.e., it cannot be signed at the outset of the relationship if no conflict has arisen).

Conflicts Respecting Former Clients

There may be times where a licensee is acting for a client in a transaction and is approached by a former client who is seeking representation in that same transaction. The most common example of this conflict is where a licensee is listing a property for sale and is contacted by a former client who is interested in purchasing that property. In this case, the licensee must first advise the former client that the licensee cannot represent them because the seller of the property is a current client of the licensee. Whether the licensee can continue acting for the current seller client requires an analysis of the confidential information that the licensee has with respect to the former client. This scenario will be discussed in more detail in the section entitled, "The Duty of Confidentiality".

Other Conflicts

There are other conflicts of interest that are completely voluntary and tend to present larger problems within the real estate sales industry. These conflicts include the following:

- Purchasing a principal's property (either for oneself or for a related party, such as a family member or friend)
- Selling one's own property (or the property of a related party) to a principal
- Receiving a referral fee for recommending a particular service to a principal, such as a home inspector or a mortgage broker

Licensees who voluntarily put themselves in these conflicts of interest add an increased level of risk to their practice since a principal may allege that the licensee breached their duty of loyalty. While it is best to avoid these practices, if licensees intend on placing themselves in these conflicts, the principal must receive full disclosure and consent to the arrangement. The principal must be aware that a conflict exists and have the option of declining to proceed any further with the particular licensee.

Licensees must keep both their common law disclosure obligations (as a fiduciary) and their disclosure obligations under the Rules in mind when in a conflict of interest.



As a Licensee...

In Chapter 2, the topic of disclosure of interest in trade was discussed. Section 53 of the Rules states that if a licensee is to directly or indirectly acquire or dispose of real estate, or an associate of a licensee is to directly or indirectly acquire or dispose of real estate (and the licensee is providing real estate services to that associate), the licensee must provide the applicable one of the Disclosure of Interest in Trade forms to the other party involved in the transaction (either the buyer or seller) before any purchase or sale agreement is entered into.



As a Licensee...

Be aware that section 56 of the Rules states that, if a licensee receives or anticipates receiving, directly or indirectly, remuneration (from someone other than the client) as a result of the licensee recommending to the client a home inspector, mortgage broker, notary public, lawyer, or savings institution, etc., the licensee must promptly disclose to the client the source of remuneration, the amount of remuneration (or how it would be calculated) and all other relevant facts relating to the remuneration.

The Duty of Full Disclosure

An agent must act in a transparent (open) manner with respect to the principal's affairs.¹⁵ This means that the agent must make *full disclosure* of all material information within the agent's knowledge. A material fact is a fact that might affect the value of the property or the principal's decision,¹⁶ or a fact that could cause a reasonable person to make a different decision about the transaction. Full disclosure obviously includes the disclosure of any conflicts of interest, which were discussed previously.

Any information, however trivial, that might influence the conduct of the principal must be disclosed by the agent. It is not appropriate for the agent to make decisions on what information should be disclosed to the principal and what information should not.

...the agent cannot arbitrarily decide what would likely influence the conduct of his principal and thus avoid the consequences of non-disclosure. If the information pertains to the transaction with respect to which the agent is engaged, any concern or doubt that the agent may have can be readily resolved by disclosure of all the facts to his principal.¹⁷

duty of full disclosure

the fiduciary duty that requires the agent make full disclosure of all facts within the agent's knowledge that might affect the value of the property or the principal's decision



As a Licensee...

If you are unsure about whether a piece of information is "material," **put yourself in your client's shoes** and ask yourself whether it is something you would want to know if you were a buyer or seller.

When in doubt, it's always better to share the information with your client. You could face disciplinary and/or civil action if you fail to disclose a piece of material information.

¹⁵ *Mulligan v. Stephenson*, 2016 BCSC 1941 (CanLII) at para. 108.

¹⁶ *S Maclige Enterprises Inc. v. Grover*, 2014 ABQB 591 (CanLII) at para. 90.

¹⁷ *Ocean City Realty Ltd. v. A & M Holdings Ltd.*, 1987 CanLII 2872 (BC CA) at para. 23.

An agent should think of themselves not as a filter for information for the principal, but a conduit of information for the principal.

secret profit

undisclosed remuneration or benefits received by an agent as a result of, or in the course of, performing duties on behalf of the principal

If an agent does not disclose a gain or reward that the agent receives from a third party in connection with their agency relationship with the principal, that gain or reward is known as a *secret profit*. An agent may not earn a secret profit and will likely have to forfeit that profit to the principal.

Baillie v. Charman, 1992 CanLII 5972 (BC CA)

The defendant was acting for the sellers, the plaintiffs, and had listed their property for \$299,000. The defendant presented an offer to the plaintiffs from a friend of the defendant for \$270,000. The defendant did not disclose to the plaintiffs that the offer was from his friend and encouraged them to accept the offer, which they did. Shortly before the completion date, the defendant's friend became interested in purchasing another one of the defendant's listings instead. The defendant and his friend set up an arrangement whereby the friend assigned the contract with the plaintiffs to a company named General Mortgage, which was owned and controlled by the defendant. Within several weeks of completion, General Mortgage sold the property to a third party for \$317,000 (a profit of \$47,000). The plaintiffs sued the defendant for breach of fiduciary duty, among other things. The BC Court of Appeal upheld the trial court decision finding that the defendant had breached his fiduciary duties to the plaintiffs in a number of ways, including by failing to disclose his relationship to his friend, by providing confidential information about the plaintiffs to his friend, by encouraging the plaintiffs to accept the \$270,000 offer from his friend, and by failing to disclose the fact that he was the sole owner of General Mortgage. As a result, the defendant was required to pay damages to the plaintiffs consisting of the commission earned from the sale of the plaintiffs' property to General Mortgage, the commission earned from the sale of the listing that the friend purchased instead of the plaintiffs' property, and the profit General Mortgage earned on the resale of the plaintiffs' property.

The duty to disclose extends to situations where the licensee will earn a profit or suffer a loss, if the information may be relevant to the seller.

Ocean City Realty Ltd. v. A & M Holdings Ltd., 1987 CanLII 2872 (BC CA)

A licensee arranged to sell a building as agent for the seller. Before completion, the buyer informed the licensee that the sale would not be completed unless the licensee agreed to split the commission with the buyer. The licensee was having financial difficulties. The licensee informed her managing broker about the deal but did not tell the seller. The managing broker consented and the licensee then agreed to the buyer's demand. The sale completed. When the seller learned of the "secret arrangement," it refused to pay the commission claimed by the licensee's brokerage. Consequently, the brokerage sued the seller.

The Court of Appeal held that the brokerage was not entitled to a commission. The fact that the licensee might have received no benefit from the "secret agreement" was irrelevant. An agent has a duty to disclose all relevant facts, whether good or bad for the agent, including any fact that could influence the conduct of the principal. Failure by a licensee to disclose a relevant fact will result in a forfeiture of the right to commission.

2021 CanLII 52000 (BC REC)

Apart from legal liability in civil court, licensees who breach their duty of full disclosure may also face professional discipline by BCFSA. In this case, a buyer's licensee failed to disclose to their clients a \$7,500 fee that the licensee agreed to pay to a seller if the seller accepted an offer from the buyers to purchase the seller's property for \$2,615,000. The licensee documented this arrangement with the seller in an addendum to the contract of purchase and sale which was signed by the sellers and the licensee, but not by the buyers. The Real Estate Council (now BCFSA) stated that the licensee committed professional misconduct by failing to promptly disclose to the buyers the licensee's obligation to pay the fee to the sellers, contrary to section 56(2) of the Rules. For this, and other misconduct, the licensee's licence was suspended for 14 days, the licensee was required to pay a discipline penalty of \$5,000 and enforcement expenses of \$1,500, and the licensee was required to complete the Real Estate Trading Services Remedial Education Course.

To help ensure that licensees fulfill their fiduciary duty of full disclosure by disclosing any secret profits, section 56 of the Rules requires that licensees make a disclosure to their client if they receive or anticipate receiving, directly or indirectly, remuneration, other than remuneration paid directly by a client, in connection with acting for that client. The specifics of section 56 are discussed later in this chapter.

The Duty of Confidentiality

Generally speaking, “confidential information” is any information about a client that is not available to the public. An agent must not disclose a principal’s confidential information to anyone else. When a licensee acts for a seller, examples of information that should be kept confidential include:

- The seller’s job is being transferred – this information may lead a prospective buyer to deduce that the seller has a limited time in which to sell and therefore may not be in a strong negotiating position
- The seller is willing to take less than the listing price
- The seller is suffering financial distress

When a licensee acts for a buyer, examples of information that should be kept confidential include:

- The buyer is willing to pay a higher price than originally offered
- The buyer recently sold their current residence and is in a hurry to purchase a new residence
- The buyer intends on reselling the property quickly after closing because they believe the property is currently under-priced

In some cases, a buyer’s agent could be required to keep the buyer’s identity confidential if the buyer requests anonymity, or if the buyer’s identity could influence a seller’s position (e.g., the buyer is a famous movie star).

A client’s confidential information may only be revealed if the client gives the licensee the express permission to do so, and this permission should be obtained in writing. If a licensee is unsure of whether certain information is confidential, the best course of action is to not disclose it and then ask the client for permission to disclose it (if disclosure is in the best interests of the client).



As a Licensee...

The standard form Multiple Listing Contract (Appendix 11.1) contains a number of provisions relating to the confidential information of the client. For example, with respect to the duties of the designated agent, section 7B of the Multiple Listing Contract states:

...the Designated Agent will not disclose to other licensees, including licensees of the Listing Brokerage who represent buyers or other sellers, any confidential information of the Seller obtained through the Designated Agent’s agency relationship with the Seller unless authorized by the Seller or required by law.

Section 7B ensures that, if another licensee within the Listing Brokerage is the designated agent of a potential buyer of the property, that the confidential information of the seller will not be made available to that licensee. With respect to the release of confidential information, section 4B of the Multiple Listing Contract specifically authorizes the publishing of specific information about the property:

LISTING SERVICE AND COOPERATING BROKERAGES. The Seller authorizes the Listing Brokerage:

To publish in the Multiple Listing Service® of the Board, the Multiple Listing Service® of any other real estate board, Internet, or anywhere else that the Listing Brokerages elects and has access to, and to share with other parties... the information contained in this Contract, the information contained in the Data Input Form and the Seller’s Property Disclosure Statement, if applicable, and the sale price of the Property once an unconditional accepted offer exists;

While most fiduciary duties owed by the agent to the principal end when the agency relationship ends (e.g., the sale or purchase completes), the *duty of confidentiality* does not terminate when the transaction completes. It continues to apply until the parties agree otherwise.¹⁸ As such:

duty of confidentiality

the fiduciary duty to keep a principal’s confidential information private, unless instructed to disclose it by the principal

... it is important to remember that confidentiality extends forever. Even when former clients enter into new agency relationships with other real estate professionals, your obligation to maintain their confidentiality continues.¹⁹

¹⁸ BC Real Estate Practice Manual, 3rd ed. 2017. Continuing Legal Education Society of British Columbia: Vancouver. At §2.24.

¹⁹ The Real Estate Council of British Columbia. RECBC Knowledge Base: Confidentiality Guidelines

Example

A licensee's brokerage had previously listed the property of a client, WG, for sale. After it was relisted with another brokerage at a reduced price, the licensee sent an email to the brokerage's clients referring to a property that could be sold well below its appraised value and that the sellers were extremely motivated to sell. The email read as follows:

Morning. I hope all is well. I'm sending out this mail to all buyers' who are currently active. I have extensive knowledge about a 4 bdrm executive, lake view home on .38 acres that could potentially sell \$300,000 below an appraisal done 1 year ago! This is due to EXTREME motivation by the sellers. I now have my rental/strata property management licence and this home could generate \$1500-1700 in rental income if used as an investment property rather than a primary residence. It requires cosmetic work and a new roof in the next 3-5 yrs. If at all interested or if you know someone who may consider this opportunity please contact me at...

The email list of recipients included WG, who, upon receipt of the email, became suspicious that the property being referred to was hers. WG had a friend send an email to the licensee asking for more information on the property mentioned in the email. The licensee replied with the following:

Hi Arianna. Did Steve and Jenn tell you about it? It's now listed at \$539K and I KNOW that it can sell between \$465K and \$500K at the moment. Let me know if you have any questions or want to go see it...

WG complained to the former Real Estate Council. Even though the email did not refer to the specific property or seller, the Consent Order Review Committee of the Council found that the licensee failed to maintain the confidentiality of WG's information in the course of communicating with prospective buyers after the brokerage's listing with WG had expired. The licensee's licence was suspended for 7 days and he was ordered to pay enforcement expenses of \$1,000 and enroll in a remedial education course.

Source: 2010 CanLII 60402 (BC REC)

Because the duty of confidentiality extends beyond the transaction, a licensee may sometimes find themselves in difficult positions with respect to former clients. The following is a particularly helpful Q&A in the Knowledge Base, "FAQ: Current and Former Clients":

Q: If the designated agent of the seller is approached by a former client who is interested in the seller's property, what should the designated agent do?

First, you should advise your former client that you cannot represent them as a client because you are already the designated agent for the seller...

Then, consider whether you can continue acting for your current seller client in the circumstances. Have you received confidential information from your former client that will impair your ability to act for your seller client?

If you are satisfied that you can continue to act for your current seller client, you should tell your current client that:

- The potential buyer is your former client, and
 - Any confidential information you received from your former client while acting as their agent, you will not be able to disclose to your current client — even if it is material to the present transaction.
- ...

Before acting for a client whose interests are opposed to one of your former clients, you should consider:

- How long it has been since you acted for the former client?
- Was the confidential information you received from the former client specific to a particular transaction? Or was it generally relevant to all transactions involving that client?
- Was the past transaction involving your former client connected to the present transaction in which you are seeking to act against your former client?

If you continue to act for your current seller client, you cannot share with them any confidential information you received from your former client while you were acting as the former client's agent. You are no longer in an agency relationship with your former client, but your obligation to protect their confidential information continues.

The duty of confidentiality relates to personal information about the principal, but it should not be confused with section 59 of the Rules, which requires the listing licensee to disclose all known material latent defects in the real estate to all other parties to the trade in real estate. This disclosure is required to be made promptly, and in any case before any agreement for the acquisition or disposition is entered into. However, the Rules state that, if the seller instructs the licensee to withhold this information, rather than being required to disclose the information anyways (in breach of the duty of confidentiality), the licensee must refuse to provide further trading services to or on behalf of that client in respect of the trade in real estate. The disclosure of material latent defects will be discussed later in this chapter.

The Duty to Obey Lawful Instructions

Agents are obligated to obey the lawful instructions of their principals. This means that the agent cannot act upon instructions that would result in:

- a violation of federal, provincial, or local law;
- a misrepresentation of the property; or
- a restriction of the sale of the property to a buyer of a certain race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age.

If a principal provides their agent with unlawful instructions, the agent should tell the principal that the instructions are unlawful and that they cannot comply with the instructions. If the principal insists on the agent following the instructions, the agent should discontinue acting for the principal.



As a Licensee...

If you believe that the instructions of a client are unlawful, you should first bring the issue to the attention of your managing broker for their advice. Remember, your managing broker is responsible for being actively engaged in the management of the brokerage, ensuring that the business of the brokerage is carried out competently and in accordance with RESA, the *Real Estate Services Regulation* (the “Regulation”), and the Rules, and ensuring that there is an adequate level of supervision over the brokerage’s licensees.

Duties of the Brokerage and Licensee under the Rules

In addition to the common law agency duties, the Rules contain duties for the brokerage and the licensee. Section 30 of the Rules contains the key duties owed by the brokerage and its related licensees to its clients:

Duties to clients

30 Subject to sections 31 and 32, if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following:

- (a) act in the best interests of the client;
- (b) act in accordance with the lawful instructions of the client;
- (c) act only within the scope of the authority given by the client;
- (d) advise the client to seek independent professional advice on matters outside of the expertise of the licensee;
- (e) maintain the confidentiality of information respecting the client;

- (f) without limiting the requirements of Division 2 [*Disclosures*] of Part 5 [*Relationships with Principals and Parties*], disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate;
- (g) communicate all offers to the client in a timely, objective and unbiased manner;
- (h) use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring;
- (i) take reasonable steps to avoid any conflict of interest;
- (j) without limiting the requirements of Division 2 [*Disclosures*] of Part 5 [*Relationships with Principals and Parties*], if a conflict of interest does exist, promptly and fully disclose the conflict to the client.

Please note:

- Many of the duties in section 30 mirror the common law duties of an agent that were discussed previously (e.g., the duty to act in the client's best interests [section 30(a)] is simply the common law fiduciary duty of loyalty).
- Because many of the duties in section 30 are also common law duties, a breach of a duty that exists both at common law and within the Rules can result in legal proceedings against the licensee by the client and professional discipline against the licensee by BCFSA (furthermore, the licensee, if a member of a local real estate board, may also be disciplined by that board if the duty is also present in the REALTOR® Code).
- Section 30 begins with "subject to sections 31 and 32..." These sections allow a brokerage and a client to agree to modify the duties in section 30. In the designated agency system, these sections were used to transfer the fiduciary duties within section 30 away from the brokerage and all of its related licensees to only the licensee acting as the designated agent.
- Despite sections 31 and 32 allowing a modification of duties under section 30, those sections make it clear that the brokerage must always supervise its related licensees to ensure they fulfill their duties under section 30 and must keep each client's information confidential and not disclose it to anyone else unless authorized by the client or required by law. Furthermore, in the case of designated agency, the Rules require the brokerage to treat the interests of all clients in an even handed, objective, and impartial manner.

Sections 33 and 34 of the Rules contain duties owed by licensees to both clients and non-clients:

Duty to act honestly and with reasonable care and skill

33 When providing real estate services, a licensee must act honestly.

Section 33 requires licensees to treat all those with whom they deal in a real estate transaction in an honest manner. The Rules recognize that, despite the strict fiduciary duties owed to one's clients, the licensee cannot fulfil those duties in a way that results in dishonest treatment of others involved in the real estate transaction. This would not be in the public interest.

34 When providing real estate services, a licensee must act with reasonable care and skill.

Section 34 mirrors the common law tort law duty of an agent to exercise reasonable care and skill when performing their duties.

