

Approved by the Nova Scotia Real Estate Commission (NSREC) for use by licensees under the *Nova Scotia Real Estate Trading Act*.
The NSREC is the regulatory body for real estate in Nova Scotia.

This is not a service agreement and does not impose any contractual obligations. This is a disclosure document only.

Responsibilities of buyers and sellers—As a buyer or seller you should carefully read all documents and understand what you are signing. If you need specialized advice, consult other professionals, such as lawyers, accountants, home inspectors, contractors, engineers and surveyors. Always obtain written confirmation about details you and your real estate representative feel are pertinent to a successful transaction.

TWO AGENCY MODELS

There are two different agency models practiced by brokerages in Nova Scotia: common law agency and designated agency. The real estate representative reviewing this agency form with you will indicate which model their brokerage uses.

COMMON LAW AGENCY

Under common law, agency is with the brokerage. All real estate representatives licensed with the brokerage represent all of the clients of the brokerage and are deemed to know all relevant information about those clients. For example, when any real estate representative at a common law brokerage enters into agency with a buyer/seller, every real estate representative at the brokerage is immediately considered to be a representative of that buyer/seller and owes that buyer/seller undivided loyalty, advice and advocacy. This is why a common law brokerage that represents a buyer and a seller in a single transaction must substantially limit their duties to each party and employ transaction brokerage or refer to another brokerage or treat one party as a customer.

DESIGNATED AGENCY

Under designated agency, the agency relationship is only with the designated agent specified in the brokerage agreement, not with the brokerage, and not with any other real estate representatives licensed with the brokerage. Unlike common law, when any real estate representative(s) at a designated agency brokerage enters into agency with a buyer/seller, only the representative(s) specified in the brokerage agreement as the designated agent represents the buyer/seller and owes that buyer/seller undivided loyalty, advice and advocacy. It is the brokerage's job to put policies and procedures in place to protect the confidential information of all brokerage clients and ensure the designated agent does not communicate any information prejudicial to the interests of clients to other licensees of the brokerage. This is how a designated agency brokerage can represent a buyer and a seller in a single transaction with full agency representation to both parties, as long as both parties have different designated agents.

DEFINITIONS

The following terms are used in most NSREC mandatory forms.

Brokerage—the real estate company under which the individual salesperson, associate broker, managing associate broker or broker is licensed.

Buyer—a person acquiring or attempting to acquire an interest in real estate by purchase.

Client—a Buyer/Seller who has engaged a brokerage in an agency relationship to act for them, and on their behalf, either to buy or sell real estate.

Customer—a person who is engaged with a brokerage in a non-agency relationship to buy or sell real estate.

Facilitation Services—services that do not require the exercising of discretion or judgment, giving confidential advice or advocating on behalf of either the buyer or the seller.

Material Latent Defect—a fault in the property that would not be discovered by a reasonably thorough building inspection that can have a serious impact on the value of the property or involve health and/or safety issues.

Purchase—includes any trade, exchange, option, lease or other acquisition of an interest in real estate.

Sale—includes any trade, exchange, option, lease or other disposition of an interest in real estate.

Seller—a person disposing or attempting to dispose of an interest in real estate by sale.

Trade or Trading—includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, commercial lease or rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt.

Transaction Brokerage—a relationship in which a brokerage and/or a designated agent provides facilitation services to the buyer and the seller in the same trade.

CLIENT RELATIONSHIP

Real estate representatives work with clients in a legal relationship called agency. As the client, the agency relationship exists between you and the brokerage under common law agency, or between you and the designated agent under designated agency. The essence of the agency relationship is that the brokerage and/or the designated agent has the authority to represent you as a client in real estate dealings with others.

Brokerages and/or designated agents are legally obligated to protect and promote your interests. Your real estate representative has the following duties:

- ✓ to protect and promote your negotiating position at all times;
- ✓ to disclose all relevant facts about a property or a transaction, including material latent defects;
- ✓ to obey all your lawful instructions;
- ✓ to provide undivided loyalty;
- ✓ to act in your best interest;
- ✓ to keep your confidence;
- ✓ to exercise reasonable care and skill in performing all assigned duties; and
- ✓ to account for all money and property placed in their possession while acting on your behalf.

Your real estate representative will also:

- ✓ explain real estate terms and practices;
- ✓ provide and explain forms used;
- ✓ identify and estimate service costs of other professionals involved in a transaction;
- ✓ assist you with negotiation;
- ✓ prepare offers and counter offers at your direction;
- ✓ present all offers promptly; and
- ✓ give you true copies of all agreements.

TRANSACTION BROKERAGE

IMPORTANT: If you are in transaction brokerage do not provide the transaction facilitator with any information you do not want the other party to know, subject to limitations defined in other agreement(s).

