

CUSTOMER – REAL ESTATE BROKERAGE

Summary: A customer is a person who has contacted but not engaged or employed a real estate brokerage to provide services, that is, the person has not entered into a service agreement with the brokerage. A customer status acknowledgement agreement is recommended in such relationships. [See: *Real Estate Act Rules*, s.1(1)(i), s.60, Schedule 1 (Forms 8, 9 & 10)]

Note: For the purposes of this Information Bulletin, and where the context permits, “real estate broker” refers to all four categories of real estate licence i.e. brokerage, broker, associate broker and associate.

In the course of conducting business, the nature of the relationship is an important issue for industry members and consumers. It is the responsibility of industry members to ensure their role is clearly understood at all times when they are dealing with consumers and third parties. Consumers and potential clients must not be pressured or directed toward a particular type of relationship.

Regardless of the type of relationship they enter into with consumers, real estate brokers should have a clear understanding of their obligations to clients and customers. While consumers should make an informed choice about the type of relationship they wish to have with a real estate broker, they should also understand the implications of the options available to them.

A customer is defined in the *Real Estate Act Rules* as “a person who has contacted, but not engaged or employed, an industry member to provide services.” In the context of real estate brokerage, a customer is a person who has approached a real estate broker and is seeking information or assistance regarding their real estate needs. The person may not have any desire to hire or employ the real estate broker but as a potential seller or buyer, they have some real estate interests they wish to pursue. In the context of agency relationships, the term “customer” is used to identify the third party, that is, the “outsider” to a particular agency relationship.

If the customer is a property owner, they may be:

- seeking information about the real estate market
- researching the process and costs associated with listing and selling their property
- considering their options i.e. selling the property on their own, listing the property with a brokerage or waiting until the market improves
- trying to decide which brokerage they will hire or employ to sell their property

If the customer is a potential buyer, they may be:

- seeking information about the real estate market
- researching the process and costs associated with buying a property
- considering their options i.e. buying a property on their own or hiring a real estate industry member

- trying to decide which brokerage they will hire or employ to assist them with buying a property
- interested in a property listed with the brokerage

A person may not want to become a client for various reasons including:

- they simply want to view a property listed with a brokerage or attend an open house
- they have not decided whether they are serious about selling or buying property
- they are unsure whether they wish to hire a brokerage to represent them
- they may be experienced or sophisticated in real estate matters and wish to represent themselves
- an industry member may have a conflict of interest and is only able to represent one party to a transaction.

In some cases, a brokerage may have a property listed and can only represent the seller. For example, a brokerage may represent a new home builder but be prohibited from representing buyers with respect to those listings. In such cases, all potential buyers will be treated as customers.

When a person chooses to be a customer, that is, has not engaged the services of the brokerage (by entering into a service agreement), the brokerage does not owe any agency or fiduciary obligations to that person. It is important for the customer to understand who the real estate broker represents and that the real estate broker will not provide any services to the customer that require judgment, advice, confidentiality or advocating on their behalf.

However, a real estate broker still has important obligations to a customer. Those obligations are to act honestly, ensure any information provided is correct, exercise due care and skill at all times, and hold any monies received from the customer in trust in accordance with the legislation.

If a real estate broker acts as the agent for a seller, and is requested to assist an unrepresented buyer in buying the seller's property, or acts as an agent for a buyer and introduces the buyer to an unrepresented seller, it is recommended the real estate broker obtain written acknowledgment the customer has knowingly chosen to be unrepresented by signing a "customer status acknowledgment" form. Customer status forms are contained in the *Real Estate Act* Rules [Schedule 1(Forms 8, 9 & 10)].

While a customer status acknowledgement form is not mandatory, it is highly recommended for use by real estate brokers. A real estate broker who uses the form and complies with the obligations outlined in the form will be in a good position to withstand any subsequent suggestion from a customer that they, in fact, believed the broker to be their agent or that they believed the broker had fiduciary obligations to them. While clarifying matters for consumers, the form also provides protection for industry members.

The customer status acknowledgement form requirements are outlined in the *Real Estate Act* Rules, s.60 (2)(3), and include the following:

- recognition that the customer has chosen to forgo any agency representation;
- that the real estate broker does not owe the customer any agency obligations including fiduciary obligations; and,

- that the customer understands the real estate broker will not provide services that require discretion, the exercising of judgment or the providing of confidential information.

The real estate broker may, at its own discretion, provide a customer with certain services as outlined in the *Real Estate Act* Rules, s.60(4)(5). Again, if these services are to be provided to a customer, it is recommended this be outlined in a customer status acknowledgment signed by the customer.

Examples of services a real estate broker may provide to a customer include the following:

- provide real estate statistics and information on a property (including comparables)
- provide agreements of purchase and sale, lease or other relevant documents and prepare all necessary documents in accordance with the instructions of the customer
- provide the names of real estate service providers (but not recommend any particular provider)
- present in a timely manner, all offers and counter-offers to and from the customer
- convey to the seller in a timely manner all information that the customer wishes to have communicated to the seller
- keep the customer informed regarding the progress of the transaction.