In a disciplinary case before the former Real Estate Council, a licensee was hired by the sellers to list their property (the "Residence") for sale. Rather than measure the Residence himself, the licensee relied on a previous listing of the Residence which indicated that it was 2,097 square feet and published that figure in his listing. The Residence sold to the buyers; however, when the buyers sought to re-sell the Residence 3 years later, their licensee measured the Residence and discovered that it was only 1,672 square feet. The buyers complained to the Council. The Council's Consent Order Review Committee found that the licensee had breached section 3-4 of the Rules (now section 34 of the Rules) by "failing to undertake sufficient due diligence to determine accurately the square footage of the Residence and by relying instead on the erroneous statement of the square footage of the Residence which had appeared in a previous listing for the Property." The licensee was reprimanded and ordered to take a remedial education course and pay \$1,250 in enforcement expenses.

Source: 2014 CanLII 23958 (BC REC)

THE DUTIES OF THE PRINCIPAL TO THE AGENT

While the majority of duties involved in the agency relationship are owed by the agent to the principal, the principal also owes limited duties to the agent, discussed below.

The Duty to Comply with the Agency Agreement

Both the principal and the agent have a contractual duty to comply with the agency agreement. A breach of the agency agreement by the principal can result in a claim for breach of contract by the agent. An example of such a breach is a seller cancelling a listing contract before the end of the listing term because they no longer want to sell their property.



As a Licensee...

Many consumers mistakenly believe that they may terminate an agency contract with their agent without consequence. This is not true. All other issues aside, a contract may only be terminated with the mutual consent of both parties or in accordance with the terms of the contract. For example, the Multiple Listing Contract (Appendix 11.1) contains a specific section on termination:

TERMINATION: The Listing Brokerage and the Seller agree that:

- A. Without prejudice to the acquired rights of the Seller or the Listing Brokerage, including without limitation the rights and obligations under Clause 5, this Contract will terminate:
 - i. upon the expiration of the term of this Contract as specified in Clause 1A;
 - ii. upon an earlier date than that specified in Clause 1A if mutually agreed to by the Seller and the Listing Brokerage in writing;
 - iii. upon a completed sale of the Property prior to the expiration of the term of this Contract;
 - iv. immediately if the Listing Brokerage's licence is suspended, cancelled or rendered inoperative under the *Real Estate Services Act*;
 - v. upon the bankruptcy or insolvency of the Listing Brokerage or if it is in receivership; and
 - vi. if the Listing Brokerage and the Designated Agent are unable to continue to provide trading services to the Seller as a result of Part 5 of the Rules [which deal with ceasing to act in a conflict of interest between current clients].

Contracts may also be terminated if one side breaches a major term of the contract, the contract is frustrated, etc., and these topics are dealt with in Chapter 10: "The Law of Contract." If none of these issues are present, a seller client who terminates the agency relationship with the listing brokerage prior to its expiry is in breach of the Listing Contract and may be liable for damages. For example, the brokerage may seek to recover advertising and listing expenses, staging fees, etc. However, it will be a business decision of the brokerage whether it pursues a client for breach of contract. In many cases, the brokerage decides against exercising this right.

The Duty to Remunerate the Agent

A principal has a duty to remunerate (or compensate) the agent for their efforts. However, section 4 of RESA states that a person will not succeed in a court action for remuneration if, at the time the real estate services were provided, the person was not licensed under RESA (or was not exempt from the requirement to be licensed).

In the real estate sales industry, compensation typically takes the form of a commission, which is usually expressed as a percentage of the total sales price of the property. In most cases, the amount of compensation, and the trigger for compensation, will be key terms in the agency agreement.



As a Licensee...

The Multiple Listing Contract (Appendix 11.1) contains a section on remuneration that contains the following information:

- the obligation to pay a commission (expressed as a percentage of the sale price of the Property);
- the three triggers for when commission will be payable by the client:
 1. if a legally enforceable contract of purchase and sale is entered into between the seller and a buyer during the listing term;

continued next page



As a Licensee, continued

2. if a legally enforceable contract of purchase and sale is entered into between the seller and a buyer who was introduced to the property during the listing term either:
 - i. within 60 days of the expiry of the listing; or
 - ii. at any time where the efforts of the listing brokerage, the designated agent for the seller, or the cooperating brokerage were an effective cause of the sale;
3. an offer to purchase is obtained from a prospective buyer during the term of the listing who is ready, willing and able to pay the listing price and agrees to the other terms of the listing, even if the seller refuses to sign the offer to purchase:
 - a statement that says that, even if the first or second triggers have been met, no commission will be payable if the buyer validly exercises their right of rescission under the *Property Law Act* (which was discussed in the previous chapter);
 - how soon the commission is payable (once the trigger for commission is met);
 - how much of the total remuneration the listing brokerage will offer to any cooperating brokerage that assists in bringing a buyer into the transaction; and
 - the listing brokerage and designated agent will advise the seller of any remuneration, other than the commission agreed to in the contract, to be received by the listing brokerage in respect of the property.

To determine whether the brokerage is entitled to be remunerated for its services, it is necessary to follow two steps. First, look at the listing agreement and decide what event(s) must happen to make the commission payable. Second, decide whether that event has taken place. Until that event occurs, the brokerage has no claim for remuneration.

To ensure that the brokerage is able to collect remuneration for any legally enforceable contract, the Multiple Listing Contract also requires the seller to promptly advise the designated agent of all inquiries for the purchase and offers to purchase the property that are received during the term of the Multiple Listing Contract or arising by reason of it, even after the expiry of the listing term.

The exact wording of the service agreement is very important because that is what determines whether the commission has been earned or not. It is also important to recognize that, as the service agreement with a client is signed in the name of the brokerage, it is the brokerage and not the licensee that is contractually entitled to the commission, despite the fact that the licensee, as the designated agent, acts as the sole agent of the client and owes the fiduciary duties to the client.

In a situation where there is no mention or agreement of the amount of remuneration for which the agent is entitled, the court will apply the principle of quantum meruit (i.e., as much as the agent reasonably deserves). When applying quantum meruit, to determine a reasonable amount, the courts will likely look for a market rate for the services offered by the agent. The cost of going to court to obtain an order for quantum meruit may exceed the amount of remuneration sought. For this reason, it is advisable to have a service agreement with all clients that includes the amount of commission and triggers for when commission will be payable.

If an agent has breached any of their duties to the principal, the right to remuneration will likely be lost (of course, the agent may also be liable for damages and subject to disciplinary action).



ALERT

Despite the fact that the brokerage may have earned its remuneration according to the terms of the service agreement with the client, if the licensee's conduct in the transaction had been investigated by BCFSA and BCFSA determined that the licensee committed professional misconduct or conduct unbecoming a licensee, RESA permits BCFSA to order, among other penalties (such as significant monetary fines and licence suspension/cancellation), that the licensee pay an additional penalty up to the amount of the remuneration accepted by the licensee in connection with the real estate services provided in the particular case. In other words, a licensee may become partially or wholly deprived of their remuneration if disciplined by BCFSA.

Finally, section 7 of RESA states that, "a managing broker, associate broker or representative is not entitled to and must not accept remuneration in relation to real estate services from any person other than the brokerage in relation to which they are licensed." In other words, a licensee must not accept remuneration from anyone other than their brokerage.

Key Provisions Dealing with Remuneration in the Rules

The Rules contain a number of provisions relating to remuneration.

1. Section 43(4) states that all written service agreements with an owner of real estate to offer that real estate for sale or other disposition must include the remuneration to be paid, the circumstances in which it will be payable, and what, if any, remuneration will be payable to a cooperating brokerage.
2. Section 60 prohibits “net listings”, which are listing contracts that provide that the licensee’s commission will be the difference between the price at which real estate is listed for sale, lease or other disposition, and the actual amount realized on the sale, lease or other disposition (i.e., the amount over and above the list price).
3. Section 66 prohibits a licensee from paying, offering to pay, or agreeing or allowing to be paid, remuneration to a person in relation to real estate services if the person is required to be licensed in relation to those services but is not licensed. This prevents unlicensed persons from attempting to forgo the licensing requirements under RESA simply by performing their work through a licensed or exempt person. If such a scenario were to occur, the licensed/exempt person could be disciplined by BCFSA and the unlicensed person could be charged with an offence under RESA. An exception to this prohibition is provided for in section 66 by allowing a licensed/exempt person in British Columbia to pay remuneration to a person who is licensed/exempt in another jurisdiction to provide equivalent real estate services in the other jurisdiction. Therefore, if a licensee in Alberta has been instructed to find a buyer for a property in British Columbia, it would be necessary for them to act in conjunction with a licensee who is licensed in British Columbia. In such circumstances, the Alberta licensee would normally be paid a portion of the commission earned, even though they do not have a licence under RESA.



ALERT

Licensees must be careful not to breach section 60 of the Rules by entering into agreements for payment on the basis of a “net listing”. Contravention of this section can lead to disciplinary proceedings for the licensee. In one disciplinary case (2016 CanLII 84763 (BC REC)), a licensee was found to have breached section 60 by entering into a net listing contract with the seller of a Vancouver property. In particular, the agreement provided that, “should the Vendor achieve a sale price above \$375,000, the listing agent will collect the difference between the final sale price and \$375,000 as commission, to a maximum of \$5,000, inclusive of HST”. As a result, the licensee was reprimanded and ordered to pay a \$5,000 discipline penalty to the former Real Estate Council, to register in and complete a remedial education course at his own expense, and to pay the Council’s enforcement expenses of \$1,250.

4. How a licensee can be paid their remuneration from the brokerage’s accounts is set out in sections 61 and 62 of the Rules. They deal with the payment of licensee remuneration from brokerage accounts, including trust accounts.
5. Finally, sections 56 and 57 contain significant disclosure requirements that will be discussed in more detail later in this chapter. Section 56 requires licensees to disclose to the client any time they receive or anticipate receiving remuneration, other than the remuneration paid directly by the client. This prohibits licensees from earning a “secret profit” (discussed earlier). Section 57 requires licensees acting for a seller to disclose details relating to remuneration when presenting an offer to their client, the seller.

The Duty to Indemnify the Agent

At common law, it is usually the duty of the principal to indemnify (repay) the agent for any expenses incurred by the agent in carrying out the acts required by the principal. However, the real estate agent is considered to have waived the right to such indemnity. The law implies that the real estate agent has given up the right to be reimbursed for expenses in return for the more substantial commission that the agent is promised under the listing contract. Despite this presumption, the agency contract between a real estate brokerage and a client can specify otherwise.

AGENCY DISCLOSURE IN BRITISH COLUMBIA

In the following section, a number of licensee disclosure requirements will be discussed. The disclosure requirements are in place to ensure that consumers have full information of the important aspects of their relationship with their brokerage/licensee. A common thread in many consumer complaints and lawsuits against licensees is that the consumer felt that they were being “kept in the dark” by the licensee, either intentionally or not, and as a result, the consumer was not able to make the best decisions possible. By fulfilling one’s disclosure obligations in a timely and meaningful way, one reduces the risk of consumer complaints and lawsuits down the road.

The following discussion on disclosures is grouped into a number of major categories according to the context to which the disclosure relates. As you read onwards, keep in mind a very simple mantra: “A fully informed consumer is a better protected consumer”.

To assist you in your understanding of these disclosures, the Figure 12.3 is a summary chart of the agency disclosures in British Columbia and can be found at the end of this section.

Disclosures Relating to the Relationship with the Consumer

The first major aspect of licensee disclosure in British Columbia centres around disclosures relating to the relationship with the consumer when providing real estate services. Consumers must know and understand exactly what they will be getting from the licensee and their related brokerage before they can truly consent or agree to the relationship. In other words, before providing any trading services to a consumer, the licensee must obtain the “informed consent” of that consumer. Without informed consent, the spirit of these disclosure requirements will not be met.

A licensee may provide trading services to a consumer in one of three ways:

1. **In a sole agency relationship:** A licensee may provide trading services in a sole agency relationship with the consumer, where the licensee represents the consumer as a “client” and does not represent any other party to that trade in real estate.
2. **In a “no agency” relationship:** A licensee may provide limited trading services outside of an agency relationship (i.e., no agency) to a consumer, with the consumer being known as an “unrepresented party”. The limited trading services that may be offered to an unrepresented party include:
 - providing the unrepresented party with general market information, standard form contracts, and other relevant documents;
 - assisting the unrepresented party fill our standard form contracts (without providing advice on appropriate terms); and
 - presenting the offers and counter-offers from the unrepresented party or the other party in the trade in real estate to the other.

A licensee in a no agency relationship with an unrepresented party may also be in a sole agency relationship with another party to that trade in real estate. For example, the licensee may be in a sole agency relationship with the seller in listing their home for sale but may assist a potential buyer fill out an offer for that home (without providing any advice to that buyer).

3. **In a dual agency relationship:** A licensee may provide limited trading services to multiple parties in a trade in real estate through dual agency, where the licensee represents each party as a “client”. As mentioned earlier, the situations in which dual agency will be permitted will be extremely rare.

Licensees and consumers will most often be in a sole agency relationship (the first option, practiced within the context of designated agency), as this ensures that the consumer is receiving the greatest level of service available in a trade in real estate. Furthermore, as a sole agent of the consumer, the licensee will owe them all of the common law agency/fiduciary duties discussed earlier in this chapter, in addition to the statutory duties set out in sections 30, 33, and 34 of the Rules. In contrast, in a “no agency” relationship (the second option), an unrepresented party is not owed any of the typical common law or statutory agency duties by the licensee, and thus, the unrepresented party is putting themselves in a risky position when participating in a trade in real estate. Finally, as a consumer in a dual agency relationship (the third option), the common law and statutory agency duties will normally have been greatly limited by the agency contract; therefore, the consumer is also putting themselves in a risky position when agreeing to such a relationship.

For each of the three options for providing trading services, there are distinct disclosure requirements, discussed next.

Section 54 of the Rules – Disclosure of Representation in Trading Services

Section 54 states, “[b]efore providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose to the party whether or not the licensee will represent the party as a client.” The Rules require that the consumer be fully informed, before they agree to any relationship with a licensee, about how the licensee will be providing trading services to them. The duties owed by the licensee to the consumer will vary significantly depending on the type of representation offered (i.e., sole agency, versus no agency, versus limited dual agency).

Section 54 of the Rules was amended on June 15, 2018. Previously, the disclosure requirement in section 54 was fulfilled through the use of BCREA’s Working with a REALTOR® brochure. This brochure no longer meets the requirements of section 54. Instead, licensees must now use BCFSAs approved form, known as the Disclosure of Representation in Trading Services form. This is a required form that licensees cannot alter or change. There are a number of fundamental components to this form:

- The key purpose of the form is to explain to the consumer the difference between being a client (represented by a licensee in a sole agency relationship) and being an unrepresented party, or non-client, in a trade in real estate.
- The form compares what a consumer can expect as:
 - a **client** of the licensee (e.g., loyalty, full disclosure, confidentiality, etc.); and
 - an **unrepresented party, or non-client**, being provided with services by a licensee (e.g., no loyalty, no full disclosure, no confidentiality, etc.).
- The form includes information about the Home Buyer Rescission Period under the *Property Law Act*, which provides buyers of “residential real property” with a right to rescind/cancel their contract of purchase and sale within three business days, subject to a fee of 0.25% of the purchase price (discussed in detail in Chapter 11: “Contracts for Real Estate Transactions”).
- The form requires the licensee to indicate whether or not they will represent the consumer as a client.
- The form ends with an optional Acknowledgement section that the consumer can complete.



As a Licensee...

While it is optional for consumers to sign their name on the Disclosure of Representation in Trading Services form, and on many other prescribed BCFSAs disclosure forms, you should nevertheless encourage its completion because it provides evidence that the consumer received the form and was given the required information by the licensee. If a consumer chooses not to complete and sign the disclosure form, you can use the Notes section on the form, if present, or another blank space on the form, to document that you presented the consumer with the form. In these notes, you may record:

- the date and time the disclosure form was presented;
- the circumstances around the form’s presentation; and
- any other details that may be relevant.

The requirement to provide the Disclosure of Representation in Trading Services form is triggered whenever trading services are being provided to a party to a trade in real estate. The definition of “trading services” is quite broad, and includes making representations about the real estate and showing the real estate. As such, a licensee who is listing a property for sale and receives a phone call from a potential buyer who would like more information about the property falls within the definition of providing trading services to that buyer. To avoid the onerous requirement for that licensee to provide the potential buyer on the telephone with a Disclosure of Representation in Trading Services form before any information can be provided, section 54 provides some exceptions to the requirement to provide the form. It states that, as long as the licensee does not solicit or receive information from the consumer about their motivation, financial qualifications or needs in respect of real estate, the licensee does not have to provide the form if the licensee is only hosting an advertised open house or is providing factual responses to general questions from the consumer.

If the Disclosure of Representation in Trading Services form indicates that the licensee will not be representing the consumer as a client, and that the licensee is representing another party as a client in the trade in real estate, the next required disclosure is triggered, which will be discussed next.

Section 55 of the Rules – Disclosure of Risks to Unrepresented Parties

Section 55 of the Rules requires the licensee to provide an additional disclosure form to the unrepresented party if:

- the licensee is providing trading services to the unrepresented party; and
- the licensee is also representing a client in the same trade in real estate.

Example

Garvin is a licensee who is listing Jenna's home for sale. As a result of a well-attended open house, Garvin receives a call from Marek, a potential buyer who would like to write an offer for Jenna's home. Garvin asks Marek if he is currently working with a real estate licensee and Marek tells him that he is not. Marek would like Garvin to help prepare and present his offer to Jenna for consideration. At this point, because Marek is an unrepresented party, and because the preparation and presentation of Marek's offer to Jenna would be providing trading services to him, Garvin needs to provide Marek with two disclosure forms: one under section 54 (the Disclosure of Representation in Trading Services form) and another disclosure under section 55.

The required disclosure form under section 55 is called the Disclosure of Risks to Unrepresented Parties form, which can be found at Appendix 12.5. This is a required form created by BCFSAs that licensees cannot alter or change. There are three key purposes to this form:

1. To advise unrepresented parties of the risks of dealing with a licensee who is also acting for a client in the trade in real estate. The key risks are that the licensee will owe all fiduciary duties to their client and will seek to fulfil their client's best interests in the course of the transaction, and that anything the unrepresented party tells the licensee will be passed onto their client.
2. To advise unrepresented parties on the limited trading services that the licensee can offer them.
3. To encourage unrepresented parties to obtain independent representation in respect of the trade in real estate.

