

nova scotia real estate COMMISSION



Practical Guide for Sellers

Practical Guide for Sellers

What you need to know about selling a home

Selling a house is a complex and sometimes stressful operation. This is why the Nova Scotia Real Estate Commission prepared this booklet, which contains the main steps you need to follow before, during and after the sale of your home. In it, you will find many useful tips to guide you and help you complete your real estate transaction in a satisfactory manner.

With the compliments of:



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Role of real estate professionals

Why use a real estate professional?

Buying and selling real estate requires extensive technical knowledge. This is why we recommend that you use the services of a real estate brokerage to make sure that all the steps involved in buying and selling real estate are completed in accordance with good trade practices.

The main function of real estate industry members (brokers and salespeople) is to act as intermediary in the purchase or sale of real estate. Industry members play a prospecting role by finding real estate for the buyer and a buyer for the seller's property; they play a negotiating role by facilitating communications between the parties involved and, mainly, they play an advisory role and help the parties define their needs and complete their real estate transaction in a satisfactory manner.

Distinction between classes of real estate licenses

A broker is responsible for the supervision of a brokerage, its staff, and its industry members. A broker ensures the business is run competently and in accordance with the *Real Estate Trading Act*, the *Commission Bylaw*, and the *Policies and Procedures*. A broker may also choose to trade in real estate, representing buyers and sellers.

A managing associate broker is authorized to operate or manage a brokerage under the supervision of a broker. An example of a managing associate broker role is a franchise branch manager. Brokers and managing associate brokers are the only industry members authorized to make management decisions and give management directives within a brokerage.

An associate broker is licensed to trade in real estate under the supervision of a licensed broker. This licence permits salespeople to achieve and be recognized for possessing a higher level of education. An associate broker has the same responsibilities as a salesperson.

A salesperson performs all the functions of a real estate professional while working under the supervision and direction of a broker.

Compulsory licensing

All industry members in Nova Scotia must hold a licence issued by the Nova Scotia Real Estate Commission. A consumer who carries out a real estate transaction through an unlicensed person is not protected under the *Real Estate Trading Act*, because the protection mechanisms apply only when the consumer deals with a professional recognized under the law. Before you do anything, check with the Commission to make sure your industry member is licensed by the Commission.

Duties and obligations of real estate brokers and salespeople

Real estate brokerage is a profession that is regulated and controlled to protect the public in real estate transactions. The *Real Estate Trading Act*, the *Commission Bylaw* and the *Policies and Procedures* define how the profession is to be practiced and hold brokerages and its industry members accountable, so that consumers are served fairly and competently.

Loyalty to the client

Industry members are bound by a strict obligation of loyalty to their clients, whose rights they are bound to promote and protect. They must act equitably toward each party to a real estate transaction.

Obligation to disclose

If your industry member has a personal relationship with the other party or if they are acting on their own behalf, they must inform you, in writing, before signing the *Agreement of Purchase and Sale*.

Examples of personal relationships are:

- Family and self
- Business associates
- Ongoing client relationships

Similarly, if your industry member is to receive compensation from a financial institution or a professional recommended by them, they must also inform you in writing and request your approval.

Advising and informing objectively and accurately

As your representative, your industry member must advise and inform you objectively and must provide you with all the explanations you need to fully understand and appreciate the services they are providing. They must also inform you of any factors that could negatively impact the transaction.

Industry members are responsible for verifying the accuracy of all information they supply to clients and customers. Your industry member must be able to demonstrate the accuracy of the information they provide using relevant documentation.



Consumer protection mechanisms



Professional development

All industry members are required to complete continuing professional education annually. Courses are based on subjects that provide industry members with a higher level of skills and knowledge to help them protect the public.

Entrance exam

The profession's entrance exam ensures that industry members possess the knowledge and competence required to provide adequate service.

Brokerage audits

The Commission ensures that the work methods of real estate industry members are in accordance with the rules of the profession. To ensure brokerages are operating within the rules, the Commission's compliance team conducts yearly audits and makes recommendations as necessary.

Complaints and investigations

As the regulatory body for real estate in Nova Scotia, the Commission handles all public complaints about the conduct and actions of industry members. Complaints must be submitted in writing, which are then investigated by the Commission's compliance department. If an industry member's actions appear to violate the *Act* or the *Bylaw*, charges may be laid. If an industry member is in violation of the *Act* or the *Bylaw*, penalties range from letters of reprimand to permanent licence cancellation. It is important to note that the Commission does not award damages.

Professional liability insurance

All industry members are required to carry errors and omissions insurance.

Recovery Fund

The Recovery Fund exists to compensate consumers where an industry member has caused a customer or client a financial loss through fraud or breach of trust.



Agency relationships

What is an agency relationship?

An industry member may or may not have an agency relationship with you. If you are a client, you are in an agency relationship; if you are a customer, you are not in an agency relationship. As a client, the industry member and brokerage have a much higher level of responsibility to you than if you are a customer. The following sections explain agency and the obligations industry members have to both clients and customers.

