

## Service Agreements for Buyers Working with Designated Brokerages

**Summary:** An industry member in a designated agency brokerage who is providing brokerage services and agency representation to a buyer **must** enter into a written service agreement. The agreement can be an Exclusive Designated Brokerage Agreement (exclusive right to represent the buyer) or a Non-Exclusive (buyer can be represented by other brokerages) Agreement. The *Real Estate Act* Rules establish the minimum requirements of a written service agreement. **For residential real estate, the Rules further identify mandatory content for exclusive brokerage agreements and designated agency relationships.** Whether or not the agreement is an exclusive or non-exclusive right to represent the client is a decision that must be made by mutual consent.

[See: *Real Estate Act* s.1(1)(w.1), *Real Estate Act* Rules s.43(2), s.44(1), s.48, s.55(1)(2)(3), s.56, s.58, s.58.1(1)(3), s.60.1 and Schedule 1]

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

### **Are written service (brokerage) agreements necessary in designated agency when representing buyers?**

Yes. Designated agency relationships represent a fundamental change from common law agency relationships. In designated agency, although the service agreement is with the brokerage, the agency and fiduciary relationship is between the individual industry member (not the brokerage) and the consumer. Another significant change is the designated agent’s knowledge is not attributed to the brokerage or to its designated agents representing other buyers or sellers. Such fundamental changes in the common law can only be successfully implemented if they are clearly documented and agreed to in writing by the consumer (seller or buyer), brokerage and designated agent.

### **In designated agency, does the written service agreement (buyer brokerage agreement) have to be an exclusive right to represent?**

No, written service agreements in designated agency can be either exclusive or non-exclusive. Regardless of the type of relationship they enter into with consumers, real estate brokers should have a clear understanding of their obligations to all parties. 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.

### **In designated agency, what is the difference between an exclusive and a non-exclusive buyer brokerage agreement?**

In designated agency, an **Exclusive Buyer Designated Brokerage Agreement** is an agreement between a buyer client and a brokerage whereby the buyer gives the brokerage the exclusive right to act on behalf of the buyer on the terms and conditions

outlined in the service agreement. In this type of agreement, the buyer warrants to the brokerage that he or she is not currently represented by any other brokerage and will not enter into any other buyer brokerage agreement with another brokerage during the term of the agreement.

In other words, in an exclusive buyer brokerage agreement, the buyer agrees only to use the services of the designated agency brokerage and be represented by the designated agent to assist them in purchasing a property during the term of the agreement.

A **non-exclusive** designated brokerage agreement for buyers is significantly different from an exclusive right to represent. The key difference is that the buyer is not limited to using the brokerage they have entered into the brokerage agreement with. In other words, they can enter into non-exclusive buyer brokerage agreements with other brokerages during the same period of time.

### **In designated agency, are there specific forms I must use when representing a buyer?**

The answer to this question will depend on two factors. Will you be representing a buyer who is interested in a residential property? Will you be entering into an exclusive buyer designated brokerage relationship?

If the answer to **BOTH** of these questions is “yes”, the agreement must contain the mandated wording as set out in the *Real Estate Act* Rules, section 60.1. The mandated content of an *Exclusive Buyer Designated Brokerage Agreement* for use in residential real estate transactions is contained in Schedule 1 of the Rules. The *Exclusive Buyer Designated Brokerage Agreement* is posted on RECA’s website under [industry member tools](#).

If the service agreement does not relate to a trade in residential real estate **OR** does not involve an exclusive right to represent the client, you are not required to use the same wording as provided in the mandated form. However it is important to recognize you must still use a written designated agency brokerage agreement and it must comply with sections 43(2) and 58.1(3) of the *Real Estate Act* Rules.

### **Can the wording in the Exclusive Buyer Designated Brokerage Agreement contained in Schedule 1 of the Real Estate Act Rules be changed or altered by the brokerage or the designated agent?**

If an industry member uses a different form than the *Exclusive Buyer Designated Brokerage Agreement* contained in Schedule 1 of the Rules, the form must contain the mandatory content set out in Schedule 1 and this mandatory content must not be directly or indirectly altered by the industry member.

Any form used by the industry member may, in addition to the mandatory content, include additional or supplementary content; however, such additional or supplementary content must not directly or indirectly alter the meaning or effect of the mandatory content and must not alter the obligations or requirements of industry members outlined in the *Real Estate Act* or the Rules. That said, upon the initiative and request of a client the forms may be amended by having the parties to the agreement agree to and initial the changes.

### Practice Tip for Non-Exclusive Designated Brokerage Agreements

When a brokerage has decided to become a designated agency brokerage, and wishes to develop its own non-exclusive designated brokerage agreement for either residential or non-residential transactions (e.g. commercial, industrial, investment, farm, ranch etc.), RECA recommends the brokerage refer to the Designated Brokerage: Agreement Outline with Example Clauses document posted on RECA's website under [industry member tools](#) as this is intended to assist brokerages in developing forms that meet the minimum requirements established in s.43(2) and 58.1(3) of the *Real Estate Act* Rules and to meet other minimum requirements pertaining to agency representation contained in the Rules.

Brokerages may include additional terms and / or clauses to these minimum requirements as may be appropriate for their chosen business model and the needs of the consumers they represent.

For additional information about written service agreements please review the Information Bulletin on RECA's website entitled [Service Agreements - Real Estate Brokerage](#). Additional information regarding designated agency can be found in the [Designated Agency Practice Guide for Industry Members](#) also located at RECA's website under industry member tools.