Example

Garvin provides Marek with the Disclosure of Risks to Unrepresented Parties form, and explains to Marek that, because the seller, Jenna, is his client, he must act in Jenna's best interests and be fully loyal to her. For example, anything Marek tells Garvin will be disclosed by Garvin to Jenna. He tells Marek that, while he can provide Marek with a standard form to use as an offer and assist him in completing it, he cannot advise Marek on what price to offer or what terms to include. Furthermore, Garvin tells Marek that he can present Marek's offer to Jenna and will communicate any counter-offers or messages between the two parties. Finally, Garvin advises Marek that he should consider seeking his own licensee (or obtain other professional assistance) to assist him in this transaction.

Similar to the Disclosure of Representation in Trading Services form, the Disclosure of Risks to Unrepresented Parties form contains an optional Acknowledgment section that the consumer can complete.

As a result of the two disclosures made to him by Garvin, Marek decides that he would feel more comfortable if he had his own real estate licensee assist him in preparing an offer for Jenna's house with terms that suit his unique situation, advising him on the appropriate price to offer, and negotiating with Jenna and Garvin (if needed).

Sections 54 and 55 of the Rules – Disclosure for Residential Tenancies

When dealing with buyers, sellers, landlords, and commercial tenants, trading services licensees will utilize the Disclosure of Representation in Trading Services form and the Disclosure of Risks to Unrepresented Parties form to comply with sections 54 and 55. However, when acting for a landlord who is seeking to rent their residential premises to an unrepresented tenant, BCFSAs mandates a form called the Disclosure for Residential Tenancies form, which can be found at Appendix 12.6. This form is intended to replace the need to provide an unrepresented tenant with both a Disclosure of Representation in Trading Services form

and a Disclosure of Risks to Unrepresented Parties form, which can be found at Appendices 12.4 and 12.5. Essentially, the form simplifies and combines the disclosures under sections 54 and 55 and is tailored specifically for residential tenants so that they understand the role of the licensee who is acting for the landlord, making it clear to the tenant that the licensee is acting in the best interests of the landlord only. It also provides information to tenants on where they can get advice about renting.

Section 64 of the Rules – Dual Agency in Under-Served Remote Location

Effective June 15, 2018, the Rules prohibit the practice of dual agency, except if the real estate is in a remote location that is under-served by licensees and it is impracticable for the parties to be provided trading services by different licensees. In the rare circumstance where a trade in real estate falls within this narrow exception, section 64 of the Rules requires that, before providing any trading services to the parties, the licensee practicing dual agency must make a disclosure to each of the parties in the dual agency relationship.

Disclosure under section 64 must be made with the Disclosure of Risks Associated with Dual Agency form, which can be found at Appendix 12.7. This is a required form that licensees cannot alter or change. This form provides the consumer with information about the concept of dual agency, how dual agency differs from sole agency, the risks of dual agency, and the options available if they do not wish to work with the licensee in a dual agency relationship. The Disclosure of Risks Associated with Dual Agency form also contains two checklists, a mandatory checklist for the licensee to complete that confirms that the licensee provided the form to the consumer and explained its contents, and an optional checklist for the consumer.

A key element of the Disclosure of Risks Associated with Dual Agency form is that the licensee's managing broker must sign the form and include an explanation of how each of the three elements necessary to provide dual agency (i.e., remote location, underserved by licensees, impractical for consumers to be provided trading services by different licensees) is met.



As a Licensee...

Due to the requirement for a licensee's managing broker to sign the Disclosure of Risks Associated with Dual Agency form (thereby certifying that the exception to dual agency is met), a licensee should speak with their managing broker before proposing offering any services through dual agency to the clients.

Recall that a fundamental element of the relationship between a licensee and a consumer is informed consent, where the consumer possesses all of the relevant information about the proposed relationship before agreeing to work with a particular licensee. The Disclosure of Risks Associated with Dual Agency form seeks to ensure that the consumer truly understands the risks of dual agency before agreeing to such a relationship.

Once the Disclosure of Risks Associated with Dual Agency form has been provided to each party, if they both wish to proceed in a dual agency relationship, the licensee must enter into a written dual agency agreement with each party. Finally, after entering into a written dual agency agreement with each party, the licensee's brokerage must provide copies of the Disclosure of Risks Associated with Dual Agency forms to BCFS.

Section 65 of the Rules – Conflicts of Interest When Acting for Multiple Clients

Earlier in this chapter, you learned about section 65 of the Rules, which states that a licensee must address a conflict of interest between two current clients in one of two ways. The licensee can stop acting for both clients or can continue acting for one client only, but only if both clients consent. In the case where the licensee will continue representing one client only, the required consents must be obtained using an Agreement Regarding Conflict of Interest Between Clients, which was discussed in detail earlier in this chapter. Licensees must be aware that the Agreement Regarding Conflict of Interest Between Clients is not a disclosure but rather a written agreement. This written agreement impacts the agency representation offered by the licensee to their clients, and will require the licensee to have an open and honest conversation with each of the clients affected; however, the requirement under section 65 is not a disclosure requirement per se. The conversation should involve the licensee seeking permission/consent from the client for the proposed method for dealing with the conflict. The Agreement Regarding Conflict of Interest Between Clients is not a document that a licensee provides to a client simply seeking a quick signature and an acknowledgement of receipt. The Agreement Regarding Conflict of Interest Between Clients can be found at Appendix 12.3.

Disclosures Relating to Remuneration for the Agent

The next set of disclosures relates to how a brokerage and licensee are paid for their services: remuneration. “Remuneration” is the prevailing term in RESA and the Rules used for referring to compensation. RESA defines remuneration as “any form of remuneration, including any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly.”²⁰ Remuneration includes commission payments, gifts, discounts on future purchases or services, etc. The Rules seek to ensure that the remuneration of brokerages and licensees is transparent to the consumer. The consumer should both know and understand who will be paying their licensee and how much.



As a Licensee...

Before entering into a relationship with a consumer to provide them with trading services, you should first have an honest conversation about how you will be paid. This conversation is particularly important for consumers who have not worked with a real estate licensee before.

Section 56 of the Rules – Disclosure of Remuneration

In most agency relationships across numerous industries, it is common for the agent’s remuneration to come directly from the principal. This makes the most sense because it is the principal who is directly benefitting from the agent’s services. However, in the real estate sales industry in British Columbia, it is common for the licensee acting for the seller to split their commission with the licensee acting for the buyer. Therefore, in many cases, the buyer does not pay their licensee directly.

Example

Matthew is a licensee who is working with Deepak, a college professor who is looking to purchase a new home. Deepak has never worked with a licensee before, and when he asks Matthew how much he has to pay for Matthew’s services, Matthew explains to him that his payment will come from a split of commission that the listing brokerage receives from the seller. Therefore, Deepak will not have to pay Matthew directly for his services. Matthew and Deepak sign a buyer agency agreement that confirms this arrangement.

In other cases, a licensee may receive remuneration from other third parties as a result of acting as an agent for the client, as demonstrated below.

Section 56 of the Rules requires that a disclosure be made promptly to the client if a licensee receives or anticipates receiving, directly or indirectly, remuneration, **other than remuneration paid directly by the client**, as a result of the licensee:

1. providing real estate services to or on behalf of the client; or
2. recommending to the client, or recommending the client to, a home inspector, mortgage broker, notary public, lawyer or savings institution, or any other person providing real estate related products or services.

Example

Matthew assists Deepak in locating and successfully negotiating the purchase of a new home. The contract is subject to a building inspection, and Matthew refers Deepak to Jethro, a home inspector that he has worked with in the past. The home inspection does not reveal any major issues and the transaction closes without any issues. Three weeks after the close, Matthew receives a cheque from Jethro for \$100. Matthew and Jethro have an arrangement whereby Jethro will pay Matthew \$100 for every home inspection referral.

In both of the preceding examples, where Matthew anticipates receiving a commission split from the listing brokerage and a referral fee from Jethro (the home inspector), Matthew is required to provide Deepak with disclosure under section 56.

The Rules contain this disclosure requirement because a key fiduciary duty of an agent is to avoid conflicts of interest. Clearly, when someone other than the principal is providing the agent with remunera-

²⁰ RESA, section 1.

tion, there is a possibility that the agent's conduct will be influenced by the source of that remuneration. If the client is aware of the conflict and consents, the agent may proceed to act. Otherwise, the agent must remove themselves from the conflict of interest and not accept the remuneration from the third party.

Example

Matthew referred Deepak to Jethro for his home inspection. As stated previously, Jethro pays Matthew \$100 for every referral. In reality, Jethro is not the most qualified home inspector available, nor is he the cheapest; however, Matthew recommends him because of the referral fee arrangement.

In this case, section 56 of the Rules requires Matthew to promptly disclose the referral fee arrangement to his client, Deepak. In this case, prompt disclosure likely requires Matthew to make this disclosure at the same time he recommends Jethro as a potential home inspector. Once disclosure has been made, Deepak, with full information of the referral fee arrangement, can make an informed decision on how to proceed. Deepak can: hire Jethro for his home inspection anyways;

- ask Matthew for a referral to a home inspector that does not pay him a referral fee;
- ask Matthew for a few home inspector referrals from which Deepak can choose; or
- find a home inspector himself.

In addition to the disclosure requirement in section 56, the fiduciary duties of loyalty and full disclosure will also require Matthew to disclose to Deepak his honest opinion of Jethro (i.e., that he is not the most qualified or cheapest home inspector available).

To make the required disclosure under section 56, BCFSA has developed a disclosure form called the Disclosure of Remuneration – Trading Services form, which can be found at Appendix 12.8. This is not a mandatory form – licensees may use this form or any form of the licensee's choosing, as long as it satisfies the requirements of section 56. The Disclosure of Remuneration – Trading Services form contains an Acknowledgement section for the client to sign. This helps the licensee prove that the required disclosure under section 56 was made to the client.

Example

When licensees receive referrals, bonuses, or gifts from anyone other than their client during a transaction, written disclosure must be made. Questions have been raised with BCFSA about how to address bonuses paid by developers in two different scenarios.

Scenario One:

- While assisting a buyer with the purchase of a presale unit, a developer advises the licensee representing the buyer that if they sell more than a specified number of units, they will earn a bonus.
- Since the licensee has not yet sold the units, this raises the question: would the licensee be obligated to disclose this potential remuneration to their clients?

Scenario Two:

- After selling several presale units in a development, the licensee representing the buyers is advised by the developer that they have earned a bonus.
- Since the licensee was unaware of the potential to earn the bonus until after completing several sales, do they need to go back and advise each of their former clients about it?

The answer in both scenarios is **YES**, disclosure must be made.

Scenario One is addressed under Section 30(f) of the Rules which requires licensees to disclose all material information about the real estate services provided to their clients. Since it is not up to licensees to determine what might be considered "material" to their client, clients must be made aware that their licensee is being offered additional remuneration from the developer if they sell a specified number of units in the development. This disclosure should be made promptly and ideally in writing.

In Scenario Two, the licensee must go back and provide the required written disclosure of remuneration – per section 56 of the Rules – for each client whose transactions resulted in the bonus being paid to the brokerage.

Source: BCFSA's "Broker's Brief: Teams, Pre-sale Bonuses and Mortgage Fraud Alert," March 22, 2022

Section 57 of the Rules – Disclosure to Sellers of Expected Remuneration

When an owner of real estate hires a brokerage to list their property for sale, the Rules require that, unless the owner waives the requirement, the brokerage must have a written service agreement with the owner. In the real estate sales industry in British Columbia, this written service agreement is known as a listing contract, the most common being the previously discussed Multiple Listing Contract (Appendix 11.1). The Rules require that this agreement include the amount of remuneration payable to the listing brokerage, under what circumstances the remuneration becomes payable, and how much, if any, the listing brokerage will offer to a cooperating brokerage (i.e., the brokerage that represents the ultimate buyer of the property) to assist in the sale of the property. Therefore, the seller will know, before entering into a relationship with the brokerage, details on how their agent will be compensated in exchange for providing the seller with real estate services.

In addition to these requirements for the listing contract, section 57 of the Rules states that, when an offer to acquire real estate is presented to a seller by the seller's licensee, that licensee must make a disclosure to the seller that states:

1. the amount of remuneration to be paid by the seller to the listing brokerage;
2. the remuneration to be paid by the listing brokerage to the cooperating brokerage, if applicable;
3. the remuneration to be retained by the listing brokerage; and
4. any remuneration that the licensee receives or anticipates receiving from anyone other than the client as a result of the licensee providing real estate services to or on behalf of the seller (and if this is the case, the licensee will also be required to deliver separate and more detailed disclosure on this remuneration under the previously discussed section 56 [disclosure of remuneration]).

The key reason why disclosure under section 57 is required is because the remuneration of licensees is unique compared to many other professionals in that it often involves a commission that fluctuates significantly based on the price of real estate and the presence of agency relationships (or lack thereof). This unique model of compensation can lead to conflicts of interest. Recall that a conflict of interest results whenever there is a temptation for an agent to breach the fiduciary duty of loyalty owed to the principal by acting in the interests of someone other than the principal (such as oneself or a third party).

Example #1 – Multiple Offers

Goran, the designated agent for the seller, Sven, receives three offers for Sven's property. All offers are for \$745,000. Offers #1 and #2 were submitted by brokerages on behalf of their buyers, while Offer #3 was submitted by a self-represented buyer who is not working with a brokerage. Goran's listing contract states that Sven will pay Goran's brokerage a commission of 7% of the first \$100,000 and 3.5% of the balance of the purchase price, and that Goran's brokerage will pay a cooperating brokerage 3% of the first \$100,000 and 1.5% of the balance of the purchase price.

Offer #1 results in a net remuneration to Goran's brokerage of \$16,900. The listing contract provided for gross commission of \$29,575; however, \$12,675 would be payable to the cooperating brokerage.

Offer #2 results in a net remuneration to Goran's brokerage of \$19,900. While \$12,675 of the \$29,575 gross commission is payable to the cooperating brokerage, the cooperating brokerage has promised that it will "kick back" \$3,000 of its commission to Goran's brokerage if Sven accepts the offer.

Offer #3 results in a net remuneration to Goran's brokerage of \$29,575. Since there is no cooperating brokerage to pay, Goran's brokerage keeps all of the commission provided for in the listing contract.

Example #2 – A Single Offer

Instead of multiple offers, suppose that Goran only receives one offer for Sven's property. This offer is received the day after being put on the market and before Sven has spent any money to execute his intended marketing plan or host an open house. The buyer is self-represented and the offer is for \$745,000. If this offer were to be accepted by Sven, because there is no cooperating brokerage to pay, Goran's brokerage would keep the entire remuneration payable by Sven (\$29,575).

Analysis of Examples #1 and #2

In both Examples #1 and #2, Goran (and his brokerage) are in a conflict of interest because there is a temptation to act in the brokerage's interest (and earn the most remuneration possible) over the seller's interests due to the fact that when no cooperating brokerage is involved in a sale, the listing brokerage earns more remuneration (in the industry, this is known as "double-ending").

In Example #1, there may be a temptation for Goran to prefer Offer #3 because it results in significantly more remuneration to be earned by the brokerage (i.e., the listing brokerage would double-end the deal), while in Example #2, there may be a temptation to encourage the seller to accept the offer because the brokerage would not have to share its remuneration with a cooperating brokerage (i.e., the listing brokerage would double-end the deal) and the brokerage would also save a number of expenses it might otherwise incur by executing a marketing plan and hosting an open house.

An agent has the fiduciary duty to avoid conflicts of interest. One way to do that is to act in a transparent (open) manner for the principal. If the principal feels that their agent has acted in a transparent manner and without being influenced by external pressures, the likelihood of complaints or feelings of unfair treatment will be greatly minimized. The disclosure under section 57 ensures that such transparency is practiced effectively and consistently. By requiring this disclosure to accompany any offer that the listing licensee presents to the seller, the seller will be informed of the personal benefits to the brokerage (i.e., remuneration) at the time they are deciding on how to respond to an offer. Information on potential conflicts of interest is most relevant to the principal at the time they are making decisions.

While such information about remuneration was disclosed to the seller in the listing contract at the time they hired the brokerage (if one was signed), the seller might have forgotten this information (because the listing contract may have been signed weeks or months prior) or the seller might not have actually read this information in the listing contract. The disclosure is most meaningful when given in context, i.e., when offers are being considered. Finally, the seller may have waived the requirement for a listing contract altogether; therefore, this disclosure may serve as the only information that the seller receives about the remuneration arrangements of the brokerage.

To make the disclosure under section 57, licensees must use the Disclosure to Sellers of Expected Remuneration (Payment) form, which can be found at Appendix 12.9. This is a required form provided by BCFSA that licensees cannot alter or change. It sets out, for the seller:

- the listing brokerage's gross remuneration (i.e., what the seller will be required to pay the listing brokerage);
- the amount the listing brokerage will pay to the buyer's brokerage (i.e., the cooperating brokerage);
- the listing brokerage's net remuneration (i.e., the amount that will ultimately be kept by the listing brokerage); and
- any other remuneration that the licensee will receive from someone other than the seller.

In the real estate sales industry, remuneration is typically expressed as a percentage of the sales price of the property; however, the Rules state that if the remuneration is to be received as money, the remuneration must be expressed as a dollar amount on the Disclosure to Sellers of Expected Remuneration (Payment) form. Expressing remuneration as a dollar amount will ensure that sellers clearly understand how licensees will be compensated and how remuneration may vary on different offers. Furthermore, such a practice best fulfills the fiduciary duty of full disclosure and achieves the goal of full transparency with the client.

The Disclosure to Sellers of Expected Remuneration (Payment) form includes spaces for disclosure information relating to expected remuneration for multiple offers and counter-offers that may go back and forth between the client seller and the potential buyer, along with an optional Acknowledgment that the consumer can complete.