About common-law agency

In common-law agency, the agency relationship is between the client and the brokerage. Under common law, all industry members at the brokerage are deemed to know all relevant transaction information about principals (buyers and sellers with whom the brokerage has an agency relationship). When any industry member employed by a common-law brokerage represents a buyer or a seller, every industry member at the brokerage is immediately considered to be a representative of that buyer/seller and therefore owes that buyer/seller undivided loyalty, advice and advocacy.

About designated agency

In a designated-agency brokerage, the contract is between the client and the brokerage, but representation is by the industry member(s) specified in the *Brokerage Agreement* (the designated agent), not all industry members employed by the brokerage. In a designated agency situation, a seller and a buyer can receive the full benefit of agency representation, complete with the undivided loyalty, advice, and advocacy of their respective industry members, while the brokerage remains impartial. The brokerage's responsibility is to ensure that each of the industry members acts in accordance with their respective agency responsibilities, and that the confidential information of the seller and buyer remains confidential.

Seller or buyer agency with you as a client

Most sellers and buyers have an agency relationship with the industry member they are using. When you are in an agency relationship with a brokerage, the industry member has the authority to represent you in real estate dealings with others.

Brokerages and their representatives are legally obligated to protect and promote the interests of their principals (clients). Specifically, the industry member has the following duties:

1. Undivided loyalty. The industry member must protect the principal's negotiating position at all times, and disclose all known facts which may affect or influence the principal's decision.
2. To obey all lawful instructions of the principal.
3. To keep the confidences of the principal.
4. The exercise of reasonable care and skill in performing all assigned duties.
5. The duty to account for all money and property placed in an industry member's hands while acting for the principal.

You can expect competent service from your industry member, knowing that the brokerage is bound by ethics and the law to be honest and thorough in representing a buyer or representing a property listed for sale.

Transaction brokerage with both the buyer and the seller

Transaction brokerage occurs when one industry member (designated agency) or one brokerage (common law) is representing both a buyer and seller in the same transaction. Because the industry member has promised a duty of confidentiality, loyalty and full disclosure to both parties simultaneously, it is necessary to limit these duties in this situation, if both parties consent.

Under designated agency, two designated agents may fully represent both parties and transaction brokerage is not necessary.

If you find yourself involved in a transaction brokerage relationship, before making or receiving an offer, both you and the other party will be asked to consent in writing to this new agency relationship.

This relationship involves the following limitations:

1. The industry member deals with the seller and the buyer impartially;





2. The industry member has a duty of disclosure to both the seller and the buyer except that,
 - the industry member cannot disclose that the buyer is willing to pay a price or agree to terms other than those contained in the offer, or that the seller is willing to accept a price or terms other than those contained in the listing;
 - the industry member cannot disclose the motivation of the buyer to buy or the seller to sell unless authorized by the buyer or seller;
 - the industry member cannot disclose personal information about either the buyer or the seller unless authorized in writing;
3. The industry member discloses to the buyer defects about the physical condition of the property known to the industry member;
4. The industry member may disclose all comparable property information to the buyer and the seller at any time;
5. The industry member cannot disclose to the buyer or to the seller confidential information obtained through any other existing or former agency relationship.

When transaction brokerage is not appropriate

Transaction brokerage is not always appropriate and consumers are never obligated to enter into a transaction brokerage relationship. The Commission has outlined the following situations where transaction brokerage should be avoided:

1. When the industry member is representing family, colleagues, or themselves;
2. When the industry member has an ongoing agency relationship with one of the parties, like a builder or a developer;
3. When the industry member is representing a novice seller or buyer.

In the first two situations, regardless of how the transaction is handled, pre-existing relationships may result in the industry member's impartiality being called into question. In the case of a novice buyer or seller, their lack of knowledge means they need an industry member's advice and support, services that cannot be provided under transaction brokerage.

Customer status

In a no agency relationship, the industry member represents either the buyer or the seller in a single agency relationship. The party that is not represented is the customer, for whom the industry member performs customer services.

If you choose customer status, the brokerage does not represent you. The brokerage is not your agent and does not owe you fiduciary duties. The brokerage will not provide you with any services that require the exercise of discretion or judgment, the giving of confidential advice or advocating on your behalf.

The services an industry member can provide to you as a customer include:

- exercising reasonable skill and care
- not negligently providing false or misleading information
- complying with the *Act* and the *Bylaw*

Industry members must ensure any person who is considering customer status is fully aware of their option to choose another brokerage to represent them rather than agreeing to customer status.

An industry member who is not in an agency relationship cannot:

- recommend or suggest a price
- negotiate on your behalf
- inform you of their client's top/bottom line
- disclose any confidential information about their principal unless otherwise authorized

You should not provide an industry member who is not in an agency relationship with you with any information you would not provide directly to their client.

All buyers and sellers, whether in an agency relationship with an industry member, will be given an agency brochure and asked to sign an acknowledgement that they have been provided this agency information and had an opportunity to review it.



