

Buying or selling a property is probably one of the most important financial decisions average consumers will make in their lifetime. It is a good idea to take a moment to consider the type of relationship you might be entering into with a REALTOR®. The more you know, the more you will be satisfied with the results.

This brochure is intended to help you and your REALTOR® discuss the information you need to make an informed decision about your relationship.

## What is Agency?



Agency is a relationship established when two parties agree to have one party act on behalf of the other. The example discussed in this guide will be the real estate brokerage acting on behalf of a buyer or a seller. The agency relationship exists between the Client (buyer or seller) and the Agent (the brokerage, including its broker, associate brokers and associates).

Members of the public at first point of contact with a brokerage representative are not in an agency relationship with the brokerage. It is important to note that an agency relationship can be created if either party acts in a manner that implies that such a relationship exists. For example, an agency relationship may be created unintentionally if the buyer or seller provides confidential information to the REALTOR® or asks the REALTOR® for advice about a possible purchase or sale. You should be careful not to form this relationship until you have made a conscious decision to have the brokerage act on your behalf and you have consented to the agency relationship in writing.

## Customer Status

If you do not wish to enter into an agency relationship but want to work with a brokerage, you will be asked to choose customer status. There are several reasons why a consumer might choose, or the brokerage might recommend, customer status. For example, if a buyer client wants to negotiate with an owner selling his or her own property, the seller will be a customer. When the brokerage is representing a seller with whom it has a long-standing relationship (e.g., a developer, a relative of a brokerage representative), the buyer should be in a customer relationship with the brokerage.

Customers always have the option of choosing another brokerage to represent them.

As a customer, you need to know that the brokerage is not your Agent and does not owe agency duties to you. Duties are limited to the common law duties of honesty and reasonable care and skill and the duty not to negligently or knowingly provide false or misleading information. The brokerage will perform services needed to help you complete a transaction as long as the services do not require exercising discretion or judgment, giving confidential advice or advocating on your behalf. The brokerage can provide you with standard purchase contracts and other relevant forms and can complete the forms for your signature, but only on your instructions.

In an agency relationship, the duties are much more extensive. The essence of the agency relationship is that the Agent has authority to represent the Client in a real estate transaction. The complex and important nature of a real estate transaction requires the Agent to exercise discretion and judgment when carrying out duties on behalf of the Client. Agents are obligated to protect and promote the interests of their clients as they would their own. Specifically, your Agent owes you the following duties:

- **Undivided loyalty**

The Agent must act solely in your best interests, must always put your interests above the Agent's own interests and above the interests of other parties. Among other things, this means avoiding conflicts of interest and protecting your negotiating position at all times.

- **Confidentiality**

The Agent has a duty to keep your confidences. Confidential information includes any information concerning you, the property or the transaction that is not required by law to be disclosed, but which, if disclosed, could be used by another party to your disadvantage. It is important to note that the duty of confidentiality continues even after the agency relationship ends.

- **Full disclosure**

The Agent must inform you of all facts known to the Agent that might affect your relationship or influence your decision in a real estate transaction. This includes any conflicts of interest the Agent might have in the course of providing services to you. The Agent should not decide for you whether the information is important to you, and the Agent is therefore obligated to disclose all relevant information. The decision is always yours.

An exception to full disclosure to you is confidential information your Agent may have gathered in a previous agency relationship. The confidential information of a previous client will not be disclosed to you unless the previous client agrees to this in writing.



- **Obedience**

As long as instructions are reasonable and ordinary under the circumstances, the Agent must obey all of your lawful instructions. If you were to insist that the Agent do something unlawful, the Agent would be obligated to terminate the relationship and any existing service agreement.

- **Reasonable care and skill**

The Agent must exercise reasonable care and skill in performing all assigned duties. The Agent is expected to meet the standard of care that a reasonable and competent REALTOR® would exercise in a similar situation.

- **Full accounting**

The Agent must account for all money and property placed in the Agent's hands while acting for you.