Other Disclosures

Section 53 of the Rules – Disclosure of Interest in Trade

The main function of a real estate licensee is to act on behalf of others who wish to deal in real property. Therefore, it is particularly important that when licensees buy, sell, or rent real estate for themselves, there should be no reason for others involved in the transaction to suspect that the licensee may have taken advantage of their position. For this reason, the Rules impose disclosure requirements on licensees when they (or certain related parties) personally deal with real estate. These requirements protect the public by ensuring that licensees reveal potential advantages in knowledge, and allow members of the public to make informed decisions as to whether or not they wish to enter into a contract with a licensee (or a related party).

A licensee must make a disclosure of interest in trade to the other party (buyer, seller, renter, or landlord) in the transaction, before the agreement is entered into, in the following two cases:

1. The licensee or an associate of the licensee is directly or indirectly acquiring real estate.
2. The licensee or an associate of the licensee is disposing of real estate.

An example of an indirect acquisition would be a situation where a third party purchases real estate with the intention of reselling the real estate to the licensee or the licensee's associate (section 53). The definition of "associate" in the Rules is quite broad, and in the case of an individual licensee, includes a licensee's spouse or

family partner (someone who is cohabiting with the licensee in a marriage-like relationship); a trust or estate in which the licensee has a substantial beneficial interest; and, a corporation, partnership, etc., in which the licensee or their spouse or family partner holds a 5% or greater interest (for the full definition, see section 51). In the case of associates, the disclosure is only required where the licensee is providing real estate services to the associate. In other words, if a spouse of a licensee is buying or selling real estate without any involvement of the licensee, no disclosure is required by the licensee because they are not providing real estate services to their spouse.

An exemption from disclosure in the case of acquiring rental real estate is contained in section 53 which says that disclosure is not required if:

- the rental real estate is being acquired by the licensee, or the licensee's spouse or family partner, with the intention that it will be used for personal residential purposes;
- the lease is for a term not exceeding one year (and any provisions for renewal do not extend the total lease period beyond one year); and
- the lease or agreement does not contain an option to purchase or a right of first refusal.

As mentioned previously, disclosure must be made before any agreement for the acquisition or disposition of real estate is entered into. Furthermore, disclosure must be made by providing the other party with the applicable one of BCFSAs two (i.e., Buying or Selling and Leasing or Renting) Disclosure of Interest in Trade forms. It is important to note that, when the licensee or associate of the licensee is acquiring real estate (either through a sale or lease), the Disclosure of Interest in Trade forms require the licensee to disclose the following information:

- In the case of the Buying and Selling form (Appendix 12.10):
 - whether the real estate is for personal, rental or other use, or is to be resold (and the terms of that resale); and
 - the amount of real estate commission or other remuneration that is anticipated to be earned or received by the licensee, any associate of the licensee, or another buyer or tenant
- In the case of the Leasing or Renting form:
 - whether the real estate is for personal or other use, or is to be sublet (and the terms of that sublease); and
 - the amount of real estate commission or other remuneration that is anticipated to be earned or received by the licensee, any associate of the licensee, or another tenant

Furthermore, each of the Disclosure of Interest in Trade forms require the signatures of the licensee making the disclosure, a witness, a representative of the brokerage, and the recipient of the disclosure.

This is only a brief summary of a rather technical section of the Rules. Should any questions arise in practice, reference should be made to section 53 itself, to the Disclosure of Interest in Trade forms, to the brokerage's managing broker, and to BCFSAs. Finally, it should be noted that the common law places disclosure obligations on individuals when acting in certain scenarios (some of which were discussed earlier in this chapter) due to the fiduciary duties of full disclosure and avoiding conflicts of interest, and that simply fulfilling the requirements of section 53 may not be enough to satisfy these common law requirements.



As a Licensee...

Strict compliance with the disclosure of interest in trade rules is important; otherwise, the transaction itself might be voidable by the other party in the transaction and the licensee may face professional discipline.

The Transaction may be Voidable by the Other Party

In *Compar Services Inc. v. Foss*, 1983 CanLII 626 (BC SC), a company, represented by a real estate agent, contracted to buy two lots from a seller. However, the agent failed to provide disclosure, in writing prior to the offer being presented in the required disclosure form regarding his position as an officer of the company, as well as his ownership interest in the

continued next page



As a Licensee, continued

company. Even though the real estate agent provided evidence in Court suggesting that he had made the seller aware of the fact that he was a real estate agent, because the disclosure was not made in the manner required, the Court allowed the seller to treat the contract as void.

You May Face Disciplinary Proceedings

BCFSA requires strict compliance with the disclosure of interest in trade rules. The following are examples of the disciplinary proceedings that can result from a breach of the Rules.

In one case (2013 CanLII 18903 (BC REC)), a licensee acted as a dual agent (which was not prohibited by the Rules at that time) in the sale of property held by a company. However, the licensee failed to provide proper disclosure to the buyer regarding his position as the owner of the company. This constituted a breach of disclosure requirements, as the Rules mandate disclosure where the licensee is providing real estate services to a corporation in which the licensee holds a 5% or greater interest. Consequently, the former Real Estate Council suspended the licensee for 90 days and required him to pay enforcement expenses of \$1,000.

In another case (2012 CanLII 32117 (BC REC)), a licensee was disciplined for providing the buyer/seller with a Disclosure of Interest in Trade form after the Contract of Purchase and Sale was signed by the buyer/seller. This case highlights the fact that the Disclosure of Interest in Trade (Buying or Selling) form should not be treated as one of many documents accompanying a Contract of Purchase and Sale – it must be completed and delivered to the other party before the sale agreement is entered into.

BCFSA recommends that licensees who provide a Disclosure of Interest in Trade (Buying or Selling) form should include the following clause in the Contract of Purchase and Sale:

Buyer's/Seller's Acknowledgement of Licensee's Interest in Trade Clause

The Buyer/Seller acknowledges having received and signed a disclosure of the licensee's interest in the transaction before the making/receipt of this offer.

In a further case (2017 CanLII 56254 (BC REC)), a licensee offered to purchase a property through a construction company that he owned. The licensee, acting as the buyer's agent (for the construction company), failed to disclose to the seller that he was a shareholder, director, and officer of the construction company. Once the offer was accepted, but before the deal had closed, the licensee attempted to resell the property at a higher price through assigning his contract to a new buyer (a practice coined in the media as "shadow flipping") by advertising the property for sale without obtaining the owner's consent. Section 4-8 of the Rules (now section 42 of the Rules) provides that a licensee must not advertise real estate for sale unless the owner of the real estate has consented to the advertising.

The licensee was ordered to pay a \$5,000 disciplinary penalty and \$3,000 in enforcement expenses for failing to provide a Disclosure of Interest in Trade form to the seller (and other related violations). Additionally, the licensee was suspended for 45 days and was ordered to be placed under the enhanced supervision of a managing broker for at least one year following the end of his suspension. Finally, he was ordered to complete the Real Estate Trading Services Remedial Education Course.

This case is an example of the consequences that may arise when a licensee fails to fulfill their obligation to disclose an interest in trade. It is important to note that the incidents involving the licensee occurred before September 30, 2016, when the maximum disciplinary penalty was \$10,000. If the incidents had occurred after September 30, 2016, the licensee could have faced a maximum fine of \$250,000 per contravention.

Licensees are covered by the Real Estate Errors and Omissions Insurance Corporation's indemnity plan; however, one of the exclusions from coverage is claims arising from providing real estate services in a transaction where an insured has or may acquire an ownership interest. In other words, a licensee's mandatory insurance policy will not provide coverage when the licensee is purchasing property for themselves.

Section 57.1 of the Rules – Home Buyer Rescission Period Disclosure

As you learned in Chapter 11, licensees have two disclosure obligations relating to the Homebuyer Rescission Period under section 42 of the *Property Law Act*. The first disclosure, which is made via the Disclosure of Representation in Trading services form, was discussed earlier in this chapter.

The second disclosure is required under section 57.1 of the Rules. This disclosure must be made in a BCFSAs-approved form. This form must be completed and given to buyers and sellers of residential real property at the following times:

- For buyers' licensees, the disclosure must be made to the buyer when the licensee prepares an offer to acquire residential real property on behalf of the buyer; and
- For seller's licensees, the disclosure must be made to the seller when the licensee presents an offer to acquire residential real property to the seller.

Disclosure can be made in one of two ways. First, licensees can use BCFSAs Disclosure of the Buyer's Right of Rescission form. Second, if the licensee is using the standard form Contract of Purchase and Sale from BCREA, the required disclosure is contained within the contract itself (see Appendix 11.2), so no additional disclosure is required.

Like all disclosures to clients, licensees must explain the contents of the disclosure and answer any questions from clients about it.

Section 59 of the Rules – Disclosure of Material Latent Defects

As you learned in Chapter 10, the seller of real property has a positive obligation to disclose to a buyer any known latent defect that renders the property dangerous or unfit for habitation. A latent defect is a defect in the property that could not be discovered during the course of a reasonable inspection. In addition to this common law disclosure requirement on sellers of real estate, the Rules place a disclosure obligation on licensees acting for clients disposing of property containing latent defects. Section 59 states that a licensee providing trading services to a client who is disposing of real estate must disclose in writing to all other parties to the trade any material latent defect in the real estate that is known to the licensee. This written disclosure must be made promptly, but in any case, before any agreement for the acquisition or disposition of the real estate is entered into and separate from any agreement giving effect to a trade in real estate. This means that the disclosure requirement cannot be fulfilled through disclosure within the contract of purchase and sale. The disclosure is not required by the licensee if the party entitled to the disclosure has already received written disclosure of the material latent defect from the client who is disposing of the real estate. For example, if the seller of a property disclosed to a potential buyer, in writing, about the existence of a material latent defect in the property, the licensee acting for the seller would not also have to make a disclosure under this section.

The definition of a "material latent defect" under the Rules is broader than the common law definition. The Rules define "material latent defect" as a material defect that cannot be discerned through a reasonable inspection of the property, including 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 this purpose known to the licensee, or
 - the licensee has otherwise become aware of this purpose;
- a defect that would involve great expense to remedy;
- a circumstance that affects the real estate in respect of which a local government or other local authority has given a notice to the client or the licensee, indicating that the circumstance must or should be remedied;
- a lack of appropriate municipal building and other permits respecting the real estate.

Under section 59 of the Rules, if a client instructs a licensee to withhold a disclosure of a material latent defect known to the licensee, the licensee must refuse to provide further trading services to or on behalf of that client in respect of the trade in real estate.

Example

Rene is acting as the designated agent for Fiona in the sale of her home. When Rene's brokerage was initially hired by Fiona, Fiona told Rene that the auto mechanic shop next door had an oil leak a few years ago and a lot of oil permeated into the soil in Fiona's backyard. Fiona also told Rene that the basement suite in her house was built by a friend who did not receive any plumbing or electrical permits from the city. When Rene informs Fiona that she likely will be required to disclose this information to a potential buyer, Fiona tells Rene not to disclose the material latent defects. Rene knows that, as an agent in a fiduciary relationship, she owes a duty to Fiona to follow Fiona's instructions; however, she is not sure how this fiduciary duty interacts with her duty to disclose known material latent defects under section 59.

Section 8.2 of the Regulation – Notice Relating to Contract Assignments

In Chapter 10, you learned that a contract assignment occurs when one of the parties to an enforceable contract transfers their rights in the contract to a third party. In the real estate sales context, an assignment occurs when a buyer under a contract of purchase and sale, before the completion date, enters into an agreement with a third party to transfer the buyer's right to purchase the property from the seller. Once the assignment occurs, the third party can demand that the seller transfer the property directly to them; however, the original buyer remains liable (to pay the purchase price) to the seller if the third party does not complete the sale. Buyers assign their contracts for a variety of reasons, including changes in their circumstances (job transfer, marriage, divorce, birth of a child, etc.) and the opportunity to make a profit if the property has increased in value since the buyer initially entered into the contract. Pre-construction or pre-completion sale contracts, which are often signed many months or even years before the real estate is finished, often present assignment opportunities.

On May 16, 2016, the provincial government enacted section 8.2 of the Regulation. Section 8.2 requires that standard terms be included by default in any offer to purchase real estate prepared by the licensee, unless the buyer instructs otherwise. These requirements are intended to protect sellers' interests and deter potential licensee misconduct in relation to contract assignments. The provincial government's rationale was to provide notification and protection to sellers in situations where a buyer purchases a property only to assign the contract to a new buyer at a higher price, without the seller's knowledge.

Section 8.2 governs the conduct of real estate licensees involved in the sale of both residential and commercial real estate; however, sales of development units by a developer (under the *Real Estate Development Marketing Act*) are exempt.

Section 8.2 states that, unless instructed in writing by the party to whom or on whose behalf the licensee is providing trading services, a licensee must include the following terms in the offer presented to the other party for consideration (the "Standard Assignment Terms"):

1. this contract must not be assigned without the written consent of the seller; and
2. the seller is entitled to any profit resulting from an assignment of the contract by the buyer or any subsequent assignee.

Furthermore, section 8.2 requires that a licensee acting for a buyer must provide notice to the seller if the offer does not contain the Standard Assignment Terms. A licensee who intends to acquire the property, directly or indirectly, must also provide notice if the offer does not contain the Standard Assignment Terms. To fulfil this requirement, licensees must use a Notice to Seller Regarding Assignment Terms form (the "Notice Form"), which is created by BCFSA and can be found at Appendix 12.11. Furthermore, the Notice Form must be provided at the same time the offer is presented to either the seller's licensee or the seller (if the seller has not engaged a licensee). While section 8.2 does not require the seller to sign the Notice Form, it contains a section

for the seller's signature. BCFSA states that the licensee delivering the Notice Form should use best efforts to obtain the seller's signature because the signature provides proof that the licensee has complied with section 8.2. Finally, licensees on both sides of the transaction are required to provide a copy of the Notice Form to their brokerages, and under section 83(1)(d) of the Rules, their brokerages are required to retain this notice. The Notice Form contains a space for the licensees' brokerages to acknowledge receipt of the form.

When acting for a seller, if an offer is made without the Standard Assignment Terms, the seller's licensee must always have a discussion with the seller about whether the offer allows for the buyer to assign the contract and if so, on what terms (i.e., conditions to assignment and whether the seller has any right to the profit resulting from the assignment). Furthermore, if the seller's licensee receives a Notice Form from the buyer's licensee, they must forward it on to the seller.



As a Licensee...

The following is a summary of your obligations under section 8.2 of the Regulation:

When acting for a buyer or when making an offer to directly or indirectly acquire real estate:

- you should have a discussion with the buyer on the Standard Assignment Terms and what impact they may have on the buyer to assign the contract of purchase and sale;
- the offer that you prepare must contain the Standard Assignment Terms, unless instructed otherwise in writing by the buyer; and
- if the prepared offer omits the Standard Assignment Terms, you must deliver the Notice Form to the seller's licensee or seller (if the seller is unrepresented).

When acting for a seller:

- If an offer to your client does not contain the Standard Assignment Terms, you must:
- deliver the Notice Form prepared by the buyer's licensee, if applicable; and
- discuss the terms in the contract relating to assignments with the seller.

Summary of Disclosures

There are numerous disclosure obligations upon licensees in British Columbia, many of which were discussed in this chapter. To assist you in your understanding of these disclosures, the following figure is a summary chart of the agency disclosures in British Columbia.

FIGURE 12.3: Overview of Agency Disclosure Requirements in British Columbia

Category	Name of Form	Required By	Trigger for Disclosure	Key Purpose of Disclosure	Source of Form	Submitted to Brokerage?	Submitted to BCFSA?
Disclosures Relating to the Relationship with the Consumer	Disclosure of Representation in Trading Services form	Section 54 of the Rules	Required before providing trading services to or on behalf of a party to a trade in real estate (exceptions exist when a licensee is only hosting an advertised open house or is only providing factual responses to general questions from the party)	To ensure that consumers understand how trading services can be provided to them, so that they can provide informed consent to being represented (a client) or unrepresented	Mandatory BCFSA form	Yes	Not unless requested
	Disclosure of Risks to Unrepresented Parties form	Section 55 of the Rules	Required when a licensee makes a disclosure under section 54 to an unrepresented party, while also representing a client in that trade in real estate	To ensure that consumers without representation from a licensee (i.e., unrepresented parties) understand the risks of being provided limited trading services by a licensee who is representing a client in the same trade in real estate	Mandatory BCFSA form	Yes	Not unless requested
	Disclosure for Residential Tenancies	Sections 54 and 55 of the Rules	Required when a licensee acting for a landlord of a residential property provides trading services to an unrepresented tenant (aside from simply showing the property and/or providing factual responses to general questions from the tenant)	To ensure that unrepresented residential tenants understand the role of the licensee who is acting for the landlord, making it clear to the tenant that the licensee is acting in the best interests of the landlord only	Mandatory BCFSA Form	Yes	Not unless requested
	Disclosure of Risks Associated with Dual Agency form	Section 64 of the Rules	Required before a licensee provides trading services in the narrow exception permitted for providing dual agency	To ensure that consumers understand the risks of being provided trading services by a licensee in a dual agency relationship, so that they can either choose other options or provide informed consent	Mandatory BCFSA form	Yes (including the signed statement from the managing broker)	Yes

continued next page

FIGURE 12.3: Overview of Agency Disclosure Requirements in British Columbia, continued

Category	Name of Form	Required By	Trigger for Disclosure	Key Purpose of Disclosure	Source of Form	Submitted to Brokerage?	Submitted to BCFSAs?
Disclosures Relating to Remuneration for the Agent	Disclosure of Remuneration – Trading Services form	Section 56 of the Rules	Required when a licensee receives or anticipates receiving, directly or indirectly, remuneration, other than remuneration paid directly by a client, in connection with the client and/or real estate services provided	To ensure that clients of licensees have full disclosure of the remuneration the licensee has received, or will receive, in connection with the client and/or real estate services provided	This form is an optional form provided by BCFSAs; however, licensees may use another form, if compliant	Yes	Not unless requested
	Disclosure to Sellers of Expected Remuneration (Payment) form	Section 57 of the Rules	Required by the seller's licensee when they present an offer or counteroffer to acquire real estate to the seller	To ensure that sellers have full disclosure of the remuneration (in dollar terms) that their licensee's brokerage and any cooperating brokerage will receive if a particular offer or counteroffer is accepted	Mandatory BCFSAs Form	Yes	Not unless requested
Other – Disclosure of Interest in Trade (Buying or Selling)	Disclosure of Interest in Trade (Buying or Selling) form	Section 53 of the Rules	Required when a consumer is selling real estate that the licensee or their associate intends to acquire an interest in, or when a consumer is buying real estate the licensee or their associate has an interest in	Ensures that consumers buying or selling real estate to or from a licensee or an associate of a licensee (being provided real estate services by the licensee) are aware of the licensee's personal interest in the transaction, so that they make take further steps to protect themselves (i.e., seeking the representation of an independent licensee, obtaining legal advice, etc.)	Mandatory BCFSAs form	Yes	Not unless requested

continued next page

FIGURE 12.3: Overview of Agency Disclosure Requirements in British Columbia, continued