The Seller Brokerage Agreement

The Seller Brokerage Agreement

If you entrust the sale of your home to a real estate brokerage, you will be required to sign a *Seller Brokerage Agreement* (SBA), otherwise known as a listing agreement. The SBA establishes a professional relationship between you and your brokerage for a given period of time. It documents the obligations of the brokerage and the seller. As a legal contract between two consenting parties, sellers are strongly encouraged to read the contract carefully so they understand the obligations of both parties to the contract. Learn more about these obligations on page 19.

Types of listing contracts

The services you receive as a seller depend on the type of listing agreement you enter with the brokerage. There is no “industry standard” commission or contract duration. The commission payable, the services rendered, and the length of the contract are negotiated between a brokerage and a seller.

Exclusive listing contract

All listing agreements are exclusive in that the seller agrees not to use the services of another brokerage for the sale of his property. This type of contract guarantees the brokerage that their efforts to sell the home will be compensated at the time of the sale.

The seller can also expect their brokerage to devote maximum time and effort to sell the property. The brokerage will cooperate with other brokerages unless instructed otherwise by the seller. In an exclusive contract, the seller may choose to have their property advertised on the MLS® System, or marketed only by the brokerage. Choosing the MLS® System invites cooperation from industry members representing buyers, as the property is marketed online at realtor.ca.

Fee-for-service agreement

In a fee-for-service agreement, the seller selects which services they wish to purchase from a set list of services offered by the brokerage. The list of services may range from signage and advertising, posting to the MLS® System, to hosting open houses and contract negotiation.

Mere posting agreement

A mere posting agreement provides the minimum level of service a brokerage may offer. When a brokerage and a seller enter into a mere posting agreement,

the brokerage is responsible for posting the property on an MLS® System, which will then appear on realtor.ca. The website realtor.ca, displays properties from all MLS® Systems across Canada. This is the only service the brokerage provides and you, as the seller, are responsible everything else, including signage, advertising, viewings and negotiating the sale. In a mere posting, there is no agency relationship between the brokerage and the seller. The seller is a customer of the brokerage and no fiduciary duties apply.



Promotion and advertising

Discuss marketing activities (listing on MLS® System, advertising, open houses, and so on) to promote the sale of the property with any industry member you meet with about the sale of your home. These activities must be discussed prior to the signing of the brokerage contract so you know what to expect, and receive the services you require. Ensure any services you wish to have that are not included in the standard wording of the *Seller Brokerage Agreement* are documented in writing.

The MLS® System is the most frequently used promotional tool. Properties posted to the MLS® System appear on realtor.ca, a website prospective buyers use to view properties. For brokerages posting to the Nova Scotia MLS® System, it informs the industry members who work in your area that your property is on the market and that you and your industry member are open to cooperation between brokerages in finding a buyer. If you wish to use this service, you have to initial the appropriate section on the listing contract.

Brokerage's compensation

Regardless of the type of listing, the amount and conditions of the brokerage's compensation must be specified in the listing agreement/ fee agreement. The brokerage's compensation may be based on a percentage of the real estate's selling price, a fixed sum, or a combination of both. Compensation based on a percentage of sale price is typically paid on the closing of the sale. Fee-for-service and mere posting agreements are typically paid at the time the agreement is signed. Remember, there is no set commission; everything is negotiable.

Contents of the *Seller Brokerage Agreement*

The *Seller Brokerage Agreement* specifies the obligations to which the brokerage and the seller have agreed. The contract must contain the following elements.



Identification of the parties

The *Seller Brokerage Agreement* must identify the parties bound by it and must include the following information:

- name of the brokerage;
- name(s) and address(es) of the owner(s). In the case of a company or an estate, the company name and the name of the person representing it must be indicated. If the seller is acting through a representative, a power of attorney must be provided to the broker.

Note: It is very important that your industry member verify that you are

the sole owner of the real estate, i.e. the deed is in your name only. If your spouse is also an owner and the property is a matrimonial home, your spouse's signature is required on all documents. Consult your lawyer if you are unsure. If your spouse is not available, you must first obtain a power of attorney drawn up by your lawyer that gives you the authority to sign on their behalf.

Selling price

An essential step in the sale of your home is to set a realistic selling price. To do so, you need to know the current status of the market. Your industry member can give you an idea of the estimated value of your home by comparing it to similar properties currently up for sale, recently sold or that have failed to sell (expired) in the same area. This will make it easier for you to set a fair and competitive price.

You also have to identify the elements that can act positively or negatively on the value of your home, such as

- location;
- size;
- age and condition of the real estate;
- number and layout of rooms;
- construction materials used;
- landscaping;
- features specific to the area;
- and so on.

Be wary of overpricing your home. Buyers are savvy shoppers. After all, their dollars are being invested. You may miss out on buyers who feel they can't afford the home and alienate ones who are looking in a higher price range. Your home may also be referenced by other salespeople to highlight the true value of other homes in the area. If your property sits on the market for longer period of time, buyers may think there is something wrong with it.

