

Exclusive Buyer Designated Brokerage Agreement

This form was developed by the Real Estate Council of Alberta for use in residential real estate.

Buyer: _____ **and** _____ **Buyer's Brokerage:** _____

Name _____ Brokerage Name _____
Name _____
Address _____ Address _____
(postal code) (postal code)
Phone: _____ Fax: _____ Phone: _____ Fax: _____
Email: _____ Email: _____

This Agreement is entered into by the Buyer and the Brokerage on the basis of the following facts:

- (a) the Buyer wishes to retain the services of the Brokerage and benefit from agency representation in the purchase of a property;
- (b) the Brokerage may also represent sellers in whose property the Buyer may be interested;
- (c) concurrent representation by the Brokerage of both the Buyer and such sellers, prevents the Brokerage from discharging the agency and fiduciary obligations it owes to each of the Buyer and such sellers;
- (d) concurrent representation is permitted by law only with the fully informed and voluntary consent of the Buyer;
- (e) the Buyer has received and read the *Agency Relationships Guide* published by the Real Estate Council of Alberta and this Agreement, and has been given an opportunity to seek further information and independent advice concerning representation by a designated agent and the other relationships discussed therein;
- (f) the Brokerage is prepared to designate separate agents to act as the sole agent for and in the best interests of the Buyer, on the one hand, and of any sellers also represented by the Brokerage in whose properties the Buyer may be interested on the other hand; and,
- (g) the Brokerage has in place policies and procedures to protect the confidential information of the Buyer and to ensure a designated agent does not communicate any information prejudicial to the interests of the Buyer to other members of the Brokerage, including other designated agents.

In consideration of the Brokerage assisting the Buyer to purchase a _____ property in the Market Area(s) described as: _____
(type of property)

_____ the Buyer hereby gives the Brokerage the exclusive right to act on behalf of the Buyer on the following terms:

1. TERM OF AGREEMENT

1.1 This Agreement will commence at _____ a.m./p.m. on the _____ day of _____, 20____ and will expire at _____ a.m./p.m. on the _____ day of _____, 20____.

2. APPOINTMENT OF DESIGNATED AGENT

- 2.1 The Brokerage designates _____ (the Designated Agent(s)) to serve as sole agent for the Buyer and, subject to clause 17, will designate other members of the Brokerage to serve as sole agents of any sellers represented by the Brokerage in whose properties the Buyer is interested.
- 2.2 If, for any reason, the Designated Agent ceases to be registered with the Brokerage, the Brokerage will designate another member of the Brokerage to serve as the sole agent for the Buyer.
- 2.3 The Brokerage will not appoint another brokerage to act on behalf of the Buyer as a subagent without the Buyer's prior written consent.

3. AGENCY RELATIONSHIP AND BROKERAGE'S RESPONSIBILITY

- 3.1 The Buyer agrees an agency relationship will exist only with the Designated Agent and not with the Brokerage.
- 3.2 The Buyer agrees the Brokerage's responsibilities will be limited to:
- (a) providing a true copy of this Agreement to the Buyer after all parties have signed;
 - (b) treating the interests of both the Buyer and sellers represented by the Brokerage in an even-handed, objective and impartial manner;
 - (c) ensuring compliance by the Designated Agent with the Brokerage's policies and procedures governing designated agents;
 - (d) supervising the Designated Agent and support staff to ensure the Designated Agent fulfills their mandate under this Agreement; and,
 - (e) holding all monies received by the Brokerage in trust in accordance with the provisions of the *Real Estate Act*.

4. BROKERAGE'S AND THE DESIGNATED AGENT'S UNDERTAKING

4.1 The Brokerage and the Designated Agent undertake that they have not, and will not, disclose any confidential information concerning the Buyer to any other member of the Brokerage or other person unless authorized by the Buyer or required by law.

5. NO ATTRIBUTION OF KNOWLEDGE

5.1 The Designated Agent's knowledge will not be attributed to the Brokerage or to its designated agents representing sellers.

6. DESIGNATED AGENT'S MANDATE

- 6.1 **Obligations:** The Designated Agent will:
- (a) obey the lawful instructions of the Buyer;
 - (b) exercise reasonable care and skill in the performance of this Agreement;
 - (c) use best efforts to seek out and advise the Buyer, in a timely manner, of properties available for sale in the Market Area(s) which may meet the Buyer's material requirements and generally promote the Buyer's interests;
 - (d) subject to clause 17, act only as the Buyer's Agent;
 - (e) subject to clause 17, be loyal to the Buyer and act in the Buyer's best interests at all times;
 - (f) make timely and full disclosure of all conflicts of interest that may arise between the Buyer's interests and those of the Brokerage, Designated Agent or sellers;
 - (g) at the earliest reasonable opportunity, advise any seller in whose property the Buyer is interested that the Designated Agent is the agent of the Buyer;
 - (h) not appoint another brokerage to act on behalf of the Buyer as a subagent without the Buyer's prior written consent;
 - (i) assist the Buyer in negotiating favourable terms and conditions with a seller;
 - (j) assist the Buyer in preparing and complying with a legally binding agreement of purchase and sale for the Property;
 - (k) use best efforts to discover relevant facts pertaining to any