Category	Name of Form	Required By	Trigger for Disclosure	Key Purpose of Disclosure	Source of Form	Submitted to Brokerage?	Submitted to BCFSA?
Other – Disclosure of Interest in Trade (Renting or Leasing) form	Disclosure of Interest in Trade (Renting or Leasing) form	Section 53 of the Rules	Required when a consumer is renting or leasing real estate to a licensee or their associate, and they intend to be the consumer's tenant (certain exemptions apply), or when a consumer is intending to rent or lease real estate that the licensee or their associate has an interest in (i.e., seeking the representation of an independent licensee, obtaining legal advice, etc.)	Ensures that consumers renting or leasing real estate to or from a licensee or an associate of a licensee (being provided real estate services by the licensee) are aware of the licensee's personal interest in the transaction, so that they make take further steps to protect themselves (i.e., seeking the representation of an independent licensee, obtaining legal advice, etc.)	Mandatory BCFSA form	Yes	Not unless requested
Other – Disclosure of Home Buyer Rescission Period	Home Buyer Rescission Period Form	Section 57.1 of the Rules	Required when a buyer's licensee prepares an offer to buy residential real estate on the buyer's behalf and when a seller's licensee presents an offer to buy residential real estate to a seller	Ensures that buyers and sellers of residential real estate are aware of key details relating to the buyers right of rescission under section 42 of the <i>Property Law Act</i> , including that the right cannot be waived, the period during which the right can be exercised, the dollar amount that must be paid by a buyer to a seller for exercising the right, how any deposit held by a brokerage will be affected if the buyer exercises this right, and any exemptions to the right of rescission	BCFSA-approved form, which is either BCFSA's Disclosure of the Buyer's Right of Rescission form or BCREA's Contract of Purchase and Sale – Residential	Yes	Not unless requested
Other – Disclosure of Material Latent Defects	No mandatory form	Section 59 of the Rules	Required whenever a licensee providing services to a seller is aware of an undisclosed material latent defect (as defined in the section) in the real estate	Ensures that all parties involved in a trade in real estate are aware of all known material latent defects about the real estate before making a decision to purchase the real estate	No mandatory form	Yes	Not unless requested
Other – Notice Relating to Contract Assignments	Notice to Seller Regarding Assignment Terms	Section 8.2 of the Regulation	Required whenever a licensee providing trading services to or on behalf of a buyer presents an offer to the seller that does not contain the standard assignment terms set out in the Regulation	Mandatory BCFSA form	Yes	Not unless requested	

APPENDIX 12.1**Buyer's Agency Exclusive Contract**

INFORMATION ABOUT THE BUYER'S AGENCY EXCLUSIVE CONTRACT
BUYER'S AGENCY EXCLUSIVE CONTRACT

THIS INFORMATION IS INCLUDED FOR THE ASSISTANCE OF THE PARTIES ONLY. IT DOES NOT FORM PART OF THE CONTRACT AND SHOULD NOT AFFECT THE PROPER INTERPRETATION OF ANY OF ITS TERMS.

1. The Buyer's Agency Exclusive Contract when signed by both parties is a legally binding contract. READ IT CAREFULLY. The parties should ensure that everything that is agreed to is in writing.
2. Buying real estate can be a very rewarding experience. Property owners generally experience pride of ownership and in many cases a financial gain over the long term. The process of buying real estate is relatively complex and for this reason many buyers seek the help and professional expertise of a licensed REALTOR® and their real estate brokerage.
3. It is recommended that the relationship between the parties should be in writing in the form of a Buyer's Agency Exclusive Contract. This will ensure that the parties will have a complete understanding of their rights and responsibilities. Each party will know what they can expect from the other and what is expected from them. This is similar to the common practice of sellers entering into a listing contract when selling a property. Real estate brokerages cooperate with each other to bring buyers and sellers together. This cooperation will help bring you the best selection of properties which meet your individual requirements.
4. The topic of compensation to the real estate brokerage should be thoroughly discussed. The discussion should include the amount of compensation, sources of payment and when the payment is to be made.
5. RESIDENCY: When completing their residency and citizenship status, the buyer and the seller should confirm their residency and citizenship status and the tax implications thereof with their lawyer/accountant.
6. REALTORS® are trained to provide valuable assistance to buyers in the following areas:
 1. Identifying desirable types of properties to acquire
 2. Locating properties available to view and consider
 3. Preliminary investigation and timely information gathering
 4. Viewing properties and providing guidance and advice
 5. Selecting the right property on which to make an offer
 6. Preparing a legally binding Contract of Purchase and Sale
 7. Negotiating favourable terms and conditions
 8. Assisting in seeking suitable financing if necessary
 9. Assisting in arranging property inspections and other needed services
 10. Assisting in the completion and possession process

These and other services can be documented on a schedule attached to the contract.

APPENDIX 12.1, continued
Buyer's Agency Exclusive Contract



PAGE 1 of _____ PAGES

BUYER'S AGENCY EXCLUSIVE CONTRACT

BETWEEN: _____
 BUYER(S) ("BUYER")

 BUYER(S) ("BUYER")

 BUYER(S) ("BUYER")

 UNIT ADDRESS

 CITY PROV PC

 TELEPHONE NUMBER CELL NUMBER

AND: _____
 (BUYER'S BROKERAGE)

 UNIT ADDRESS

 CITY PROV PC

 TELEPHONE NUMBER CELL NUMBER

1. TERMS OF CONTRACT:

- A. The Buyer hereby appoints the Buyer's Brokerage and the Designated Agent (as hereinafter defined) to find a property in the market area (as defined in clause 1C) for the Buyer to purchase and to assist the Buyer in negotiating the terms of purchase.
- B. The term of this Contract shall commence on _____ and, unless renewed in writing, shall expire at 11:59 pm on _____.
 MONTH DAY YEAR
 MONTH DAY YEAR
- C. MARKET AREA: Market Area is defined as that area located within the perimeter boundaries of the following areas:

 all within the Province of British Columbia.

2. DESIGNATED AGENCY:

- A. The Buyer's Brokerage designates _____ (the "Designated Agent") to act as the sole agent of the Buyer in respect of the purchase of a property in the Market Area and will designate one or more licensees of the Buyer's Brokerage to act as the sole agents of all sellers or other buyers who are also represented by the Buyer's Brokerage. If for any reason the license of the Designated Agent (or where the Designated Agent is comprised of more than one licensee, the licenses of all of those licensees) is suspended, cancelled or becomes inoperative under the *Real Estate Services Act* or the Designated Agent (or where the Designated Agent is comprised of more than one licensee, all of those licensees) is temporarily unavailable or ceases to be engaged by the Buyer's Brokerage, the Buyer's Brokerage will designate another licensee of the Buyer's Brokerage to act as the sole agent of the Buyer.
- B. The Designated Agent will not disclose to other licensees, including licensees of the Buyer's Brokerage who represent sellers or other buyers, any confidential information of the Buyer obtained through the Designated Agent's agency relationship with the Buyer unless authorized by the Buyer or required by law.
- C. The Buyer agrees that:
 - (i) an agency relationship will exist only with the Designated Agent;

--	--	--

INITIALS

BC 2039 NOV 2023

COPYRIGHT BC REAL ESTATE ASSOCIATION

© 2023, British Columbia Real Estate Association ("BCREA"). All rights reserved. This form was developed by BCREA for the use and reproduction by BC REALTORS® and other parties authorized in writing by BCREA. Any other use or reproduction is prohibited except with prior written consent of BCREA. This form is not to be altered when printing or reproducing the standard pre-set portion. BCREA bears no liability for your use of this form.

APPENDIX 12.1, continued**Buyer's Agency Exclusive Contract**

PAGE 2 of _____ PAGES

- (ii) information obtained by the Designated Agent through the Designated Agent's agency relationship with the Buyer will not be attributed to the Buyer's Brokerage or to other licensees of the Buyer's Brokerage who represent sellers or other buyers; and
- (iii) no agency relationship will exist with the Buyer's Brokerage.

3. THE DESIGNATED AGENT WILL:

- A. Act as the agent of only the Buyer with respect to a property in which the Buyer becomes interested;
- B. Subject to Clause 4A use reasonable commercial efforts to promote the interests of the Buyer;
- C. At the earliest reasonable opportunity, advise any seller of property in which the Buyer becomes interested that the Designated Agent is the agent of the Buyer;
- D. Obey all lawful instructions of the Buyer that are consistent with the Real Estate Services Act, the Real Estate Services Rules, The REALTOR® Code, and all applicable Rules and Bylaws of the real estate board or association including related Regulation and Policies;
- E. Fulfill the duties set out in
 - (i) Real Estate Services Rule 30, except as modified or made inapplicable by agreement between the Buyer's Brokerage and the Buyer, and
 - (ii) Real Estate Services Rules 33 and 34;
- F. Make the Buyer aware of properties located in the Market Area listed with the Multiple Listing Service® for the Market Area, and such other properties that the Designated Agent is aware of, which may meet the Buyer's requirements.

4. THE BUYER'S BROKERAGE AGREES:

- A. That the services as may be set out in Schedule "A" if attached will be provided;
- B. To monitor and supervise the activities of the Designated Agent to ensure compliance by the Designated Agent with the provisions of this Contract and with the Buyer's Brokerage's policies and procedures governing designated agents;
- C. Not to disclose confidential information of the Buyer to any person unless authorized by the Buyer or required by law;
- D. To treat the interests of the Buyer and all sellers and other buyers also represented by the Buyer's Brokerage in an even handed, objective and impartial manner; and
- E. To hold all monies received by the Buyer's Brokerage in trust in accordance with the *Real Estate Services Act*.

5. THE BUYER AGREES:

- A. Not to use the services of any other brokerage or licensee, within the Market Area, during the term of this Contract;
- B. To advise the Designated Agent of properties within the Market Area in which the Buyer is interested;
- C. To provide the Designated Agent with sufficient information to enable the Designated Agent to determine the Buyer's ability to purchase or to obtain a mortgage of a property;
- D. To negotiate in good faith the purchase of property in which the Buyer is interested, provided that the property and the terms of purchase are satisfactory to the Buyer;
- E. That the Designated Agent may disclose the Buyer's identity unless otherwise instructed by the Buyer in writing;
- F. That the Designated Agent is being retained solely to provide real estate services and not as a lawyer, tax advisor, lender, certified appraiser, surveyor, structural engineer, home inspector, or other professional service advisor; and
- G. That while the Designated Agent has an obligation to use reasonable efforts to obtain information regarding the physical condition of a property in which the Buyer becomes interested, to the extent the Designated Agent is not able to obtain such information, the Designated Agent may only have limited knowledge about such property and in such cases the Buyer will be relying upon information concerning the property's physical condition provided by the seller, listing brokerage or another person. The Buyer understands and agrees that information provided

--	--	--

INITIALS

APPENDIX 12.1, *continued*

Buyer's Agency Exclusive Contract

PAGE 3 of _____ PAGES

by a seller, a listing brokerage or another person in respect of a particular property is not warranted by the Designated Agent or the Buyer's Brokerage as being accurate and will be relied upon at the Buyer's risk. The Buyer should make their own enquiries and investigations concerning the physical condition of a property, which should include an independent property inspection.

6. BUYER'S BROKERAGE REMUNERATION:

- A. The Buyer will pay the Buyer's Brokerage a fee of _____ ("Fee")

of the purchase price plus applicable Goods and Services Tax and any other applicable tax if:

- (i) a legally enforceable Contract of Purchase and Sale between the Buyer and a seller in respect of property located in the Market Area is entered into during the period of this Contract; or
 - (ii) a legally enforceable Contract of Purchase and Sale between the Buyer and a seller in respect of property located in the Market Area, which is introduced to the Buyer by the Buyer's Brokerage, the Designated Agent or by any other person including the Buyer during the period of this Contract is entered into:
- (a) within sixty (60) days after the expiration of the term of this Contract; or
 - (b) any time after the period described in (a) where the efforts of the Buyer's Brokerage or the Designated Agent were an effective cause;

provided, however, that no such remuneration is payable if, after the expiration of the term of this Contract, the Buyer has entered into a similar written Buyer's Agency Exclusive Contract with a licensed brokerage in respect of the Market Area and the property is purchased during the term of that contract;

except, in each case, if the property is "residential real property" (as defined in the *Home Buyer Rescission Period Regulation*) that is not exempt and the Buyer has exercised their right of rescission set out in Section 42 of the *Property Law Act* within the prescribed period and in the prescribed manner for doing so in which case no Fee will be payable by the Buyer.

- B. Prior to the Buyer making an offer to purchase a property, the Designated Agent will advise the Buyer of the total amount of remuneration offered by the listing brokerage to be paid to the Buyer's Brokerage for assisting in obtaining a buyer for that property.
- C. Monies, if any, under Clause 6B shall be deducted from the amount due and payable by the Buyer under Clause 6A and the Buyer shall pay any shortfall owing to the Buyer's Brokerage.
- D. The remuneration due to the Buyer's Brokerage under Clause 6A shall be payable on the earlier of the date the sale is completed or the completion date set out in the Contract of Purchase and Sale.
- E. The Buyer's Brokerage will advise the Buyer of any remuneration, other than that described in Clause 6B, to be received by the Buyer's Brokerage in respect of that property.

7. THE BUYER ACKNOWLEDGES AND AGREES THAT:

- A. The duties set out in Real Estate Services Rule 30 apply only to the Designated Agent and do not apply to any other licensees of the Buyer's Brokerage who represent sellers or other buyers and, subject to Clause 4B, 4C and 4D, do not apply to the Buyer's Brokerage;
- B. The Buyer's Brokerage or the Designated Agent may provide trading services, have agency relationships with or be engaged by other buyers, or be engaged by or have agency relationships with sellers, unless doing so would constitute a dual agency that is not permitted by Part 5 of the Real Estate Services Rules;
- C. In the case that the provision of trading services to the Buyer contemplated hereby and the provision of trading services to a seller or another buyer constitutes or becomes a dual agency that is not permitted by Part 5 of the Real Estate Services Rules, the Buyer acknowledges and agrees that the Buyer's Brokerage and the Designated Agent, as applicable, must comply with Real Estate Services Rule 65 and may be required to cease providing certain trading services to the Buyer;

--	--	--

INITIALS

APPENDIX 12.1, continued**Buyer's Agency Exclusive Contract**

PAGE 4 of _____ PAGES

- D. Despite Real Estate Services Rule 30(f), the Buyer's Brokerage and the Designated Agent will not be required to disclose to the Buyer confidential information obtained through any other agency relationship.
- E. If a property in which the Buyer is interested is not listed with a real estate brokerage, the Buyer's Brokerage may enter into a fee agreement with the seller but the Designated Agent will not, in any event, act as an agent of that seller.

8. CONFLICTS OF INTEREST:

- A. If the Designated Agent's provision of trading services to the Buyer and the seller of a property (referred to in this Clause 8A as the "Property") would constitute a dual agency that is not permitted by Part 5 of the Real Estate Services Rules, the Designated Agent may request consent from the Buyer and such seller to continue to represent either the Buyer or such seller in respect of the Property and terminate their agency relationship with the other party. In such case, the Designated Agent will present the Buyer and such seller with a written agreement in compliance with section 65 of the Real Estate Services Rules (the "Consent Agreement"). Notwithstanding anything else in this Contract, if the Buyer and such seller consent to the Designated Agent continuing to act for one of them, and terminating the agency relationship with the other, in respect of the Property and they execute the Consent Agreement, the Buyer hereby acknowledges and agrees as follows:
 - (i) if the Designated Agent ceases to act as the agent of the Buyer, the Designated Agent may otherwise in the future act as the agent of the Buyer in respect of property other than the Property;
 - (ii) if the Designated Agent ceases to act as the agent of the Buyer in respect of the Property, subject to Part 5 of the Real Estate Services Rules, the Buyer's Brokerage may designate another licensee of the Buyer's Brokerage to act as the Designated Agent of the Buyer or if the Buyer's Brokerage is unable to or does not designate another licensee of the Buyer's Brokerage, the Buyer's Brokerage may refer the Buyer to another brokerage for representation in respect of the Property; provided that, the Buyer will not be obligated to accept such referral; and
 - (iii) if the Designated Agent ceases to act as the agent of the Buyer in respect of the Property, the parties acknowledge that:
 - (a) the Designated Agent's agency with the Buyer will terminate and the Designated Agent will no longer have any duties to the Buyer as agent of the Buyer, whether under this Contract, under the Real Estate Services Rules (other than their duties of confidentiality under Rule 30(e)) or otherwise; and
 - (b) the Buyer's Brokerage and the Designated Agent will be permitted by the terms of the Consent Agreement and the Real Estate Services Rules to continue to represent such seller.
- B. If the Designated Agent's provision of trading services to the Buyer and another buyer with whom the Designated Agent has an agency relationship (the "Other Buyer") in respect of a property (referred to in this Clause 8B as the "Property") would constitute a dual agency that is not permitted by Part 5 of the Real Estate Services Rules, the Designated Agent may request consent from the Buyer and the Other Buyer to continue to represent either the Buyer or the Other Buyer in respect of the Property. In such case, the Designated Agent will present the Buyer and the Other Buyer with a Consent Agreement. Notwithstanding anything else in this Contract, if the Buyer and the Other Buyer consent to the Designated Agent continuing to act for one of them in respect of the Property and they execute the Consent Agreement, the Buyer hereby acknowledges and agrees as follows:
 - (i) if the Designated Agent ceases to act as the agent of the Buyer in respect of the Property, the Designated Agent may continue to act as the agent of the Buyer in respect of property other than the Property;
 - (ii) if the Designated Agent ceases to act as agent of the Buyer in respect of the Property, subject to Part 5 of the Real Estate Services Rules, the Buyer's Brokerage may designate another licensee of the Buyer's Brokerage to act as the agent of the Buyer in respect of the Property or if the Buyer's Brokerage is unable to or does not designate another licensee of the Buyer's Brokerage, the Buyer's Brokerage may refer the Buyer to another

--	--	--

INITIALS

APPENDIX 12.1, continued
Buyer's Agency Exclusive Contract

PAGE 5 of _____ PAGES

brokerage for representation in respect of the Property; provided that, the Buyer will not be obligated to accept such referral; and

(iii) if the Designated Agent ceases to act as the agent of the Buyer in respect of the Property, the parties acknowledge that:

- (a) the Designated Agent's agency with the Buyer will terminate and the Designated Agent will no longer have any duties to the Buyer as agent of the Buyer, whether under this Contract, under the Real Estate Services Rules (other than their duties of confidentiality under Rule 30(e)) or otherwise; and
- (b) the Buyer's Brokerage and the Designated Agent will be permitted by the terms of the Consent Agreement and the Real Estate Services Rules to continue to represent such Other Buyer.

9. COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION:

- A. The Buyer hereby consents to the collection, use and disclosure by the Buyer's Brokerage and by the managing broker(s), associate broker(s) and representative(s) of the Buyer's Brokerage (collectively the "Licensee") noted below, and the real estate board in whose jurisdiction the Market Area is located and/or of which the Buyer's Brokerage or Licensee is a member, of personal information about the Buyer:
 - (i) for all purposes related to the provision of real estate services by the Licensee to the Buyer including but not limited to:
 - (a) locating, assessing and qualifying properties for the Buyer;
 - (b) advertising on behalf of the Buyer; and
 - (c) providing information to third parties including but not limited to lawyers and notaries public, financial institutions, government departments and agencies and building inspectors;
 - (ii) for the purpose of placement in the database of a Multiple Listing Service® of a real estate board, if the property purchased by the Buyer is listed on such Multiple Listing Service®;
 - (iii) for compilation, retention and publication by such real estate board of any statistics including historical Multiple Listing Service® data for use by persons authorized to use the Multiple Listing Service® of such real estate board;
 - (iv) for enforcing codes of professional conduct and ethics for members of real estate boards;
 - (v) for such other purposes as are appropriate in connection with the listing, marketing and selling of real estate;
 - (vi) for all other purposes authorized in this Contract; and
 - (vii) for the purposes (and to the recipients) described in the British Columbia Real Estate Association's Privacy Notice and Consent form.
- B. The personal information provided by the Buyer may be stored on databases outside Canada, in which case it would be subject to the laws of the jurisdiction in which it is located.

10. TERMINATION: The Buyer's Brokerage and the Buyer agree that:

- A. Without prejudice to the acquired rights of the Buyer or the Buyer's Brokerage, including without limitation the rights and obligations under Section 6, this Contract will terminate:
 - (i) upon the expiration of the term of this Contract as specified in Clause 1B;
 - (ii) upon an earlier date than that specified in Clause 1B if mutually agreed to by the Buyer and the Buyer's Brokerage in writing;
 - (iii) upon a completed purchase of a property in the Market Area by the Buyer prior to the expiration of the term of this Contract;
 - (iv) immediately if the Buyer's Brokerage's licence is suspended, cancelled or rendered inoperative under the *Real Estate Services Act*;
 - (v) upon the bankruptcy or insolvency of the Buyer's Brokerage or if it is in receivership; and
 - (vi) if the Buyer's Brokerage and the Designated Agent are unable to continue to provide trading services to the Buyer as a result of Part 5 of the Real Estate Services Rules.

--	--	--

INITIALS

APPENDIX 12.1, continued**Buyer's Agency Exclusive Contract**

PAGE 6 of _____ PAGES

- B. Immediately upon the termination of this Contract the Buyer's Brokerage and the Designated Agent will:
- cease all activities on behalf of the Buyer; and
 - if requested by the Buyer, return all documents and other materials provided by the Buyer.

11. MISCELLANEOUS PROVISIONS:

- "Sale" includes an exchange and "purchase price" includes the value of property exchanged.
- "Period" or "date of expiration" of this Contract includes the period or date of expiration of any written extension.
- Interpretation of this Contract and all matters concerning its enforcement by the parties shall be governed by the laws of the Province of British Columbia.
- The parties acknowledge that this Contract fully sets out the terms of the agreement between them.
- This Contract shall be binding upon and benefit not only the parties but also their respective heirs, executors, administrators, successors and assigns.
- "Property" may include a leasehold interest, a business and the goodwill and assets of it, an interest, partnership or share in a business or in the goodwill and assets of it, or a manufactured home, plus any other real property designated by a seller.

12. AGREEMENT:

- The Buyer acknowledges having read and understood this Contract, that it accurately describes the agreement with the Buyer's Brokerage and that the Buyer has received a copy of it.
- Where the Buyer is comprised of more than one party, the obligations under this Contract of each and every party comprising the Buyer shall be joint and several.
- The parties agree that this Contract and any amendments or attachments thereto may be executed in counterparts by the parties and delivered originally or by facsimile, email, or other means of electronic transmission. Each such counterpart when so executed and delivered is deemed to be an original and all such counterparts of a relevant document taken together shall constitute one and the same relevant document as though the signatures of all the parties were upon the same document.

SIGNED, SEALED & DELIVERED THIS _____ DAY OF _____ YR. _____.

If the Buyer is an individual, the Buyer declares that they are a Canadian citizen or a permanent resident as defined in the *Immigration and Refugee Protection Act*:

YES
INITIALS

NO
INITIALS

BUYER'S SIGNATURE



BUYER'S SIGNATURE



BUYER'S SIGNATURE

WITNESS

WITNESS

WITNESS

Per: MANAGING BROKER'S SIGNATURE/AUTHORIZED SIGNATORY



BUYER'S BROKERAGE (PRINT)



DESIGNATED AGENT'S SIGNATURE



DESIGNATED AGENT (PRINT NAME)

*PREC represents Personal Real Estate Corporation

Trademarks are owned or controlled by The Canadian Real Estate Association (CREA) and identify real estate professionals who are members of CREA (REALTOR®) and/or the quality of services they provide (MLS®).

BC 2039 NOV 2023

COPYRIGHT BC REAL ESTATE ASSOCIATION

© 2023, British Columbia Real Estate Association ("BCREA"). All rights reserved. This form was developed by BCREA for the use and reproduction by BC REALTORS® and other parties authorized in writing by BCREA. Any other use or reproduction is prohibited except with prior written consent of BCREA. This form is not to be altered when printing or reproducing the standard pre-set portion. BCREA bears no liability for your use of this form.

APPENDIX 12.1, *continued*
Buyer's Agency Exclusive Contract

PAGE 7 of ____ PAGES

BUYER'S AGENCY EXCLUSIVE CONTRACT SCHEDULE "A"

For Educational Purposes Only

--	--	--

INITIALS

BC 2039 NOV 2023

COPYRIGHT BC REAL ESTATE ASSOCIATION

© 2023, British Columbia Real Estate Association ("BCREA"). All rights reserved. This form was developed by BCREA for the use and reproduction by BC REALTORS® and other parties authorized in writing by BCREA. Any other use or reproduction is prohibited except with prior written consent of BCREA. This form is not to be altered when printing or reproducing the standard pre-set portion. BCREA bears no liability for your use of this form.

APPENDIX 12.2**Buyer Agency Acknowledgement**

PAGE 1 of _____ PAGES

BUYER AGENCY ACKNOWLEDGEMENT**BUYER'S BROKERAGE ASSISTANCE**

The Buyer has requested that _____ (the "Buyer's Brokerage") assist the Buyer in the purchase of a property and in consideration of that assistance the Buyer acknowledges, understands, covenants and agrees that:

1. DESIGNATED AGENCY

A. The Buyer's Brokerage designates _____

(the "Designated Agent") to act as the sole agent of the Buyer in respect of the purchase of a property and will designate one or more licensees of the Buyer's Brokerage to act as the sole agents of all sellers or other buyers who are also represented by the Buyer's Brokerage. If for any reason the license of the Designated Agent (or where the Designated Agent is comprised of more than one licensee, the licenses of all those licensees) is suspended, cancelled or becomes inoperative under the *Real Estate Services Act* or the Designated Agent (or where the Designated Agent is comprised of more than one licensee, all those licensees) is temporarily unavailable or ceases to be engaged by the Buyer's Brokerage, the Buyer's Brokerage will designate another licensee of the Buyer's Brokerage to act as the agent of the Buyer.

- B. The Designated Agent will not disclose to other licensees, including licensees of the Buyer's Brokerage who represent sellers or other buyers any confidential information of the Buyer obtained through the Designated Agent's agency relationship with the Buyer unless authorized by the Buyer or required by law.
- C. The Buyer acknowledges that:
 - (i) an agency relationship will exist only with the Designated Agent;
 - (ii) information obtained by the Designated Agent through the Designated Agent's agency relationship with the Buyer will not be attributed to the Buyer's Brokerage or to other licensees of the Buyer's Brokerage who represent other buyers or sellers; and
 - (iii) no agency relationship will exist with the Buyer's Brokerage and the Buyer's Brokerage's obligations to the Buyer will be limited to the obligations set out in Clauses 3, 5A and 5B.

2. DESIGNATED AGENT

- A. The Designated Agent will not be obligated to make the Buyer aware of any or all properties which may meet the Buyer's requirements;
- B. The Buyer's Brokerage may terminate the agency relationship with the Buyer at any time; however, such termination will not relieve the Buyer's Brokerage and the Designated Agent from their obligations under Part 5 of the Real Estate Services Rules;
- C. Subject to Clause 2A and 2B the Designated Agent will:
 - (i) act as the agent of only the Buyer with respect to a property in which the Buyer becomes interested;
 - (ii) unless otherwise agreed to, use reasonable commercial efforts to promote the interests of the Buyer;
 - (iii) at the earliest reasonable opportunity advise any seller of property in which the Buyer becomes interested;
 - (iv) Obey all lawful instructions of the Buyer that are consistent with the Real Estate Services Act, the Real Estate Services Rules, The REALTOR® Code, and all applicable Rules and Bylaws of the real estate board or association including related Regulation and Policies;

--	--	--

INITIALS

BC2044 REV NOV 2023

COPYRIGHT BC REAL ESTATE ASSOCIATION

© 2023, British Columbia Real Estate Association ("BCREA"). All rights reserved. This form was developed by BCREA for the use and reproduction by BC REALTORS® and other parties authorized in writing by BCREA. Any other use or reproduction is prohibited except with prior written consent of BCREA. This form is not to be altered when printing or reproducing the standard pre-set portion. BCREA bears no liability for your use of this form.

APPENDIX 12.2, continued**Buyer Agency Acknowledgement**

PAGE 2 of _____ PAGES

- (v) Fulfill the duties set out in Real Estate Services Rule 30, except as modified or made inapplicable by agreement between the Buyer's Brokerage and the Buyer, and Real Estate Services Rule 33 and 34;

3. BUYER'S BROKERAGE

- A. The Buyer's Brokerage will monitor and supervise the activities of the Designated Agent to ensure compliance by the Designated Agent with the Buyer's Brokerage's policies and procedures governing designated agents;
- B. The Buyer's Brokerage will not disclose confidential information of the Buyer to any person unless authorized by the Buyer or required by law;
- C. The Buyer's Brokerage will treat the interests of the Buyer and all sellers and other buyers also represented by the Buyer's Brokerage in an even handed, objective and impartial manner; and
- D. The Buyer's Brokerage will hold all monies received by the Buyer's Brokerage in trust in accordance with the *Real Estate Services Act*;

4. BUYER ACKNOWLEDGEMENTS

- A. The duties set out in Real Estate Services Rule 30 apply only to the Designated Agent and do not apply to any other licensees of the Buyer's Brokerage who represent sellers or other buyers and, subject to Clause 3A, 3B and 3C, do not apply to the Buyer's Brokerage;
- B. The Buyer's Brokerage or the Designated Agent may provide trading services to, have agency relationships with or be engaged by other buyers, or be engaged by or to have agency relationships with sellers, unless doing so would constitute a dual agency that is not permitted by Part 5 of the Real Estate Services Rules;
- C. In the case that the provision of trading services to the Buyer contemplated hereby and the provision of trading services to a seller or another buyer constitutes or becomes a dual agency that is not permitted by Part 5 of the Real Estate Services Rules, the Buyer acknowledges and agrees that the Buyer's Brokerage and the Designated Agent, as applicable, must comply with Real Estate Services Rule 65 and may be required to cease providing certain trading services to the Buyer; and
- D. Despite Real Estate Services Rule 30(f), the Buyer's Brokerage and the Designated Agent will not be required to disclose to the Buyer confidential information obtained through any other agency relationship.

5. CONFLICTS OF INTEREST

- A. If the Designated Agent's provision of trading services to the Buyer and the seller of a property (referred to in this Clause 5A as the "Property") would constitute a dual agency that is not permitted by Part 5 of the Real Estate Services Rules, the Designated Agent may, if permitted by the Real Estate Services Rules, request consent from the Buyer and such seller to continue to represent either the Buyer or such seller in respect of the Property and terminate their agency relationship with the other party. In such case, the Designated Agent will present the Buyer and such seller with a written agreement in compliance with section 65 of the Real Estate Services Rules (the "Consent Agreement"). Notwithstanding anything else in this Acknowledgment, if the Buyer and such seller consent to the Designated Agent continuing to act for one of them and terminating the agency relationship with the other, in respect of the Property and they execute the Consent Agreement, the Buyer hereby acknowledges and agrees as follows:
 - (i) if the Designated Agent ceases to act as the agent of the Buyer, the Designated Agent may otherwise in the future act as the agent of the Buyer in respect of property other than the Property;
 - (ii) if the Designated Agent ceases to act as the agent of the Buyer in respect of the Property, subject to the provisions of Part 5 of the Real Estate Services Rules, the Buyer's Brokerage may designate another licensee of the Buyer's Brokerage to act as the Designated Agent of the Buyer or, if the Buyer's Brokerage is unable to or does not designate another licensee of the Buyer's Brokerage, the Buyer's Brokerage may refer the Buyer to another brokerage for representation in respect of the Property; provided that, the Buyer will not be obligated to accept such referral; and

--	--	--

INITIALS

APPENDIX 12.2, continued
Buyer Agency Acknowledgement

PAGE 3 of ____ PAGES

- (iii) if the Designated Agent ceases to act as the agent of the Buyer in respect of the Property, the parties acknowledge that: (A) the Designated Agent's agency with the Buyer will terminate and the Designated Agent will no longer have any duties to the Buyer as agent of the Buyer, whether under this Contract, under the Real Estate Services Rules (other than their duties of confidentiality under Rule 30(e)) or otherwise; and (B) the Buyer's Brokerage and the Designated Agent will be permitted by the terms of the Consent Agreement and the Real Estate Services Rules to continue to represent such seller.
- B. If the Designated Agent's provision of trading services to the Buyer and another buyer with whom the Designated Agent has an agency relationship (the "Other Buyer") in respect of a property (referred to in this Clause 5B as the "Property") would constitute a dual agency that is not permitted by Part 5 of the Real Estate Services Rules, the Designated Agent may request consent from the Buyer and the Other Buyer to continue to represent either the Buyer or the Other Buyer in respect of the Property. In such case, the Designated Agent will present the Buyer and the Other Buyer with a Consent Agreement. Notwithstanding anything else in this Acknowledgment, if the Buyer and the Other Buyer consent to the Designated Agent continuing to act for one of them in respect of the Property and they execute the Consent Agreement, the Buyer hereby acknowledges and agrees as follows:
 - (i) if the Designated Agent ceases to act as the agent of the Buyer in respect of the Property, the Designated Agent may continue to act as the agent of the Buyer in respect of property other than the Property;
 - (ii) if the Designated Agent ceases to act as agent of the Buyer in respect of the Property, subject to the provisions of Part 5 of the Real Estate Services Rules, the Buyer's Brokerage may designate another licensee of the Buyer's Brokerage to act as the agent of the Buyer in respect of the Property or if the Buyer's Brokerage is unable to or does not designate another licensee of the Buyer's Brokerage, the Buyer's Brokerage may refer the Buyer to another brokerage for representation in respect of the Property; provided that, the Buyer will not be obligated to accept such designation or referral and in such case the agency contemplated hereby will terminate; and
 - (iii) if the Designated Agent ceases to act as the agent of the Buyer in respect of the Property, the parties acknowledge that: (A) the Designated Agent's agency with the Buyer will terminate and the Designated Agent will no longer have any duties to the Buyer as agent of the Buyer, whether under this Contract, under the Real Estate Services Rules (other than their duties of confidentiality under Rule 30(e)) or otherwise; and (B) the Buyer's Brokerage and the Designated Agent will be permitted by the terms of the Consent Agreement and the Real Estate Services Rules to continue to represent such Other Buyer.

6. NO REMUNERATION

The signing of this Acknowledgment does not obligate the Buyer to pay any remuneration directly to the Buyer's Brokerage or Designated Agent for services provided to the Buyer by the Buyer's Brokerage and the Designated Agent unless otherwise agreed to by the parties.

DATED THIS _____ DAY OF _____ YEAR _____

Acknowledged by

_____ BUYER PRINT NAME WITNESS	_____ BUYER PRINT NAME WITNESS	_____ BUYER PRINT NAME WITNESS
		SEAL
		SEAL
		SEAL

*PREC represents Personal Real Estate Corporation

Trademarks are owned or controlled by The Canadian Real Estate Association (CREA) and identify real estate professionals who are members of CREA (REALTOR®) and/or the quality of services they provide (MLS®).

BC2044 REV NOV 2023

COPYRIGHT BC REAL ESTATE ASSOCIATION

© 2023, British Columbia Real Estate Association ("BCREA"). All rights reserved. This form was developed by BCREA for the use and reproduction by BC REALTORS® and other parties authorized in writing by BCREA. Any other use or reproduction is prohibited except with prior written consent of BCREA. This form is not to be altered when printing or reproducing the standard pre-set portion. BCREA bears no liability for your use of this form.

APPENDIX 12.3

Agreement Regarding Conflict of Interest Between Clients Form



Resolving Conflicts of Interest Between Clients: Understanding Your Options

You are receiving this form because there is a conflict between your interests and the interests of another of your real estate professional's clients.