Should you wish to change the asking price or any other details in the contract, an *Amendment* form must be completed and signed by all parties.

Occupancy and signing of the deed transfer

The dates of occupancy (the closing date) must be specified in the listing contract. The buyer may propose different dates in the offer to purchase, but these are subject to your approval in the same way as the other clauses in the offer to purchase. However, they can be negotiated if necessary.

Description of the real estate—the *Listing Addendum*

When you want to sell your home, several important details must be collected and verified right from the beginning (lot size, amount of taxes, general condition of the house and its main components, and so on). It is essential that you provide your industry member with all the information pertaining to the real estate, as well as all documents that will allow them to fulfill their role.

The *Listing Addendum* contains a detailed description of the real estate, including

- address;
- lot measurements and area;
- room sizes;
- property details; and
- what does or does not remain. In the case of a condominium, you must also specify the condo fees, special assessments, number of parking and storage spaces included in the sale, and their identification numbers.

Inclusions and exclusions

The question of included or excluded items must be examined closely before the *Seller Brokerage Agreement* is signed. This step of the sale process is too often a cause of dispute between sellers and buyers. This is why we recommend that you specify as many elements as possible. The best is to cover each item which could lead to confusion by specifying those which are included and those which are specifically excluded, such as

- security systems
- air conditioning units
- window coverings
- fridges, stoves, washers, and dryers



Schedule of Leased Equipment

All leased and rented equipment, such as water heaters, propane tanks, and furnaces, must be recorded on the *Schedule of Leased Equipment*. The schedule must specify whether the equipment is leased or rented, and for leased equipment, whether the leases can be assumed or bought-out by the buyer.

Condominiums

The *Listing Addendum* addresses the reserve and contingency funds when condominium real estate is involved. The expenses related to the maintenance and administration of common areas held by the condominium corporation are paid through this fund, which is set up by the condominium to deal with expenses. It is important to note that the sums invested in the fund are not recoverable at the time of the sale of the condominium property. These sums should be considered the same as property taxes.

The Property Condition Disclosure Statement

The *Property Condition Disclosure Statement* (PCDS) is designed to protect all parties involved in real estate transactions. The objective is to encourage full communication so that buyers have as much information as possible concerning the property. Lawsuits are expensive and frequently result from a misunderstanding, a communication problem, or a lack of information.

Without a PCDS, sellers may have difficulty establishing that a problem was disclosed to buyers, and buyers may be unable to establish that a statement was made or that information was withheld unless important information is confirmed in writing on the PCDS.

Sellers are not required to provide a PCDS, but most do. However, there are several situations where disclosure statements are not available and typically relate to a situation where the seller did not live in the house. Some examples are:

- Foreclosure—the property is owned by a bank
- Relocation—a property is being sold by a relocation company
- Estate—the property owner died and an executor is selling the property
- Rental—the property owner rented out the property to others

If you have not lived in the house you are selling, and are questioning whether to complete a PCDS, you should first consult with a lawyer.

Patent defects and latent defects

Property defects are divided into two types: patent defects and latent defects. A patent defect is a fault in the property that is readily observable to the untrained eye of a potential buyer (for example, a broken pane of glass, old roof shingles or peeling paint). A latent defect is a fault in the property that would not be discovered by a reasonably thorough building inspection (for example, a serious crack in the foundation that has been covered over with paneling or



improper wiring covered by drywall). Material latent defects can have a serious impact on the value of the property or involve health and/or safety issues. Sellers are required to disclose any known material latent defects; otherwise they may be liable to the buyer for the cost of repairs.

Obligations of the seller

The listing contract clearly states the obligations of the seller. These obligations deal with exclusivity, the contract term and the details describing the real estate.

Obligations of the brokerage

The obligations of the brokerage are also specified in the listing contract. They deal with loyalty, competence, duty to inform and verify information, advertising, obligations to disclose, conflicts of interest, and so on.

Signing the listing contract

Carefully read your contract with your broker or industry member before signing it and do not hesitate to ask questions if any clause is unclear.

Your industry member will give you a copy of your home's listing cut so that you can make sure the statement on the listing contract reflects reality. If the listing cut contains errors, the industry member must correct them and give you a revised copy. The listing cut will be used to market the property and will be supplied to any person interested in the property.

Term of agreement

The term of agreement contains the start and end dates of the agreement. There is no standard duration; agreements may be as short as a day or as long as a year. The only exception to this is MLS® listings, which must be a minimum of 60 days.

Holdover clause

Listing agreements contain a clause to protect the brokerage for the work it did during the listing period. The holdover clause requires the seller to pay the commission to the brokerage should a buyer, that was introduced to the property during the listing, enter into an *Agreement of Purchase and Sale* with the seller during the holdover period, typically 180 days after the listing expires.