As licensed professionals, real estate industry members are further bound by statutory obligations that are set out in the *Real Estate Act* (Alberta) and its Rules. These obligations reinforce the common law duties described above. All told, you are entitled to – and should expect – competent service from your Agent, knowing that the brokerage and its representatives are bound by ethics and the law to be honest in every real estate transaction.

In an agency relationship, the Client, as well, has duties towards the Agent. You have the duty to:

- compensate the Agent for the expenses that the Agent incurs as a result of carrying out its responsibilities as requested on your behalf;
- pay any agreed-upon remuneration or compensation as outlined in the signed service agreement;
- disclose to the Agent matters that could affect a transaction, including material facts that must be passed on to the third party in the real estate transaction.

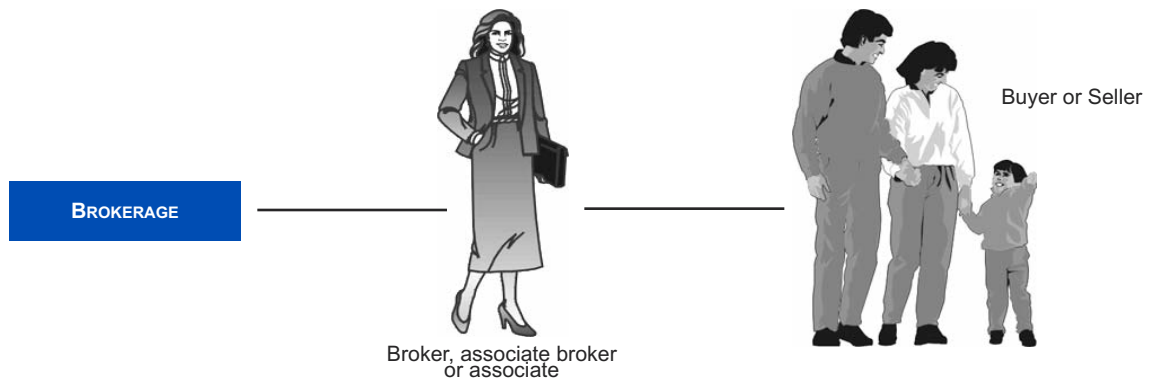
***You should also consider it your responsibility to read carefully all documents and understand what you are signing. If you need specialized advice, seek other professionals such as lawyers, accountants, and inspectors.***

## Types of Agency Relationships

### Sole Agency

Sole Agency occurs when one brokerage, its broker, associate brokers and associates represent only the seller or the buyer in a real estate transaction (see figure 1). The Agent (Seller's Agent or Buyer's Agent, as the case may be) owes its Client the duties described on the previous page.

Figure 1



### Dual Agency

Dual Agency arises when one brokerage represents both the buyer and seller in a transaction. Dual Agency occurs whether one individual in the brokerage is working for both the buyer and the seller (figure 2) or different representatives from the same brokerage are working for the buyer and the seller (figure 3). The brokerage, including its broker and all its associate brokers and associates, is the Dual Agent.