As a client, you must make a choice about how to proceed in this situation. This form is intended to help you understand your options. **You are strongly encouraged to read this entire document and consider getting independent professional advice before making a decision.**

WHAT IS A CONFLICT OF INTEREST BETWEEN CLIENTS?

Real estate professionals have a duty to act in their clients' best interests. Conflicts of interest between clients of the same real estate professional can happen when, for example:

- One client wishes to make an offer on another client's property;
- Two or more clients are interested in making an offer on the same property; or
- One client wishes to rent another client's property.

In situations like these, a real estate professional cannot continue to represent both clients—because when clients' interests conflict, it becomes impossible for a real estate professional to act in the best interests of both clients.

For example, sellers want the maximum price for their properties, while buyers want to pay the lowest possible price.

BC Financial Services Authority is the legislated regulatory agency that works to ensure real estate professionals have the skills and knowledge to provide you with a high standard of service. All real estate professionals must follow rules that help protect consumers, like you. We're here to help you understand your rights as a real estate consumer. **Keep this information page for your reference.**

HOW CONFLICTS BETWEEN CLIENTS CAN BE RESOLVED

When your interests come into conflict with the interests of another client in the same transaction, your real estate professional must either:

- A. Release both clients.
- B. Release one client ("the RELEASED CLIENT") while continuing to represent the other client ("the CONTINUING CLIENT") using the **Agreement Regarding Conflict of Interest Between Clients**.

In most situations, it is likely that there will be many real estate professionals available to provide independent representation to consumers in real estate transactions. If the property is remote and underserved by real estate professionals, your real estate professional must explore the possibility of dual agency and then provide you with the **Understand the Risks of Dual Agency** form, which explains this kind of representation.

APPENDIX 12.3, continued**Agreement Regarding Conflict of Interest Between Clients Form**

Resolving Conflicts of Interest Between Clients: Understanding Your Options

AGREEMENT REGARDING CONFLICT OF INTEREST BETWEEN CLIENTS

Your real estate professional may already have discussed with you how they typically resolve conflicts of interest between clients, including any brokerage policies on the matter.

If your real estate professional has suggested releasing one client, you and the other client must agree. If both parties agree, the **Agreement Regarding Conflict of Interest Between Clients** must be signed to document the arrangement.

If either you or the other client decides not to sign the **Agreement Regarding Conflict of Interest Between Clients**, your real estate professional must release both parties in the transaction.

In the situation where you have been released as a client, you can be represented by a different real estate professional in the transaction. It is not recommended that you be unrepresented in a transaction as it exposes you to additional risks.

IF YOU ARE THE CONTINUING CLIENT, YOU WILL CONTINUE TO BE REPRESENTED BY YOUR REAL ESTATE PROFESSIONAL.

The real estate professional will continue to owe you special legal duties, including:

- Loyalty. They will act only in your best interests.
- Avoiding conflicts of interest. They must avoid any situation that would affect their duty to act in your best interests.
- Confidentiality. They must not reveal your private information without your permission, even after your relationship ends. That includes:
 - your reasons for buying, selling or leasing
 - your minimum/maximum price
 - any preferred terms and conditions you may want to include in a contract.
- Full disclosure. They must tell you everything they know that might influence your decision in a transaction.

However, your real estate professional cannot disclose to you any of the confidential information they received from the Released Client while they were representing that client, such as:

- their reasons for buying, selling or leasing
- their minimum/maximum price
- their preferred contract terms and conditions.

IF YOU ARE THE RELEASED CLIENT, YOU WILL NO LONGER BE REPRESENTED BY YOUR REAL ESTATE PROFESSIONAL IN THIS TRANSACTION.

Your former real estate professional will no longer be able to give you advice or negotiate on your behalf in this transaction. Your former real estate professional **will no longer** owe you special legal duties, including:

- Loyalty.
- Avoiding conflicts of interest.
- Full disclosure.

However, your former real estate professional must keep confidential the information you may have shared with them while you were being represented, such as:

- your reasons for buying, selling or leasing
- your minimum/maximum price
- any preferred terms and conditions you may want to include in a contract.

Carefully consider the services that you would receive as a continuing client or as a released client and ask your real estate professional about anything that is not clear before signing the **Agreement Regarding Conflict of Interest Between Clients**.

APPENDIX 12.3, continued**Agreement Regarding Conflict of Interest Between Clients Form**

Resolving Conflicts of Interest Between Clients: Understanding Your Options

AGREEMENT REGARDING CONFLICT OF INTEREST BETWEEN CLIENTS

INSTRUCTIONS FOR REAL ESTATE PROFESSIONAL

If all parties agree to the terms proposed in the following agreement, promptly submit the completed, signed and dated agreement to your brokerage.

If one or more clients do not agree to the terms of the agreement, you must stop acting for all clients. You are encouraged to refer each client to another real estate professional who can represent their interests in the transaction.

This is an agreement made in compliance with section 65 of the Real Estate Services Rules. For this agreement to take effect it must be completed and signed by all parties.

PARTIES: (PLEASE PRINT)

Real Estate Professional

Date

Continuing Client

Released Client

The Continuing Client is the:

- Seller
- Potential buyer
- Lessor/landlord
- Lessee/tenant
- Assignor
- Potential assignee
- Other (describe) _____

The Released Client is the:

- Seller
- Potential buyer
- Lessor/landlord
- Lessee/tenant
- Assignor
- Potential assignee
- Other (describe) _____

Of the property located at: _____

APPENDIX 12.3, continued**Agreement Regarding Conflict of Interest Between Clients Form**

Resolving Conflicts of Interest Between Clients: Understanding Your Options

AGREEMENT REGARDING CONFLICT OF INTEREST BETWEEN CLIENTS

BACKGROUND

1. The Real Estate Professional is separately representing the Continuing Client and the Released Client, who have conflicting interests in respect of a real estate transaction or potential transaction involving a property located at the address indicated above (the "Transaction").
2. The Real Estate Professional cannot represent both the Continuing Client and the Released Client in the Transaction as to do so would amount to "dual agency", which is prohibited by Section 63 of the Rules made under the *Real Estate Services Act*.
3. The Real Estate Professional proposes to stop representing the Released Client in respect of the Transaction and to continue representing the Continuing Client in respect of the Transaction.

The Released Client and the Continuing Client acknowledge and agree that:

1. The Real Estate Professional has disclosed that there is a conflict between the Continuing Client and the Released Client as follows: (select one)
 - Potential buyer is interested in purchasing seller's property
 - Two separate potential buyers are interested in purchasing the same property
 - Tenant is interested in leasing the landlord's property
 - Two separate existing clients wish to enter into an assignment agreement together
 - Other: (describe)

The Real Estate Professional will continue to represent the Continuing Client in respect of the Transaction, including providing services such as:

- a. giving the Continuing Client advice in the Transaction, and negotiating on the Continuing Client's behalf in the Transaction; and

- b. owing the Continuing Client the following special legal duties: loyalty, full disclosure, and the duty to avoid conflicts.

2. The Real Estate Professional will no longer be representing the Released Client in respect of the Transaction. This means that:
 - a. the Real Estate Professional will not give the Released Client advice in the Transaction, or negotiate on the Released Client's behalf in the Transaction; and
 - b. in the Transaction, the Real Estate Professional will not owe the Released Client the following special legal duties: loyalty, full disclosure, and the duty to avoid conflicts.
3. The Real Estate Professional will maintain the confidentiality of any information that was disclosed by the Released Client to the Real Estate Professional in the course of the Real Estate Professional's representation of the Released Client ("Previous Confidential Information"), unless lawfully disclosed.
4. Even if the Previous Confidential Information would be relevant to the Continuing Client in the Transaction, the Real Estate Professional:
 - a. is prohibited from disclosing the Previous Confidential Information to the Continuing Client; and
 - b. the advice and information the Real Estate Professional may provide to the Continuing Client may be limited due to the Real Estate Professional's ongoing duty not to disclose the Previous Confidential Information.

The Real Estate Professional has advised the Released Client and the Continuing Client to seek independent professional advice in respect of the Transaction.

APPENDIX 12.3, continued**Agreement Regarding Conflict of Interest Between Clients Form**

Resolving Conflicts of Interest Between Clients: Understanding Your Options

AGREEMENT REGARDING CONFLICT OF INTEREST BETWEEN CLIENTS

You are strongly advised to read this entire document and seek independent professional advice before signing this agreement. If you agree to the terms of this agreement, complete and sign as either the Continuing Client or Released Client.

REAL ESTATE PROFESSIONAL:

Name (please print)

Team name and members, if applicable. *The duties of a real estate professional as outlined in this form apply to all team members.*

Signature

Date

 SEAL

CONTINUING CLIENT(S):

Name (please print)

Signature

Date

 SEAL

Name (please print)

Signature

Date

 SEAL

RELEASED CLIENT(S):

Name (please print)

Signature

Date

 SEAL

Name (please print)

Signature

Date

 SEAL

A copy of this disclosure and agreement is not required to be provided to BC Financial Services Authority unless it is specifically requested.

APPENDIX 12.4**Disclosure of Representation in Trading Services Form**

Your Relationship with a Real Estate Professional

Real estate professionals have a regulatory requirement to present you with this consumer information before providing services to you.

This information explains the different relationships you can have with a real estate professional to buy, sell or lease property. Before you disclose confidential information to a real estate professional regarding a real estate transaction, you should understand what type of business relationship you have with that individual.

You can work with a real estate professional in one of the following ways:

AS A CLIENT

If you are the client of a real estate professional, they work on your behalf. The real estate professional representing you has special legal duties to you, including:

- **Loyalty.** They will act only in your best interests.
- **Full disclosure.** They must tell you everything they know that might influence your decision in a transaction.
- **Avoid conflicts of interest.** They must avoid any situation that would affect their duty to act in your best interests.
- **Confidentiality.** They must not reveal your private information without your permission, even after your relationship ends. That includes:
 - your reasons for buying, selling or leasing
 - your minimum/maximum price
 - any preferred terms and conditions you may want to include in a contract

When you become a client, you may be asked to sign a written agreement setting out your and the real estate professional's responsibilities.

AS A NON-CLIENT

A real estate professional who is not representing you as a client does not owe you special legal duties:

- **No loyalty.** They may be representing a client with competing interests to yours in a transaction. They must be loyal to their client, not you.
- **No duty of full disclosure.** They do not have a duty to give you all relevant information.
- **No duty to avoid conflicts.** They are not acting in your interests.
- **No confidentiality.** They must share any information you tell them with their clients in a transaction.

As a non-client, a real estate professional may give you only limited services.

Whenever a real estate professional works with you in a real estate transaction, whether you are their client or not, they have a responsibility to act honestly and with reasonable care and skill.

BC Financial Services Authority is the legislated regulatory agency that works to ensure real estate professionals have the skills and knowledge to provide you with a high standard of service. All real estate professionals must follow rules that help protect consumers, like you. We're here to help you understand your rights as a real estate consumer.

Keep this information page for your reference.

APPENDIX 12.4, continued
Disclosure of Representation in Trading Services Form

Your Relationship with a Real Estate Professional

DISCLOSURE OF REPRESENTATION IN TRADING SERVICES

This is a required disclosure form in compliance with sections 54 of the Real Estate Services Rules. Your real estate professional must present the Your Relationship with a Real Estate Professional information page to you along with this disclosure form.

REAL ESTATE PROFESSIONAL DISCLOSURE DETAILS

I disclose that I am (check one):

- representing you as my client
- not** representing you as a client

Name

Team name and members, if applicable. The duties of a real estate professional as outlined in this form apply to all team members.

Brokerage

Signature

Date

Notes:

CONSUMER ACKNOWLEDGMENT:

This is NOT a contract

I acknowledge that I have received the **Your Relationship with a Real Estate Professional** consumer information page and this disclosure form.

Name (optional)

Name (optional)

Initials (optional)

Date

Initials (optional)

Date

A copy of this disclosure is not required to be provided to BC Financial Services Authority unless it is specifically requested.

APPENDIX 12.5**Disclosure of Risks to Unrepresented Parties Form**

**BC Financial
Services Authority**

Not a Client? Know the Risks

Real estate professionals have a regulatory requirement to present you with this consumer information.

BC Financial Services Authority is the legislated regulatory agency that works to ensure real estate professionals have the skills and knowledge to provide you with a high standard of service. All real estate professionals must follow rules that help protect consumers, like you. We're here to help you understand your rights as a real estate consumer.

Keep this information page for your reference.

This information from BC Financial Services Authority explains the risks of working with a real estate professional who is already representing a client in the same transaction.

We recommend that you seek independent representation in this real estate transaction.

BE CAUTIOUS.

The real estate professional who gave you this form is already representing a client in this transaction. They owe a duty of loyalty to that client and must work in that client's best interests. They cannot represent you or work in your interests in this transaction.

This real estate professional must tell their client any relevant information you share with them. For example, if disclosed by you, they must share the following information:

- your reasons for buying, selling or leasing
- your minimum/maximum price
- any preferred terms and conditions you may want to include in a contract

Only share information that you are comfortable being disclosed to the other party in this transaction.

This real estate professional can only provide you very limited services. Because this real estate professional must be loyal to their client and work in their client's interest, they can only give you limited assistance.

THEY CANNOT:

- ✗ give you advice on an appropriate price
- ✗ give you advice about any terms and conditions to include in a contract
- ✗ negotiate on your behalf
- ✗ share any of their client's confidential information with you, like:
 - their minimum/maximum price
 - their reason for buying/selling/leasing.
- ✗ protect your confidential information

THEY CAN:

- ✓ share general information and real estate statistics
- ✓ show a property and provide factual information about the property
- ✓ provide you with standard real estate forms and contracts
- ✓ fill out a standard real estate contract
- ✓ communicate your messages and present your offers to their client

APPENDIX 12.5, *continued*

Disclosure of Risks to Unrepresented Parties Form

Not a Client? Know the Risks

DISCLOSURE OF RISKS TO UNREPRESENTED PARTIES

This is a required disclosure form in compliance with section 55 of the Real Estate Services Rules. A real estate professional must present the Not a Client? Know the Risks information page to you along with this form.

REAL ESTATE PROFESSIONAL DISCLOSURE DETAILS

I am already representing a client in this transaction and working in only their best interest. I am not representing you or acting on your behalf.

Name _____

Team name and members. *The duties of a real estate professional as outlined in this form apply to all team members.*

Brokerage _____

Signature _____

Date _____

Property address _____

Notes:

CONSUMER ACKNOWLEDGMENT:

This is NOT a contract

I acknowledge that I have received the **Not a Client? Know the Risks** consumer information page and this disclosure form.

I understand that the real estate professional named above is not representing me as a client or acting on my behalf in this transaction.

Name (optional) _____

Name (optional) _____

Initials (optional) _____

Date _____

Initials (optional) _____

Date _____

A copy of this disclosure is not required to be provided to BC Financial Services Authority unless it is specifically requested.

APPENDIX 12.6

Disclosure for Residential Tenancies Form



Renting Residential Property: What Tenants Need to Know

Real estate professionals have a regulatory requirement to present you with this consumer information before providing services to you.

This information from BC Financial Services Authority explains the role of a real estate professional when you are considering renting a property.

The real estate professional who gave you this form represents the owner of this residential rental property.

While this real estate professional can provide some limited services to you as a prospective tenant of this rental property, they owe a duty of loyalty to the owner, and are working for the owner's best interests.

This form sets out what this real estate professional can and cannot do for you as a prospective tenant in relation to this rental property.

THEY CANNOT:

- ✗ give you advice on terms and conditions to include in a tenancy agreement
- ✗ negotiate on your behalf
- ✗ share any of the owner's confidential information with you

THEY CAN:

- ✓ share statistics and general information about the rental property market
- ✓ provide you with standard forms and contracts such as a rental application and/or tenancy agreement
- ✓ show the property
- ✓ assist you to fill out a tenancy agreement
- ✓ communicate your messages and present your offers to their client

Because this real estate professional is working in the owner's best interests, they have a duty to share important information with the owner if disclosed by you including, for example: your motivations, your financial qualifications, and your preferred terms and conditions.

Find information about the rights and responsibilities of tenants and landlords from:

- BC Residential Tenancy Branch: gov.bc.ca/landlordtenant
- Tenant Resource & Advisory Centre: tenants.bc.ca

As a prospective tenant you should consider seeking independent professional advice about renting property.

BC Financial Services Authority is the legislated regulatory agency that works to ensure real estate professionals have the skills and knowledge to provide you with a high standard of service. All real estate professionals must follow rules that help protect consumers, like you. We're here to help you understand your rights as a real estate consumer.

Keep this information page for your reference.

APPENDIX 12.6, continued
Disclosure for Residential Tenancies Form

Renting Residential Property: What Tenants Need to Know

DISCLOSURE FOR RESIDENTIAL TENANCIES

This is a required disclosure form in compliance with sections 54 and 55 of the Real Estate Services Rules. The real estate professional must present the Renting Residential Property: What Tenants Need to Know information page to you along with this disclosure form.

REAL ESTATE PROFESSIONAL DISCLOSURE DETAILS

I disclose that I represent the owner of this rental property. I cannot represent you or act on your behalf.

Name

Team name and members. *The duties of a real estate professional as outlined in this form apply to all team members.*

Brokerage

Signature

Date

Rental property address

Notes:

CONSUMER ACKNOWLEDGMENT:

This is NOT a contract

I acknowledge that I have received the **Renting Residential Property: What Tenants Need to Know** consumer information page and this disclosure form.

I understand that the real estate professional named above is not representing me as a client or acting on my behalf in this transaction.

Name (optional)

Name (optional)

Initials (optional)

Date

Initials (optional)

Date

A copy of this disclosure is not required to be provided to BC Financial Services Authority unless it is specifically requested.

APPENDIX 12.7**Disclosure of Risks Associated with Dual Agency Form**

**BC Financial
Services Authority**

Understand the Risks of Dual Agency

A real estate professional is required to give you this consumer information before providing services to you as a dual agent.

You are receiving this form because the real estate professional representing you also represents another party in the same transaction. This is known as “dual agency.”

Some examples of dual agency are when one real estate professional represents:

- a property seller and the buyer of that property

- two separate buyers who each hope to purchase the same property
- a landlord and tenant in the same transaction.