Cancelling the *Seller Brokerage Agreement*

Before signing the *Seller Brokerage Agreement*, make sure you understand and agree with all of the terms and conditions in the document. Once signed, the *Seller Brokerage Agreement* is a legally binding contract and cannot be cancelled easily. The standard wording in the agreement permits terminating the contract only if there was a material breach of the contract terms (the industry member failed to do what was set out in the contract). If this is not acceptable, you may wish to discuss inserting additional cancellation provisions in the contract with your industry member.

Withdrawing your property from the market

Withdrawing your property from the market is not the same as cancelling. When a property is withdrawn, it is no longer advertised or shown, but the contract is still in effect (you can't list with someone else). The most common reasons for withdrawing a property from the market is if the sellers are out of town for a period of time, or over the holidays, or if they wish to make repairs.

Other considerations

Residency

Are you a non-resident? If so, you must provide a guarantee that you will pay certain taxes imposed by the federal authorities. This is usually accomplished by holding back a percentage of the proceeds at closing until the tax requirements (Capital Gains Tax) are resolved. This is done by your lawyer.

Mortgage repayment penalty

If the buyer chooses not to take over your mortgage, which is usually the case, you will have to pay back your mortgage loan and have the mortgage cancelled at your expense. The cancellation of your mortgage loan may carry a penalty, which you will have to pay at the time of the sale (see page 23, for selling expenses).



Showing your home to its best advantage

Part of the success in selling your home depends on the impression potential buyers have when they view it. Showing it off properly is therefore of prime importance. Many elements can help get you the best possible price for your property. Some involve up-front expenses, which may be recovered when you sell your house. A preparation checklist is provided on the next page to help you plan how to prepare your home.

First impressions

First impressions have a considerable impact on a person's perception after a visit. Therefore, certain visual aspects must be reviewed. Is the outside of the house in good condition? Do gutters need repairs? Is the garage neat? Have broken windows been replaced? Has the grass been cut and raked? Do the hedges and shrubs need trimming? In winter, has the snow been removed? Does the doorbell work? Are door trimmings in good condition?

Indoor aspect

Have cracks been repaired? Are paint touch-ups necessary? Have leaky faucets been repaired? Are there any burnt-out bulbs? Do squeaky doors need a drop of oil?

Bathrooms

Are bathrooms shiny? Has the bathtub been re-caulked? Are the floors clean?

Kitchen

Is it spotless? Are the sink and faucets clean? Are cupboards impeccable both inside and out? Have the fridge and counter tops been de-cluttered?

Atmosphere

Have lights been turned on? Is the furnace on if it's cold? Is there a fire in the fireplace when it's cold? Are curtains open during the day? Have you thought of putting on a little soft music? Do your plants and flowers look healthy? Have animals been removed or locked up for the showing? Is ventilation adequate?

Preparation checklist

Make a list of the work your home needs to show to its best advantage. You may be able to do some of the work yourself; however, some repairs may require the services of a paid professional. Although the work may not guarantee the selling price compensates for the cost, it will increase your chances of selling your property quickly.

	To do	Cost		To do	Cost
Check			Cleaning		
fixtures			walls		
heating			floors		
electrical			lighting		
water			windows		
septic			doors		
plumbing			cupboards		
			baths		
			showers		
			storage		
			curtains		
			appliances		
			garage/ shed		
	To do	Cost		To do	Cost
Painting			Repairs		
entrance			siding		
kitchen			roof		
living room			windows		
bathrooms			doors		
bedrooms			garage		
bathrooms			landscaping		
basement			fences		
siding			deck/balcony		
fence			walkway		
decks/balcony			driveway		
garage/shed			parking		
doors					
Total cost			Total cost		
Grand total					

Selling expenses

Expect some additional expenses when selling real estate. The following table shows expenses encountered during the sale of a property.

Calculating selling expenses	
Mortgage balance	\$
+ Brokerage commission	\$
+ Appraisal fee (if applicable)	\$
+ Legal fees	\$
+ Disbursements	\$
+ Mortgage penalty	\$
+ Property tax adjustment	\$
= Total selling expenses	\$

Net proceeds from the sale

The net proceeds from the sale is the difference between the selling price of the property and the total selling expenses.

Calculating net proceeds	
Selling price of the property	\$
- Total selling expenses	\$
= Net proceeds	\$





The Agreement of Purchase and Sale

The Agreement of Purchase and Sale

The *Agreement of Purchase and Sale* is a contract through which a person undertakes to purchase real estate. In return, the document also indicates that the seller undertakes to sell the real estate once the *Agreement of Purchase and Sale* has been accepted.

Industry members in Nova Scotia are required to use standardized forms approved by the Commission for all residential real estate transactions. These forms make sure that everyone is literally on the same page, reducing errors, omissions and inconsistencies.

Content of the Agreement of Purchase and Sale

The *Agreement of Purchase and Sale* content is designed to protect both buyers and sellers. It is important to make sure that the information contained therein is in accordance with that of the *Seller Brokerage Agreement*.

Identification of the parties

The *Agreement of Purchase and Sale* identifies the parties bound by contract (the seller and the buyer).