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- property for which the Buyer is considering making an offer;
- (l) hold all monies received by the Brokerage in trust in accordance with the provisions of the of the *Real Estate Act*;
- (m) present, in a timely manner, all offers and counter-offers to and from the Buyer even where a property is already the subject of an agreement of purchase and sale;
- (n) disclose to the Buyer, in a timely manner, all relevant facts known to the Designated Agent affecting a property or a transaction;
- (o) keep the Buyer fully informed regarding the search for the property and any resulting transaction;
- (p) advise the Buyer to obtain expert advice on matters of importance to the Buyer;
- (q) subject to clause 13.1(b) disclose to the Buyer the existence and terms of any competing offers for a property in which the Buyer is interested known to the Designated Agent;
- (r) comply with all provisions of the *Real Estate Act* and its regulations, and the rules and bylaws of the Real Estate Council of Alberta; and
- (s) provide a true copy of this Agreement to the Buyer after all parties have signed.

6.2 Other Services: The Buyer requests, and the Designated Agent agrees to provide at the Buyer's expense, where applicable, the following additional services:

- (a) to advertise for suitable properties: Yes No
- (b) to assist the Buyer to arrange for inspections of a property; Yes No
- (c) to assist the Buyer to arrange for appraisals of a property; Yes No
- (d) to assist the Buyer in arranging for a search of title to a property; Yes No
- (e) the services listed below:

Buyer's initials

7. BUYER'S CONFIDENTIAL INFORMATION WILL BE PROTECTED

7.1 The Brokerage and Designated Agent undertake they will not use confidential information received from the Buyer, or obtained as a result of providing services under this Agreement, for their own gain or the gain of their employees or to the prejudice of the Buyer's interests.

8. USE AND DISTRIBUTION OF BUYER'S INFORMATION

8.1 The Buyer consents to the collection, use and disclosure of personal information by the Brokerage and Designated Agent for the purpose of this Agreement and such other use as is consistent with the purchase or prospective purchase of a property.

8.2 The Buyer agrees that information regarding any property purchased by the Buyer through the Brokerage and Designated Agent may be retained and disclosed by the Brokerage to any listing service(s) for reporting, appraisal and statistical purposes.

9. BROKERAGE'S FEE

9.1 Payment Security

(a) The Buyer will pay the Brokerage on the signing of this Agreement, the sum of _____

Dollars (\$ _____) which will be applied towards any remuneration payable by the Buyer to the Brokerage under clause 9.2 of this Agreement.

(b) These funds shall be refunded to the Buyer no later than _____ days after the expiry date of this Agreement if the remuneration is not earned according to clause 9.2. If the Buyer has signed a contract with a new brokerage as per clause 9.2(c), these funds shall be refunded forthwith to the Buyer.

9.2 **Remuneration:** The Buyer will pay the Brokerage as remuneration:

_____ (plus GST);

Buyer's initials

(a) if, during the term of this Agreement a legally enforceable purchase contract from whatever source obtained is entered into between the Buyer and a seller (other than a seller or a property that has been specifically excluded in writing from this Agreement) and the purchase is subsequently completed, or the Buyer, without legal justification fails to complete the purchase; or

(b) if, within _____ days of the expiration of this Agreement (the Hold-Over Period), a legally enforceable purchase contract is entered into between the Buyer and a seller (other than a seller or a property that has been specifically excluded in writing from this Agreement) whose property was introduced to the Buyer during the term of this Agreement by whatever means or person; and whether or not the Brokerage is the effective cause of such purchase contract and the purchase is completed or the Buyer without legal justification fails to complete the purchase; except this clause will not apply where the Buyer has signed another buyer brokerage agreement after the expiration of this Agreement and remuneration is payable to another brokerage according to the terms of that other buyer brokerage agreement as a result of a purchase.

9.3 Source of Remuneration

(a) The Buyer authorizes the Brokerage to request payment of the remuneration specified in clause 9.2 or part thereof from:

(i) the Brokerage representing the seller; or Yes No

Buyer's initials

(ii) the Seller, where the Seller has not listed the property with a Brokerage; Yes No

Buyer's initials

(b) Where the amount so received by the Brokerage plus the Payment Security:

(i) exceeds the remuneration and GST specified in clause 9.2, then the excess will immediately be paid by the Brokerage to the Buyer; or

(ii) is less than the remuneration and GST specified in clause 9.2 then the shortfall will immediately be paid by the Buyer to the Brokerage.