Figure 2

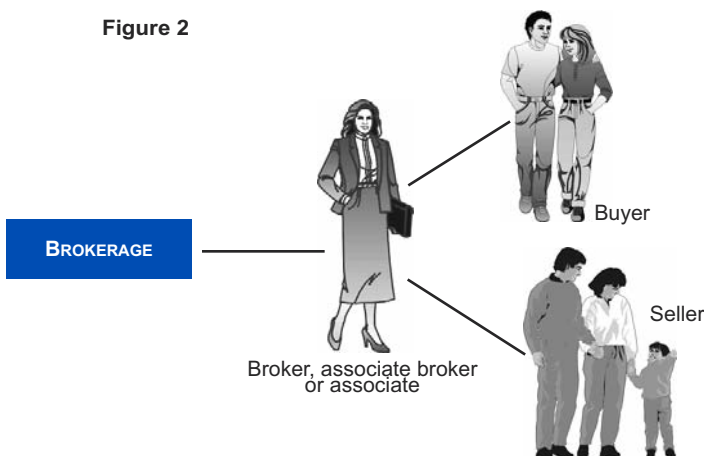
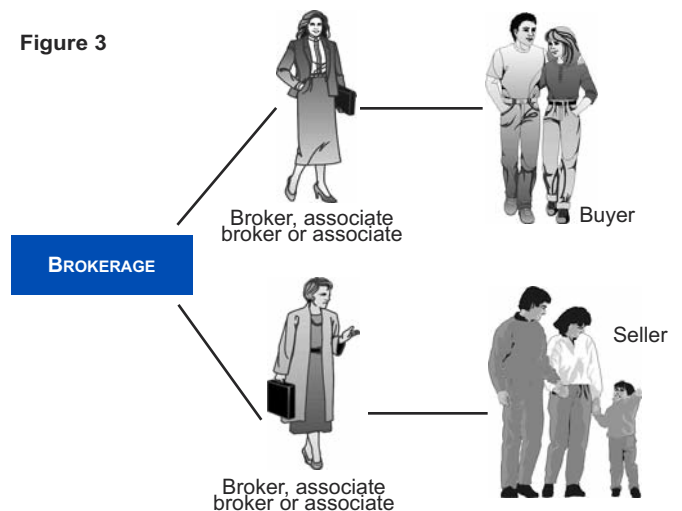


Figure 3



Dual Agency creates some limitations for the brokerage in fulfilling the obligations owed to the buyer and the seller respectively, in particular the obligations of:

- undivided loyalty to the buyer and to the seller;
- confidentiality of information obtained from the buyer or from the seller; and
- full disclosure of all facts that may influence the decisions of the buyer or the seller.

By law, Dual Agency is only permitted with the fully informed and voluntary consent of both the buyer and the seller. The Agent must obtain your written consent before an offer is made, when the identities of both parties to the transaction are known. It is necessary to give consent at the offer stage because there are transactions for which dual agency may not be appropriate. At the preliminary stage, however, the brokerage will want your commitment in principle to Dual Agency so that properties listed by the brokerage can be shown to buyer clients of the brokerage.

In Dual Agency, the Dual Agent will assist the buyer and the seller in negotiating a mutually acceptable agreement while at the same time limiting the duties owed to each Client. The Dual Agent will treat the interests of both the buyer and the seller in an even-handed, objective and impartial manner, and will ensure that any advice or information given to one party will be disclosed to the other.

The Dual Agent will also disclose:

- to the buyer any material latent defects affecting the property, all government and local authority notices and lack of permits; and
- to the seller all facts that would adversely affect the buyer's ability to purchase the property.

However, the Dual Agent **cannot** disclose:

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

Finally, the Dual Agent will fulfill all other obligations to each Client if they do not conflict with the other Client's interests.

## Making an Informed Choice

Your REALTOR® has the responsibility of explaining the options you have when choosing to work with a real estate brokerage. It is in your best interests to understand what duties you are owed and what limitations there are or might be when you choose a certain relationship. Ask questions and be sure you are satisfied with the answers before you enter into a relationship with a particular brokerage. That's the surest path to success!

\* Under new federal legislation, the **Proceeds of Crime (Money Laundering) and Terrorist Financing Act** (PCMLTFA), real estate agents are required to collect personal information in order to identify individuals conducting large financial transactions, such as buying or selling property. Further details are found at [www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca).

# Agency Relationships Acknowledgment

*The Agency Relationships guide explains a real estate brokerage's duty to you.  
You are asked to choose the type of relationship you wish to have with the brokerage.  
This is not a service agreement and does not impose contractual obligations.*

I received the Agency Relationships guide from the brokerage representative named below and have obtained satisfactory answers to any questions that it raised.

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Name of brokerage

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Name of broker, associate broker or associate

In accordance with the disclosures made to me:

- I choose to enter into a sole agency relationship with the brokerage.
- I choose to enter into a sole agency relationship with the brokerage and I consent to the brokerage pursuing transactions that could lead to Dual Agency.
- I choose customer status.  
(In this instance, a Customer Status Acknowledgment form will be completed).

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Signature

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Date

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Print Name

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Signature

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Date

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Print Name