Time for acceptance

The time for acceptance sets a deadline after which the *Agreement of Purchase and Sale* becomes null and void.

Description of the property

The *Agreement of Purchase and Sale* contains a detailed description of the property, including property identification number(s) (PID), the street address, items to be included and conditions to be met.

If the property is a condominium, the contract must specify the number of parking and storage spaces and their identification numbers.

Price

The *Agreement of Purchase and Sale* must indicate clearly the purchase price offered by the buyer. The price statement usually indicates that the payment will be made in full upon the closing.

Deposit

Typically, the buyer gives the deposit to the seller's brokerage to be held in trust as a show of good faith to complete the transaction. The deposit is credited towards the purchase price at the time of closing. The deposit can be as much both parties agree. One way to deter the buyer from backing out of the transaction is to require a high deposit up front. In all cases, the deposit belongs to the transaction and can only be released if one of three things happens:

1. The deal closes;
2. The buyer and seller sign a release agreeing where the deposit is to be paid; or
3. A court decides what to do with the deposit.

In most terminated transactions, the buyer and seller agree to end the transaction and sign a mutual release. However, when the parties are unable to reach an agreement deposit must remain in the brokerage trust account until a court order is obtained.

Declarations and obligations of the buyer

The *Agreement of Purchase and Sale* contains a clause stipulating that the buyer has examined the property and declares that they are satisfied therewith. In the case of a condominium, the agreement specifies that the buyer will examine the declaration of the condominium, including the condominium bylaw and the reserve fund, and declare whether or not the buyer is satisfied therewith. It is, therefore, important to read this document.

Delivery of the real estate

The *Agreement of Purchase and Sale* contains a clause by which the seller promises to deliver the property in the condition in which it was when the buyer examined it.

Pre-closing viewing

The *Agreement of Purchase and Sale* contains a clause that allows the buyer to view the property, before closing, to ensure it is in the same condition as it was when the offer was made. This is not another inspection; it is a home viewing to confirm the condition of the property hasn't changed since the buyer agreed to buy it.





Costs relating to repayment and cancellation

The costs relating to the repayment and cancellation of any debt secured by a mortgage and not assumed by the buyer must be borne by the seller. This includes mortgage penalties as well as leased equipment fees (furnace, hot water tank, and so on) that are not included on the *Agreement of Purchase and Sale* as costs to be assumed by the buyer.

Ownership documents

The *Agreement of Purchase and Sale* states the obligations of the seller regarding the titles of ownership. Thus, the seller must supply the buyer with a valid title of ownership, free of any debt, charge or other restriction of private or public law other than the usual easements. The seller's lawyer must, therefore, supply authentic copies of the deed.

Defect or irregularity

The *Agreement of Purchase and Sale* has a mechanism to protect the buyer who finds a defect or irregularity in the property after signing the offer to purchase. This is called the Inspection/ PCDS clause.

Declarations and obligations common to the parties

The *Agreement of Purchase and Sale* contains a number of declarations and obligations which apply to both parties:

- the adjustments relating to property taxes, general taxes, co-ownership expenses, fuel reserves and income or expenses relating to the real estate;
- the date of closing;
- the inclusions and exclusions.

Reference to addendums and schedules

The *Agreement of Purchase and Sale* may contain a reference to addendums and schedules. These form part of the *Agreement of Purchase and Sale*.

Signatures

The *Agreement of Purchase and Sale* must include the buyer's and seller's signatures as well as that of their respective spouses, if applicable. Each copy must bear the original signature of each of the parties. In addition, a witness's signature



Remember!

Make sure you read and understand any offer you receive because once an offer is accepted, it becomes a legally binding contract. Ask your industry member any questions you may have so that no doubt remains in your mind.

Declarations

Your declarations in the listing contract must also appear in the offer. If some elements do not appear, you can add them using a counter offer.

Checking the dates

Make sure the dates for the closing, the conditions, and the occupancy are in accordance with your needs and do not turn over the property or the keys until the closing is complete.

Inclusions and exclusions and conditions

Make sure included and excluded items are indicated in the contract and that the buyer's conditions are achievable in the time period specified.

Receiving offers

As seller, your industry member is required to present you with all offers received on your property, even after it is subject to an accepted offer.

strongly is recommended. Should there be any changes or additions to the wording of the agreement, they must be initialled by all parties.

The Counter Offer

You may accept or refuse any offer presented to you. You may also make a *Counter Offer*. The first purpose of the *Counter Offer* is to inform the buyer that the offer, as written has been rejected, but that you would be agreeable to the offer if specific changes or additions are made.

The *Counter Offer* may also be used to include or exclude certain items, change the selling price or simply to further clarify the offer. The buyer, in turn, may not accept the *Counter Offer* and wish to make a new offer.

Conditions of acceptance

The conditions of acceptance in the *Counter Offer* set a deadline for its acceptance and notification. Therefore, the deadline for accepting the *Counter Offer* is a date and time by which the seller cannot withdraw the *Counter Offer*, and by which the acceptance by the buyer is given to the seller in order to be valid.