9.4 Payment of Remuneration

The Buyer will pay the remuneration to the Brokerage no later than the _____ business day after the purchase is completed unless the Buyer and the Brokerage otherwise agree in writing. A purchase is completed when the purchase price is paid to the seller or the seller's lawyer and is releasable. Any holdbacks or conditions accepted by the seller or the seller's lawyer will not delay the payment of remuneration to the Brokerage.

9.5 Alternative Remuneration

If during the term of this Agreement, the Buyer should withdraw from the market, the Buyer will reimburse the Brokerage for all reasonable expenses incurred in the performance of this Agreement prior to the date on which the Buyer notifies the Brokerage in writing of the Buyer's decision, provided that such reimbursement will not prejudice any other claim to remuneration to which the Brokerage may become entitled under clause 9 of this Agreement.

9.6 Limitation on Other Remuneration

Subject to clause 9.3, the Brokerage agrees not to accept any other remuneration, whatever its form (including a finder's fee, referral fee or gift) and from whatever source (including the seller, another brokerage or a contractor), directly or indirectly related to its agency under this Agreement unless, before accepting such remuneration, the Brokerage has:

(a) fully disclosed in writing to the Buyer all relevant facts relating to the offer of remuneration including the maximum amount to be received; and,

(b) obtained the Buyer's written consent to the Brokerage receiving such remuneration

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10. DUTIES OF THE BUYER

- 10.1 The Buyer agrees to provide the Designated Agent with sufficient personal and financial information to enable the Designated Agent to determine the Buyer's ability to purchase real estate.
- 10.2 The Buyer will:
- (a) make reasonable efforts to communicate and cooperate with the Designated Agent in a timely manner;
 - (b) provide the Designated Agent with all information necessary to identify properties in the Market Area(s) in which the Buyer may be interested; and,
 - (c) immediately advise the Designated Agent of any material change in information provided to the Designated Agent.
- 10.3 The Buyer will immediately advise the Brokerage and the Designated Agent during the term of this Agreement and during the Hold-Over Period of all:
- (a) inquiries by, and all offers to sell from, interested sellers introduced to the Buyer during the term of this Agreement or their representatives received by the Buyer;
 - (b) offers to sell presented to the Buyer by, or made to the Buyer, from a seller introduced to the Buyer during the term of this Agreement which is accepted by the Buyer or a seller as the case may be and will deliver such offer to the Brokerage.

11. BUYER'S WARRANTY

- 11.1 The Buyer warrants that the Buyer:
- (a) is not currently represented by any other brokerage and will not enter into another Exclusive Buyer Brokerage Agreement or Exclusive Buyer Designated Brokerage Agreement with another brokerage during the term of this Agreement with respect to the same Market Area(s); and,
 - (b) has disclosed to the Brokerage and Designated Agent all of the material requirements that the Buyer is seeking in a property.

12. INDEMNIFICATION

- 12.1 The Buyer will hold harmless and indemnify the Brokerage and Designated Agent for any claims that may arise from its reasonable and good faith reliance on representations made, or information provided, by the Buyer.

13. ADDITIONAL TERMS

- 13.1 The Buyer agrees that:
- (a) subject to clause 17, the Brokerage and Designated Agent may represent other sellers and buyers;
 - (b) the Brokerage and the Designated Agent cannot disclose to the Buyer confidential information obtained through any other agency relationship to which the Brokerage or Designated Agent is or has been a party;
 - (c) the Brokerage or Designated Agent will not be obligated to seek additional properties of interest to the Buyer once the Buyer is a party to an unconditional agreement of purchase and sale for a property;
 - (d) if a property purchased is owned by a limited company, a purchase of shares representing a controlling interest in the limited company will constitute a purchase for the purposes of this Agreement; and,
 - (e) this Agreement will be governed by the laws of the Province of Alberta and the Buyer and the Brokerage and Designated Agent will submit to the jurisdiction of the Courts of the Province of Alberta for the resolution of any disputes that may arise out of this Agreement.

13.2 _____

14. ENDING THIS AGREEMENT

- 14.1 Without prejudice to the acquired rights of the Buyer or the Brokerage, this Agreement will terminate on:
- (a) the expiration of the term of this Agreement as specified in clause 1;
 - (b) on an earlier date than that specified in clause 1 if mutually agreed to by the Buyer and the Brokerage in writing;
 - (c) a completed purchase of a property;
 - (d) the suspension or cancellation of the Brokerage's licence to trade in real estate;
 - (e) the bankruptcy or insolvency of the Brokerage or if it is in receivership.
- 14.2 Where a party to this Agreement has materially breached this Agreement, the other party may, at its option, end this Agreement by notice in writing to the party in breach.

