



## ENSURE ROLE IS UNDERSTOOD – REAL ESTATE BROKERAGE

**Summary: A real estate broker must ensure their role is clearly understood by their clients and third parties. [See: *Real Estate Act* Rules, s.41(e), s.55]**

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

All industry members have an obligation to ensure their role is clearly understood by their clients and third parties. For an explanation of the term “client,” see RECA Information Bulletin: *Client - Real Estate Brokerage*. For real estate brokers, this obligation carries additional disclosure requirements as outlined in the *Real Estate Act* Rules, s.55.

Often the role of a real estate broker is not always adequately explained or well understood by the parties to the transaction. The result is the client and other parties are confused and may not appreciate the responsibilities of the real estate broker and why they are conducting themselves in a particular manner.

The *Real Estate Act* Rules s.55 place an obligation on real estate brokers to ensure their role in a real estate transaction is understood. Before eliciting or as soon as possible upon receiving confidential information from any person concerning that person’s real estate needs, motivation, financial qualifications, or before entering into a service agreement, the real estate broker must disclose in writing to that person the following:

- (a) *the nature of services the real estate broker will provide;*
- (b) *whether the real estate broker is acting in the trade or anticipated trade on behalf of any other person, in any capacity;*
- (c) *any conflict of interest that may exist; and,*
- (d) *any other facts that may be likely to influence the person’s decision.*

If subsequent to this disclosure there is any material change in the facts which have been disclosed, the industry member must immediately disclose the change to that person. The real estate broker must use his or her best efforts to obtain written acknowledgement of the disclosures.

It is important to recognize, the real estate broker’s duty of disclosure is not triggered merely by:

- (a) *a bona fide “open house” showing;*
- (b) *preliminary conversations or “small talk” concerning the price range, location and property styles; or,*
- (c) *responding to general factual questions from a potential buyer or seller.*

If it is the intention of a real estate broker to represent or assist a person in a real estate transaction (as a sole agent), this should be discussed with the client. A copy of the *Agency Relationships Guide* should be provided to and reviewed with all potential clients. Do not assume that clients understand the role of the industry member because

they have not asked any questions. A real estate broker should always take the time necessary to explain what it means to be a sole agent, their obligations and what services they will provide.

All real estate brokerage (representation) agreements are a form of service agreement and should be in writing. A written service agreement **should** be entered into **before** a real estate broker provides any services to a client. An exclusive buyer brokerage agreement or exclusive seller brokerage agreement (listing) **must** be set out in writing and comply with the provisions contained in the *Real Estate Act* Rules or prescribed by the Real Estate Council of Alberta.

When a real estate broker is only acting for one party, another party may very well request information upon which they will rely. It will be up to the real estate broker to ensure this party understands he or she does not act for them. A real estate broker may also find it prudent to advise this party they may seek separate, independent representation. An agency relationship cannot be created unilaterally. Clients must agree to be represented and the real estate broker must agree to represent them. See RECA Information Bulletin: *Customer – Real Estate Brokerage*.

If the situation arises where a brokerage represents a seller with whom it has an agency relationship, and a buyer with whom it has an agency relationship is interested in the seller's property, in order to facilitate the transaction, the brokerage may enter into a written transaction brokerage agreement with respect to that property. Before entering into a transaction brokerage agreement, the industry member must clearly explain the differences in this role from that of sole agent, give the buyer and seller an opportunity to review the transaction brokerage agreement and answer any questions the parties may have. Discussion should especially include the differences in fiduciary duties that exist in a single agency situation and transaction brokerage.