Any *Counter Offer* should include a reasonable deadline (usually between 12 and 24 hours) by which the *Counter Offer* must be rejected or accepted.

If the *Counter Offer* is accepted, the property is considered conditionally sold, although the transaction only becomes official upon closing. However, the transaction cannot be completed until all of the conditions of the contract are fulfilled. Therefore, a final deadline must be set for the conditions to be carried out, so the closing can be finalized.

Standard conditions of the contract

Agreements of Purchase and Sale have a number of standard conditions. They are:

- Deposit
- PCDS/ inspection
- Financing
- Insurance
- Lawyer review

Each of these conditions assigned a date by which they are deemed satisfied unless notice is given to the contrary. If notice to the contrary is given, either party is at liberty to amend the contract or terminate the contract. For example, the buyer is unable to obtain financing, the buyer must give notice to you or your industry member by the date in the contract, at which point the buyer may ask to amend the contract to give them more time or terminate the contract. If the buyer asks for an extension, you may grant the amendment, propose a further amendment (a different date) or terminate the contract.

The property transfer

Once the offer or the counter offer has been accepted and the conditions are met, the next step is to make the transaction official. The two main components at this stage are the title examination and the closing. The property transfer requires the services of a lawyer, but your industry member continues to play a central role at this step of the real estate transaction. Among other things, they make sure that all documents required are available and will be of assistance if any problems arise.

Title examination

The lawyer completes the necessary research to guarantee marketable title of ownership. The lawyer verifies that the seller is indeed the owner of the property, whether they have the right and the ability to sell, and if a spouse or other person must consent to the sale, and so on.

All property sales in Nova Scotia are registered through the new *Land Registration Act* requirements and the government certifies title. This means all property that changes hands in Nova Scotia must be converted over to the new Land Registry System. Should the property not currently be on the new system, it is the seller's responsibility, through their lawyer, to take necessary steps to convert the title to the new system, typically at the seller's expense.

The closing

The final step of the transaction is the closing which involves the completion of the necessary legal and mortgage documents. This is typically completed after the buyer has completed their preclosing viewing.

Registration of rights of ownership

Once the closing is final, the lawyer registers the transaction with the Registry of Deeds. The lawyer may retain the funds until this step has been completed.



The Nova Scotia Real Estate Commission

Created by the *Real Estate Trading Act*, the Nova Scotia Real Estate Commission is an independent, non-government agency, responsible for regulating the real estate industry in Nova Scotia. The Commission's mandate is to ensure consumer confidence in the real estate industry. Among other duties, it ensures that industry members carry out their activities in accordance with the *Act* and *Bylaw*.

The Registrar, the senior staff person at the Commission, is responsible for overseeing the activities of the industry members, including auditing their records, accounts and actions. The Registrar may order an investigation and lay charges if an industry member refuses to follow the *Act* and the *Bylaw*.

At the direction of the Registrar, the Commission's compliance team is responsible for investigating if there is reason to believe that an industry member has acted improperly, and may recommend charges to the Registrar if necessary. Any industry member who does not act in accordance with the *Act* and the *Bylaw* may be charged and required to appear before the Discipline Committee, which has the authority to impose fines, suspend violators or even revoke their right to practice.

Do you have a problem?

The first thing to do is to discuss the problem with your industry member. If you are not satisfied with the outcome of the discussion, contact the broker or managing associate broker where your industry member is licensed. If this does not yield results or if you feel you haven't received information leading you to believe that everything is being handled properly, contact the Commission's compliance team who can get the information you need to clarify the situation and find out about your rights.

Amortization

Period required to pay back a mortgage in full through regular payments. The amortization is usually based on fixed terms of 10, 15, 20, or 25 years.

Appraisal

Process which consists in estimating the market value of real estate based on the general condition of its components and its specific features. The appraisal is often the result of a comparison with similar real estate up for sale or recently sold in the same area. It is done by a licensed appraiser.

Cancellation

Cancellation of an agreement or the registration of a right through which one is freed from certain obligations, under certain conditions.

Charge

Amount to be paid according to a preset deadline. Tax payable on the use of a public utility, for example.

Chattels

Personal property which is moveable and not attached, such as furniture and appliances.

Client

A client is any person that is in an agency relationship with an industry member. This relationship may be formalized, as in a Seller or Buyer Brokerage Agreement or it may be verbal or as a result of actions of the industry member. The client relationship ends once the purchase or lease negotiated closes or the expiration date of the contract. If the industry member does not provide disclosure, then it is assumed you are in a client relationship.

Common area/condo fees

Expenses related to the maintenance and management of the common areas of a condominium property. Monthly payment, usually fixed, used to set up a fund to pay for current and unforeseen expenses (repairs, equipment replacement, and so on).

Counter offer

A response from the seller presented in reply to an offer.

Note: The first purpose of the counter offer is to signify refusal by the seller of an offer by the buyer.

Customer

A person who has not engaged or employed the brokerage in an agency capacity or as the person's transaction broker.