Transaction brokerage occurs when a real estate brokerage or a designated agent enters into an agreement, in which the brokerage or the designated agent acts as an impartial facilitator for the seller and the buyer in the same trade.

As an impartial facilitator, the brokerage or the designated agent treats the buyer and the seller in an even-handed and impartial manner. Under transaction brokerage, the brokerage or the designated agent acts as an impartial facilitator for both parties, not exclusively in the best interest of one party as the brokerage or designated agent would in a client relationship.

No one is obligated to proceed with a real estate transaction under transaction brokerage. Both the buyer and seller must be provided with an opportunity to obtain independent advice.

Either the seller or the buyer may obtain representation from another brokerage and/or designated agent, or be treated as a customer as an alternative to transaction brokerage. All parties must consent, in writing, to transaction brokerage before an Agreement of Purchase and Sale is prepared. Failing which, treat one party as a customer, or be referred to another brokerage/designated agent to receive representation.

Under transaction brokerage, the real estate representative will, for both the buyer and seller include the following, but not limited to:

- ✓ explain real estate terms and practices; and
- ✓ identify and estimate service costs of other professionals involved in a transaction.

Under this relationship, the real estate representative cannot:

- ✗ provide utmost loyalty to the Buyer and the Seller;
- ✗ act in the best interests of either the Buyer or the Seller;
- ✗ offer advice or recommendations to either the Buyer or the Seller; and
- ✗ disclose confidential information learned in the previous relationships to either the Buyer or the Seller.

CUSTOMER RELATIONSHIP

IMPORTANT: If you are in a customer relationship do not provide the real estate representative with any information you do not want the other party to know, subject to limitations defined in other agreement(s).

A buyer or a seller may also choose to use the services of a real estate representative without an agency relationship. For example, this might occur when a real estate representative is showing you their seller client's property or when they approach a seller directly on behalf of their buyer client.

In this relationship, the real estate representative has a legal and ethical duty to provide accurate and honest answers to questions and can provide the following services:

- ✓ explain real estate terms and practices; and
- ✓ identify and estimate service costs of other professionals involved in a transaction.

The real estate representative cannot:

- ✗ provide utmost loyalty to the Buyer and the Seller;
- ✗ act in the best interests of either the Buyer or the Seller;
- ✗ offer advice or recommendations to either the Buyer or the Seller; and
- ✗ disclose confidential information learned in the previous relationships to either the Buyer or the Seller.

PRIVACY AND USE OF PERSONAL INFORMATION

Real estate representatives respect the privacy expectations of consumers and the requirements imposed by law. Your informed consent is required for the collection, use and retention of your personal information. Making you aware of how your personal information will be used, to whom it will be disclosed and how long it will be stored forms a basis of a relationship of trust between you and your real estate representative.

Real estate representatives are required by federal law to collect information that confirms the identity of buyers and sellers. In addition, to assist in the marketing and sale of a property, real estate representatives must collect information including: listing price, purchase price, listing duration, interior and exterior photos and assessment information. Your real estate representative must disclose the information collected to his or her broker.

Real estate representatives will disclose the information to other brokerages, potential buyers and interested parties during the course of marketing of the property for sale, as well as through the sales process. In addition, all or some of it will be disclosed to the Nova Scotia Association of REALTORS®, government departments, appraisers, municipal organizations and others. Some of the information will be compiled in statistics for use in comparative sales analyses by appraisers and brokerages, as well as consumers. Some or all of the information, including the purchase price, may be published and distributed in print, before the closing in accordance with MLS® rules, and made available on the internet through public websites including those maintained by real estate representatives and brokerages, and by the Canadian Real Estate Association on realtor.ca.

I understand that the brokerage/real estate licensees have an obligation to comply with the provisions of the *Nova Scotia Real Estate Trading Act* (the "Act"), and NSREC Bylaw, and that this may include providing my personal information to the NSREC for the purpose of audit, inspection, review and related purposes. I consent to the disclosure of my personal information as identified above.

Retention of Information: All information is collected by each real estate representative is retained by their brokerage for at least seven (7) years. This allows the brokerages to meet its obligations to all government and regulatory authorities.

ACKNOWLEDGEMENT

I acknowledge having received and read this agency form from the real estate representative named below and have obtained satisfactory answers to any questions that it raised. I understand the relationships that may occur between a real estate representative and me. I further understand that I may sign additional documentation acknowledging the type of relationship that I will receive.

This is not a service agreement and does not impose any contractual obligations.

Name of real estate representative: _____

Brokerage: _____

Agency model practiced: Common Law
 Designated Agency

Signature of Seller/Buyer: _____

Signature of Seller/Buyer: _____

Date: _____

If you have concerns or questions about your real estate transaction, contact the Nova Scotia Real Estate Commission

P: 902-468-3511 • 601-1595 Bedford Highway, Bedford, NS, B4A 3Y4 • www.nsrec.ns.ca • info@nsrec.ns.ca