15. BROKERAGE'S DUTIES ON ENDING OF AGREEMENT

- 15.1 When this Agreement ends, the Brokerage and Designated Agent will immediately:
- (a) cease efforts to seek out and advise the Buyer of properties for sale in the Market Area(s);
 - (b) return all documents and other materials, if any, provided by the Buyer.

16. BROKERAGE'S CONTINUING DUTIES

- 16.1 Ending this Agreement for whatever reason does not relieve the Brokerage and Designated Agent of their duties to account for all monies received by the Brokerage and confidentiality to the Buyer.

17. CHANGE IN REPRESENTATIVE CAPACITY OF THE DESIGNATED AGENT

- 17.1 If the Designated Agent is the agent of a seller and the Buyer wishes to view that seller's property, the Designated Agent will:
- (a) disclose this fact to both the Buyer and the seller; and,
 - (b) unless instructed otherwise by the seller, facilitate the viewing of the Property by the Buyer and make available the marketing information that is available to all potential buyers; however, the mere viewing of the property will not mean the Buyer is interested in the Property for the purposes of clause 17.2 below.
- 17.2 If the Designated Agent is also the agent of a seller in whose property the Buyer is interested, the Designated Agent will:
- (a) immediately advise the Buyer and the seller of all relevant facts and of the implications of concurrent representation;
 - (b) give the Buyer and the seller an opportunity to seek independent advice;
 - (c) obtain the written informed consent of the Buyer to the Brokerage continuing to provide services to the seller and the Buyer in a Transaction Brokerage relationship on the terms and conditions specified in the Designated Agency Transaction Brokerage Agreement and in the *Agency Relationships Guide* published by the Real Estate Council of Alberta prior to writing the offer; and
 - (d) obtain the written informed consent of the seller to the Brokerage continuing to provide services to the seller and the Buyer in a Transaction Brokerage relationship on the terms and conditions specified in the Designated Agency Transaction Brokerage Agreement and in the *Agency Relationships Guide* published by the Real Estate Council of Alberta prior to presenting the Buyer's offer to the seller.
- 17.3 Should the Designated Agent and the Brokerage decide not to enter into a Designated Agency Transaction Brokerage Agreement or should either the Buyer or seller refuse to consent to Transaction Brokerage, the Designated Agent will continue to represent the party, be it the Buyer or the seller, with whom it first entered into an agency relationship and the Brokerage will offer to designate another member of the Brokerage to represent the other party as sole agent, to treat the other party as a customer, or to refer the other party to another brokerage.

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18. DEFINITIONS

- 18.1 For the purposes of this Agreement:
(a) "buyer" means a person acquiring or attempting to acquire an interest in real estate by purchase;
(b) "purchase" includes an exchange, option, lease or other acquisition of an interest in real estate;
(c) "sale" includes an exchange, option, lease or other disposition of an interest in real estate;
(d) "seller" means a person disposing or attempting to dispose of an interest in real estate by sale;
(e) "concurrent representation" means a situation in which a brokerage or an industry member represents two or more parties to a trade whose interests are seen to be in conflict; and,
(f) "purchase is complete" when the purchase price is paid to the seller or the seller's lawyer and is releasable.

SIGNED AND DATED
this _____ day of _____, 20_____.

Signature of Buyer _____

Print Name of Buyer _____

Signature of Witness _____

Print Name of Witness _____

Signature of Buyer _____

Print Name of Buyer _____

Signature of Witness _____

Print Name of Witness _____

Signature of Brokerage Representative _____

Print Name _____

Signature of Witness _____

Print Name of Witness _____

Signature of Designated Agent _____

Print Name _____

Signature of Witness _____

Print Name of Witness _____

19. THIS AGREEMENT

19.1 This Agreement includes, if signed by the Buyer and attached to this Agreement, the following documents:

19.2 No change to the terms of this Agreement shall be effective unless it is in writing and signed by the Seller and the Brokerage.

19.3 If there is conflict or discrepancy between any provision added to this Agreement and any provision in the standard portion hereof, the added provision will supersede the standard provision to the extent of such conflict or discrepancy.

19.4 This Agreement will constitute the entire agreement between the Buyer, the Brokerage and the Designated Agent and there are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as expressed herein.

19.5 This Agreement will be read with all changes of number required by the context.

20. BUYER'S ACKNOWLEDGEMENT

21.1 The Buyer, having received and read both this Agreement and the Agency Relationships Guide, and having been given the opportunity to request further information concerning this Agreement and the representation relationships described in the guide, acknowledges this Agreement accurately sets out the terms agreed to by the Buyer, the Brokerage and the Designated Agent.

21.2 This Agreement may be signed by the parties and transmitted by fax. This procedure will be as effective as if the parties had signed and delivered an original copy.