



## SERVICE AGREEMENTS – REAL ESTATE BROKERAGE

**Summary: Real estate brokers registered with a brokerage enter into service agreements on behalf of the brokerage. In the service agreement the client agrees to hire or engage the brokerage to act on their behalf in a real estate transaction. A brokerage that wishes to enter into a client relationship should enter into a written service agreement unless declined by the prospective client. If a brokerage wishes to enter into an exclusive seller or buyer brokerage agreement, the service agreement must be in writing. [*Real Estate Act*, s.1(1)(w.1), s.18(2), s.22(a), s.23, s.24, *Real Estate Act* Rules s.1(1)(g), s.43, s.56, s.60.1]**

*Note: For the purposes of this Information Bulletin, “brokerage” means real estate brokerage and “individual industry members” means those individuals who hold a real estate licence as a broker, associate broker or associate and are registered with a licensed brokerage.*

### Brokerage Agreements are Service Agreements

The *Real Estate Act* defines service agreement as “a contract that establishes the relationship between the parties as to the services and obligations to be performed by an industry member.” [*Real Estate Act*, s.1(1)(w.1)] The *Real Estate Act* Rules define a client as “a person who has entered into a service agreement with an industry member in accordance with these rules, whether or not that service agreement is in writing.” [*Real Estate Act* Rules s.1(1)(g)]

Therefore, in the context of the real estate brokerage business, a service agreement is a contract between a brokerage and a client. The client agrees to hire or “engage” the services of the brokerage to act on their behalf in a real estate transaction. The brokerage agrees to provide the services specified in the contract and fulfill various obligations to the client. Individual industry members registered with a real estate brokerage enter into service agreements on behalf of the brokerage and represent the brokerage in the delivery of the agreed upon services.

For sellers, the service agreement is a seller brokerage agreement (also referred to as a “listing agreement”). For buyers, the service agreement is a buyer brokerage agreement (also referred to as a “buyer agency agreement”). It is important to understand only a licensed real estate brokerage can enter into a brokerage agreement with a client. How this occurs will vary from brokerage to brokerage. Typically, however, the authority to enter into brokerage agreements is delegated to the individual industry members registered with the brokerage. In all cases, the individual industry members enter into such agreements on behalf of the brokerage, i.e. the licensed entity.

### Brokerage Agreements Should be in Writing

In accordance with *Real Estate Act* Rules s.43(1), an industry member who wishes to enter into a client relationship should enter into a written service agreement with that prospective client unless declined by a prospective client. In order for a prospective

client to decline a written service agreement, that prospective client must have been provided appropriate information and documentation to make an informed decision. For example in the situation of a prospective buyer, the buyer should be informed of the obligations of an industry member (*Real Estate Act* Rules s.58) and the services (*Real Estate Act* Rules s.55(1)(a)) to be provided to the buyer and the buyer's obligation to the brokerage. Appropriate documentation may include a copy of the Exclusive Buyer Brokerage Agreement.

Clearly, a written agreement is preferable to an oral agreement because it documents the provisions of the service arrangement, and the relationship between the industry member and the client. It includes the nature of the services to be provided, responsibilities of parties, amount or method of calculating the remuneration to be paid to the industry member, duration of the agreement and provisions for termination of the agreement.

### **Exclusive Brokerage Agreements Must be in Writing**

It is important for real estate brokers to recognize if they are entering into an exclusive right to represent a client, that is, an exclusive seller brokerage agreement (listing) or exclusive buyer brokerage agreement, the service agreement must be in writing and must comply with the provisions contained in the *Real Estate Act* Rules or prescribed by Council [*Real Estate Act* Rules s.56].

### **Written Service Agreements – Basic Requirements**

The *Real Estate Act* Rules establish a number of basic requirements that must be incorporated in all written service agreements [s.43(2)]. Every written service agreement shall:

- (a) be signed by the relevant parties
- (b) clearly show all terms and conditions of the agreement and shall include:
  - (i) the names of the parties to the agreement;
  - (ii) if applicable, the address or legal description of the property affected by the agreement;
  - (iii) if applicable, the date on which the agreement will become effective;
  - (iv) the duration of the agreement;
  - (v) the services to be provided by the brokerage;
  - (vi) the responsibilities of each party to the agreement;
  - (vii) the use and distribution of personal and confidential information;
  - (viii) the amount or method of calculating the remuneration or alternate compensation to be paid and the circumstances on which it will be payable;
  - (ix) provisions for the termination of the agreement; and,
- (c) provide that any amendment or addition to the terms of the agreement shall be in writing and signed by the relevant parties.

A real estate broker must deliver to a client a true copy of the service agreement and of any amendment or addition, immediately upon its signature

In addition to these basic requirements, the Real Estate Council of Alberta has mandated specific wording for various industry member-client relationships when real estate brokers trade in residential real estate [*Real Estate Act* Rules s.60.1]. It is the

responsibility of real estate brokers trading in residential real estate to ensure the contracts they are using meet these requirements. The mandatory wording for these forms can be found in the *Real Estate Act* Rules, Schedule 1.

### Practice Tip

Written service agreements have many practical advantages. By documenting an arrangement with a client, a real estate broker clearly outlines his or her role and the types of services they will be provide to the client, which reduces the likelihood of misunderstandings and provides certainty for the client. Written service agreements clarify expectations and promote positive relationships with clients.

In addition to the above, there are important business reasons for written service agreements. In the event of a legal dispute, a written agreement provides greater certainty as to what was agreed to between the parties. It is a critical issue when a brokerage is seeking to collect unpaid commissions, remuneration or fees as a result of providing services to a client. Legal action to collect unpaid commissions or remuneration owing cannot be brought against a client unless the service agreement on which recovery is sought is in writing and signed by the party to be charged [*Real Estate Act* s.22].

To assist real estate brokers in making the distinction between a client and a customer, see RECA Information Bulletin: *Customer – Real Estate Brokerage*.