

Working With a Realtor



Working With a REALTOR : The Agency Relationship

By Brian Madigan LL.B.

The entire concept of agency is much misunderstood particularly when it comes to real estate. So, let's have a look at the brochure commonly used in Ontario.

This is the "official" version, and real estate agents are required to have it signed and placed in their clients' file folders for subsequent review and inspection on audit by the Real Estate Council of Ontario.

The document is entitled "Working With a Realtor The Agency Relationship, and is reproduced in its entirety as follows:

"In real estate, there are different possible forms of agency relationship:

1. Seller representation

When a real estate brokerage represents a seller, it must do what is best for the seller of a property.

A written contract, called a listing agreement, creates an agency relationship between the seller and the brokerage and establishes seller representation. It also explains services the brokerage will provide, establishes a fee arrangement for the REALTOR's services and specifies what obligations a seller may have.

A seller's agent must tell the seller anything known about a buyer. For instance, if a seller's agent knows a buyer is willing to offer more for a property, that information must be shared with the seller.

Confidences a seller shares with a seller's agent must be kept confidential from potential buyers and others.

Although confidential information about the seller cannot be discussed, a buyer working with a seller's agent can expect fair and honest service from the seller's agent and disclosure of pertinent information about the property.

2. Buyer representation

A real estate brokerage representing a buyer must do what is best for the buyer.

A written contract, called a buyer representation agreement, creates an agency relationship between the buyer and the brokerage, and establishes buyer representation. It also explains services the brokerage will provide, establishes a fee arrangement for the REALTOR's services and specifies what obligations a buyer may have.

Typically, buyers will be obliged to work exclusively with that brokerage for a period of time.

Confidences a buyer shares with the buyer's agent must be kept confidential.

Although confidential information about the buyer cannot be disclosed, a seller working with a buyer's agent can expect to be treated fairly and honestly.

3. Multiple representation

Occasionally a real estate brokerage will represent both the buyer and the seller. The buyer and seller must consent to this arrangement in writing. Under this multiple representation arrangement, the brokerage must do what is best for both the buyer and the seller.

Since the brokerage's loyalty is divided between the buyer and the seller who have conflicting interests, it is absolutely essential that a multiple representation relationship be properly documented. Representation agreements specifically describe the rights and duties of everyone involved and any limitations to those rights and duties.

4. Customer service

A real estate brokerage may provide services to buyers and sellers without creating buyer or seller representation. This is called "customer service."

Under this arrangement, the brokerage can provide many valuable services in a fair and honest manner. This relationship can be set out in a buyer or seller customer service agreement.

Real estate negotiations are often complex and a brokerage may be providing representation and/or customer service to more than one seller or buyer. The brokerage will disclose these relationships to each buyer and seller.

Who's working for you?

It is important that you understand who the REALTOR is working for. For

example, both the seller and the buyer may have their own agent which means they each have a REALTOR who is representing them.

Or, some buyers choose to contact the seller's agent directly. Under this arrangement the REALTOR is representing the seller, and must do what is best for the seller, but may provide many valuable customer services to the buyer.

A REALTOR working with a buyer may even be a "sub-agent" of the seller. Under sub-agency, both the listing brokerage and the cooperating brokerage must do what is best for the seller even though the sub-agent may provide many valuable customer services to the buyer.

If the brokerage represents both the seller and the buyer, this is multiple representation.

Code of Ethics

REALTORS believe it is important that the people they work with understand their agency relationship. That's why requirements and obligations for representation and customer service are included in a Code of Ethics which is administered by the Real Estate Council of Ontario.

The Code requires REALTORS to disclose in writing the nature of the services they are providing, and encourages REALTORS to obtain written acknowledgement of that disclosure. The Code also requires REALTORS to submit written representation and customer service agreements to buyers and sellers.

Acknowledgement by

(Names)

I/we have read and understand the Working with a REALTOR - The Agency Relationship brochure:

Buyers

As buyer(s), I/we understand that

(Name of Brokerage)

Is (initial one)

_____ Representing my interests, to be documented in a separate written agency representation agreement, and I understand the brokerage may represent and/or provide customer service to other buyers and sellers.

_____ Not representing my interests, to be documented in a separate written customer service agreement, but will act in a fair, ethical and professional manner.

Signature Date

Sellers

As seller(s) I/we understand that:

(Name of Brokerage)

Is (initial one)

_____ Representing my interests, to be documented in a separate written agency representation agreement, and I understand the brokerage may represent and/or provide customer service to other sellers and buyers.

_____ Not representing my interests, to be documented in a separate written customer service agreement, but will act in a fair, ethical and professional manner.

Signature Date

This form is for information only and is not a contract.”

The above document is to be acknowledged as having been read, and the sellers can elect between client and customer status. If they refuse to sign, the agent is to make a note to that effect and place it in the file.

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