RISKS OF DUAL AGENCY

Dual agency limits a real estate professional’s ability to share information with you and give you advice. It prevents them from exclusively acting in your best interest.

Your real estate professional’s duties to you as a client change in dual agency.

IN MOST SITUATIONS...

- Your real estate professional must be 100% loyal to you and put your interests above all others.
- They must take reasonable steps to avoid conflicts of interest.
- They must fully disclose all facts in their knowledge that could affect your decision-making.
- They must protect your confidential information. They cannot reveal your motivation for buying/selling/leasing/renting, the minimum/maximum price that you are willing to pay or accept, or other confidential information, without your permission.

IN DUAL AGENCY...

- The duties that your real estate professional owes to you and their other client(s) will be limited, as set out in an agreement of dual agency.
- They cannot give you any advice on what purchase price you should offer or accept, or what terms you should include in the contract to protect your interests.
- They cannot make full disclosure to you of all material facts in their knowledge if that would breach their duty to protect their other client’s confidential information.
- They cannot share information with you such as the other client’s motivation or preferred terms, nor share your information with their other client.

DUAL AGENCY NOT ALLOWED IN BC IN MOST CASES

Because dual agency presents significant risks to consumers, it is not permitted in BC except in certain circumstances. A real estate professional may only provide dual agency to you when the property you wish to buy or

sell (or rent or lease) is in a remote location that is underserved by real estate professionals, and it would be impracticable for you and the other party to be represented by separate real estate professionals.

APPENDIX 12.7, continued
Disclosure of Risks Associated with Dual Agency Form

Understand the Risks of Dual Agency

DISCLOSURE OF RISKS ASSOCIATED WITH DUAL AGENCY

This is a required disclosure form in compliance with sections 64 of the Real Estate Services Rules. A real estate professional must present the Understand the Risks of Dual Agency consumer information page to you along with this disclosure form.

STATEMENT OF BROKERAGE

This section must be completed by the managing broker before the disclosure is presented to the consumer.

Note to managing brokers: Please refer to the **Use of Dual Agency Exemption** guidelines regarding the factors to consider.

- I am satisfied that the criteria set out in section 64(1) of the Rules are met in this case.
- I have included the required description of the reasons why the requirements for engaging in dual agency have been met in this case.

This disclosure is made in respect of a property located at: _____

Managing Broker

Brokerage

Signature

Date

THIS SECTION MUST BE COMPLETED BY THE MANAGING BROKER.

Provide a **detailed description** of how the requirements for engaging in dual agency, as set out in section 64(1) of the Rules, have been met in this situation. Attach additional pages, if required.

APPENDIX 12.7, continued**Disclosure of Risks Associated with Dual Agency Form****Understand the Risks of Dual Agency****DISCLOSURE OF RISKS ASSOCIATED WITH DUAL AGENCY****REAL ESTATE PROFESSIONAL CONFIRMATION**

- I confirm that I have given the clients the **Understand the Risks of Dual Agency** consumer information page and this disclosure form, including a signed Brokerage Statement.
- I confirm that I will provide the clients a dual agency agreement.

Name _____

Team name and members, if applicable. *The duties of a real estate professional as outlined in this form apply to all team members.*

Signature _____

Date _____

CONSUMER ACKNOWLEDGMENT:**This is NOT a contract****You Have Choices**

It is up to you to decide whether you wish to enter into dual agency. You may wish to seek legal advice before making a decision.

You can say yes or no to dual agency. A real estate professional can only proceed in dual agency if both clients consent and enter into an agreement of dual agency.

If one or both clients say no to dual agency, the real estate professional who gave you this form will be unable to provide further real estate services to either client for this transaction.

I acknowledge that I have received:

- the **Understand the Risks of Dual Agency** consumer information page, and
- this disclosure form, including a signed Brokerage Statement and a detailed description of the reasons for engaging in dual agency.

Name _____

Name _____

Initials _____

Date _____

Initials _____

Date _____

IMPORTANT: The brokerage must provide a copy of this disclosure to the BC Financial Services Authority promptly after entering into a written agreement of dual agency. Send to dual-agency-disclosure@bcfsa.ca.

APPENDIX 12.8

Disclosure of Remuneration – Trading Services Form



WHEN A REAL ESTATE LICENSEE ANTICIPATES RECEIVING REMUNERATION* AS A RESULT OF PROVIDING REAL ESTATE SERVICES TO YOU OR ON YOUR BEHALF (OTHER THAN ANY REMUNERATION PAID DIRECTLY BY YOU, THE CLIENT), THEY ARE REQUIRED TO ADVISE YOU OF THIS IN WRITING.

**Remuneration includes any form of remuneration, including any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly.*

PART A: CLIENT INFORMATION

Notice to (name of client)

Street address of subject real estate

PART B: DISCLOSURE OF COMMISSION (complete only one of the following in Part B)

DISCLOSURE OF COMMISSION WHEN ACTING FOR ONE PARTY

I _____ am licensed under the *Real Estate Services Act* and I disclose to you that my related brokerage _____ anticipates receiving a commission of _____ (indicate amount or method of calculation) from _____ with respect to real estate services provided to you or on your behalf in relation to the subject real estate. (name of individual or organization)

DISCLOSURE OF COMMISSION WHEN ACTING AS DUAL AGENT

I _____ am licensed under the *Real Estate Services Act* and I disclose to you that my related brokerage _____ anticipates receiving a commission of _____ (indicate amount or method of calculation) from _____ with respect to real estate services provided to you, and to the other party to the transaction, in relation to the subject real estate. (name of individual or organization)

PART C: DISCLOSURE OF REFERRAL FEES AND OTHER REMUNERATION NOT DISCLOSED IN PART B

I _____ am licensed under the *Real Estate Services Act* and I disclose to you that my related brokerage _____ will receive or anticipates receiving remuneration in the form of or amount of _____ (name of brokerage) from _____ (name of individual or organization) as a result of my recommendation or referral of: (indicate form or amount of remuneration) (name of individual or organization)

- (a) you to the following individual or organization _____ (name of individual or organization); or
- (b) the following individual or organization _____ (name of individual or organization) to you.
- (c) the following individual or organization (who is a party to your real estate transaction) _____ (name of individual or organization) to another real estate licensee. (name of individual or organization)

PART D: ACKNOWLEDGEMENT

This disclosure is made to you in compliance with section 56 of the Real Estate Services Rules, at

_____ on _____.
(place) (date)

Name of Licensee _____ Signature of Licensee _____

The undersigned acknowledges receipt of this Disclosure of Remuneration Form at _____ on _____.
(place) (date)

Signature of person/persons to whom disclosure has been made: _____

A COPY OF THIS DISCLOSURE IS NOT REQUIRED BY BCFSA UNLESS SPECIFICALLY REQUESTED.

APPENDIX 12.9**Disclosure to Sellers of Expected Remuneration (Payment) Form**

**BC Financial
Services Authority**

Paying for Real Estate Services: What Sellers Need to Know

Your real estate professional is required to give you this form when presenting you with an offer for the purchase of your property.

They must disclose to you:

- the amount their brokerage will be paid
- the amount of the payment that will be shared with the buyer's brokerage, if any
- the amount their brokerage will keep for representing you in the transaction

The amounts may vary depending on the offers you receive, and the information may affect how you decide to proceed with the sale of your property.

When you receive an offer from a buyer, your real estate professional will give you a completed **Disclosure to Sellers of Expected Remuneration (Payment)** form. If you receive a counter-offer, they will update the form with new amounts.

The disclosure form shows you:

- | | | |
|--|--|---|
| ✓ the total amount your real estate professional's brokerage will receive if you accept the offer | ✓ how the payment would be shared with the brokerage representing the potential buyer, if any | ✓ any other payment your real estate professional will receive or expects to receive in connection with this transaction |
|--|--|---|

The disclosure form shows the amount the brokerage will earn, not the amount your real estate professional will earn. Real estate professionals receive payment for the services they provide you from their brokerage.

APPENDIX 12.9, continued**Disclosure to Sellers of Expected Remuneration (Payment) Form****Paying for Real Estate Services: What Sellers Need to Know****DISCLOSURE TO SELLERS OF EXPECTED REMUNERATION (PAYMENT)**

You are receiving this form because an offer has been made to purchase your property.

This is a required disclosure form in compliance with section 57 of the Real Estate Services Rules. Your real estate professional must present the Paying for Real Estate Services: What Sellers Need to Know information page to you along with this disclosure form.

REAL ESTATE PROFESSIONAL DISCLOSURE DETAILS

Name	Property address
------	------------------

Team name and members	Name(s) of seller(s)
-----------------------	----------------------

The duties of a real estate professional as outlined in this form apply to all team members.

Brokerage	Name(s) of potential buyer(s)
-----------	-------------------------------

Signature	Potential buyer(s)' brokerage, if any
-----------	---------------------------------------

Offer Details	Offer	Counter-offer	Counter-offer	Counter-offer
Date of offer/counter-offer:				
Offered purchase price:				
Date of disclosure:				
Payment Details Amounts below are exclusive of GST	Offer	Counter-offer	Counter-offer	Counter-offer
If you accept this offer you will pay your real estate professional's brokerage this amount:				
<ul style="list-style-type: none"> This amount will be kept by your real estate professional's brokerage for representing you: 				
<ul style="list-style-type: none"> This amount will be shared with the potential buyer's brokerage^t: 				
Your real estate professional has received or will receive this amount from someone other than you, as a result of providing real estate services to you, or on your behalf ^{tt} :				

CONSUMER ACKNOWLEDGMENT:**This is NOT a contract**

Please initial to acknowledge disclosure for each offer or counter-offer (optional):

^t When buyers and sellers are working with real estate professionals from the same brokerage, this field will be filled out to indicate the amount that is retained by the brokerage for the services provided by the buyers' real estate professional.

^{tt} If the real estate professional discloses an amount in this section, they must provide sellers with a separate form that sets out the source of the remuneration, the amount or likely amount or method of calculation of the remuneration, and all other relevant facts relating to the remuneration under section 56(1)(a) of the Rules.

A copy of this disclosure is not required to be provided to BC Financial Services Authority unless it is specifically requested.



BC Financial Services Authority / You're Protected
bcfsa.ca

APPENDIX 12.10**Disclosure of Interest in Trade (Buying & Selling) Form**

**BC Financial
Services Authority**

Disclosure of Interest in Trade (Buying or Selling)

Real estate licensees have a regulatory requirement to present you with this consumer information whenever:

- You are selling real estate that the real estate licensee or their associate intends to acquire an interest in, or
- You are buying real estate that the real estate licensee or their associate has an interest in.

This disclosure must be provided to you **before** you enter into any agreement for the purchase and sale of real estate. This disclosure must also be provided to you where the real estate licensee provides real estate trading services to their associate.* (see page 4 for the definition of an associate).

This disclosure is being provided to you to raise awareness of the potential risks that may arise in a real estate transaction when a real estate licensee has a direct or indirect personal interest. These risks can include the potential for conflicts of interest or a disparity in bargaining power because of a difference in knowledge. Real estate licensees are generally considered to be sophisticated parties in a transaction and may have greater knowledge than the average consumer, which may include you, about the property (e.g., fair market value, development potential) and the real estate market in general.

You should speak to your real estate licensee and/or seek independent advice if you have any questions about this disclosure or the risks it might indicate.

BC Financial Services Authority

is the legislated regulatory agency that works to ensure real estate licensees have the skills and knowledge to provide you with a high standard of service. All real estate licensees must follow rules that help protect consumers, like you. We're here to help you understand your rights as a real estate consumer.

Keep this information page for your reference.

IT IS STRONGLY RECOMMENDED THAT YOU (the Consumer) OBTAIN INDEPENDENT ADVICE REGARDING THE FAIR MARKET VALUE OF THE PROPERTY YOU ARE BUYING OR SELLING.

IN THIS DOCUMENT

- **Part A** shows you who is making the disclosure and who they represent.
- **Part B** must be filled out when a real estate licensee or the associate they represent is **buying a property**.
- **Part C** must be filled out when a real estate licensee or the associate they represent is **selling a property**.

APPENDIX 12.10, *continued*
Disclosure of Interest in Trade (Buying & Selling) Form

PART A – TO BE COMPLETED BY ALL REAL ESTATE LICENSEES

Notice to (indicate name of either the buyer or seller): _____

Street address of the property

Legal description of the property

I, _____ (name of real estate licensee), am licensed under the *Real Estate Services Act*, and disclose to you that:

- I am buying the property (proceed to Part B)
- my associate(s) is (are) buying the property and I am providing them trading services (proceed to Part B)
- I am selling the property (proceed to Part C)
- my associate(s) is (are) selling the property and I am providing them trading services (proceed to Part C)

Name of associate(s)

My relationship to the associate(s)

PART B – TO BE COMPLETED WHEN THE REAL ESTATE LICENSEE OR AN ASSOCIATE THEY REPRESENT IS BUYING THE PROPERTY

I am / my associate is BUYING the property:

- for personal use, rental or other use, or
- to resell it
 - and I, and/or my associate intend to resell the property with the following terms:

Remuneration:

If you accept my and/or my associate's offer, real estate commission or other remuneration is anticipated to be earned or received in the following amounts:

By me: \$_____

By my associate: \$_____

From another buyer or tenant: \$_____

APPENDIX 12.10, continued**Disclosure of Interest in Trade (Buying & Selling) Form****PART C – TO BE COMPLETED WHEN THE REAL ESTATE LICENSEE OR AN ASSOCIATE THEY REPRESENT IS SELLING THE PROPERTY**

- I own the property
- My associate owns the property

REAL ESTATE LICENSEE DISCLOSURE DETAILS**Disclosure – To be completed by the real estate licensee:**

I make this disclosure to you in compliance with section 53 of the Real Estate Services Rules under the *Real Estate Services Act* at:

_____(place) on _____ date

Disclosed by _____ (signature of real estate licensee)

Witnessed by _____ (signature of a person other than
the person to whom the disclosure is to be made)

CONSUMER ACKNOWLEDGMENT**This is NOT a contract**

I acknowledge that I have received the **Disclosure of Interest in Trade** consumer information page and this disclosure form.

Name (optional)

Date

Name (optional)

Date

Initials (optional)

Date

Initials (optional)

Date

APPENDIX 12.10, *continued*

Disclosure of Interest in Trade (Buying & Selling) Form

BROKERAGE USE ONLY

A COPY OF THIS FORM MUST BE DELIVERED TO YOUR BROKERAGE. **THIS SECTION IS TO BE COMPLETED BY THE BROKERAGE WHOSE REAL ESTATE LICENSEE IS MAKING THE DISCLOSURE.**

I _____ acknowledge receipt of a copy of this disclosure on behalf of the brokerage of the real estate licensee making this disclosure.

Signature of person acknowledging receipt

Date

Title of person acknowledging receipt on behalf of the brokerage

Note: section 83(1)(a) of the Real Estate Services Rules requires a brokerage to maintain a copy of all written disclosures and any other related acknowledgements under Part 5 Division 2 of the Real Estate Services Rules.

Definitions

ASSOCIATE

A licensee's associate means:

- their spouse (as defined by the Family Law Act),
- a trust or estate wherein the licensee or their spouse or family partner have a substantial beneficial interest or serve as a trustee, or
- a corporation, partnership, association, syndicate or unincorporated organization wherein the licensee or their spouse or family partner hold 5% or more of its capital or are entitled to 5% or more of its profits.

An associate in the case of a brokerage that is a corporation or partnership means:

- a director, officer or partner of the brokerage,
- a shareholder of the brokerage who holds more than 10% of the voting shares of the brokerage,
- a trust or estate wherein the brokerage or a director, officer or partner of the brokerage has a substantial beneficial interest (or serves as a trustee)
- a corporation, partnership, association, syndicate or unincorporated organization wherein the brokerage or a director, officer or partner of the brokerage, holds 5% or more of its capital or is entitled to 5% or more of its profits.

APPENDIX 12.11**Notice to Seller Regarding Assignment Terms**
**BC Financial
Services Authority / Notice to Seller
Regarding Assignment Terms**

Please print clearly

The Real Estate Services Regulation requires this notice to be provided to you, the seller, at the same time you are presented with a proposed contract for the purchase and sale of your property (an "offer") if that offer does not include one or both of the following terms:

- A term that provides that the contract must not be assigned without your written consent;
- A term that provides that you are entitled to any profit resulting from an assignment of the contract by the buyer or any subsequent assignee.

A contract assignment occurs when a buyer transfers the contract to buy property to someone else before the completion date.

Before accepting this offer, you should obtain independent professional advice regarding the absence of one or both of these terms. You should also consider whether you wish to make a counter-offer that includes the absent term(s) or other terms regarding assignments.

If this offer does not contain any terms about whether the contract may be assigned,

- the contract may be assigned without your consent, and
- you will not have any right to receive the profit, if any, made by the buyer from the sale of your property before the completion date.

If you are working with a real estate licensee, the Regulation requires the licensee to inform you about the following:

- if the terms included in the offer you received permit the buyer to assign the contract;
- any conditions in the offer on any assignment, including whether you have the right to receive any additional money if the buyer makes a profit from assigning the contract.

PART A

Notice to (name of seller(s))	
Street address of real estate being sold	Legal description
Name of licensee providing notice	Date notice provided

PART B – SIGNATURES AND ACKNOWLEDGEMENT

I, _____ (name of seller(s))
acknowledge receipt of a copy of this notice at the same time the offer was presented to me on _____ (date)
Signature of seller(s): _____

BROKERAGE USE ONLY

Note: BCFSA advises licensees to provide a copy of this notice to their managing broker, and brokerages to retain a copy of this notice.	
Name of person acknowledging receipt of notice for brokerage	Signature of person acknowledging receipt of notice for brokerage
Title of person acknowledging receipt of notice for brokerage	Date

Mailing Address BC Financial Services Authority 600-750 West Pender Street Vancouver, B.C. Canada V6C 2T8	Enquiries Tel: 604.660.3555 Toll-free: 1.866.206.3030 Fax: 866.660.3365 www.bcfsa.ca info@bcfsa.ca
--	--

A COPY OF THIS NOTICE IS NOT REQUIRED TO BE PROVIDED TO BCFSA UNLESS IT IS SPECIFICALLY REQUESTED.