Deed transfer tax

Tax imposed by a municipality on any transfer of right of ownership in its jurisdiction.

Deposit

A sum of money that accompanies an offer to purchase real estate to be applied against the purchase price if and when the sale is finalized. The deposit must be placed in a trust account and will be deducted from the balance payable at the closing, or will be returned to the buyer if the sale does not go through. It may also be claimed by the seller if the buyer refuses to complete the sale.

Listing cut

Document on which a brokerage has presented the features (construction year, taxes, measurements, and so on) of real estate listed for sale.

Down payment

Personal contribution of the buyer to the financing of real estate purchase. Cash portion deducted from the selling price, which determines the amount of financing required to complete the purchase.

Note: If the down payment for the purchase of the real estate is less than 25% of the purchase price, the loan must be insured by the Canada Mortgage and Housing Corporation (CMHC) or another mortgage insurer.

Easement

Restriction of the right of ownership for reasons of general interest or public use. Right of access or use of land by others, for a defined purpose (passage, parking, public utilities, and so on).

Financing

Means used by a buyer to acquire real estate. Financial resource, often in the form of a mortgage loan provided to the buyer by a financial institution for the purchase of real estate (see Mortgage).

Fixtures

Items attached to the property or a building and considered part of it, such as plumbing fixtures or a fence. If in doubt as to whether an item is a fixture or a chattel, include it in the Agreement of Purchase and Sale.

Gross Debt Service (GDS) ratio

Portion of the borrower's gross income used to pay monthly housing expenses (principal, interest, taxes, heating).

Industry member

A person who holds a license issued by the Nova Scotia Real Estate Commission authorizing them to carry out brokerage transactions on behalf of others for the purchase, sale or rental of real estate.

An industry member is only authorized to act for and on behalf of a broker. They act as a representative of the brokerage.

Inspection

General verification of the state of the main components of real estate (foundation, structure, roof, heating system, electrical system, and so on) to assess condition.

Interest rate

Percentage representing the amount of interest produced by an amount of one hundred dollars. A four per cent interest rate will produce an interest amount of \$4 payable to the lender for every \$100 borrowed.

The interest rate is used to calculate the amount to be paid to the lender in ex-

change for financing to allow the buyer to purchase real estate.

Licence

Operating permit issued by the Nova Scotia Real Estate Commission to any person or company, who meets the legal requirements to carry out real estate brokerage activities in Nova Scotia. The granting of a license is conditional to the successful completion of a specialized real estate brokerage course and an entrance exam.

Listing contract

Agreement under which a person authorizes a real estate brokerage to act on their behalf for a given period of time, as intermediary in the purchase, sale, rental or exchange of real estate. The Seller Brokerage Agreement documents the obligations to which the broker and the seller agree by mutual consent.

Location certificate

Document containing a report, in which the land surveyor expresses their opinion on the location and condition of real estate compared to the titles and the legal description as well as laws and regulations governing the real estate. The location certificate indicates whether or not the buildings are on the property, but does not verify any dimensions.

Mortgage

Method of financing in which the real estate is used as collateral for debt repayment.

Mortgage insurance

Insurance purchased by a home buyer to guarantee the payment of the monthly installments required to reimburse a mortgage in full.

Note: If the down payment for the purchase of the property is less than 25% of the purchase price, the loan must be insured by the Canada Mortgage and Housing Corporation (CMHC) or another mortgage insurer.

Nova Scotia Real Estate Commission

Regulatory body created under the *Real Estate Trading Act* whose mandate is to ensure consumer confidence in the real estate industry by regulating the activities of all real estate brokerages and industry members practicing in Nova Scotia.

Offer to purchase

Undertaking by a person to purchase real estate under certain conditions set by that person. Contract through which the seller agrees to sell the real estate once they have accepted the offer to purchase.

Principal

Amount of money borrowed through a mortgage.

Professional liability insurance

All industry members are required to have professional liability insurance (errors and omissions). This insurance protects industry members against the financial consequences of any fault, error, negligence or omission, which their representatives or themselves could be responsible for in the course of their activities.

Real estate broker

A licensed broker is responsible for the supervision of a brokerage, its staff, and industry members. Supervision includes being actively engaged in the management of the business and must be physically available to oversee the business. A broker ensures the business is run competently and in accordance with the *Act*, the *Bylaw*, and the *Policies and Procedures*. Brokers may also trade in real estate.

Real estate brokerage

The professional activity of industry members. Brokerage transactions and professional acts carried out by industry members concerning the purchase, sale, rental or exchange of real estate. Services which can only be practiced by individuals licensed by the Nova Scotia Real Estate Commission.

Recovery fund

Fund created under the Real Estate Trading Act, to which all industry members in Nova Scotia contribute to compensate consumers who are victims of fraud or breach of trust by an industry member.

Related expenses

Additional expenses to be paid when buying real estate, including building inspection, property appraisal, loan application, legal fees, taxes, insurance, and so on.

Right of ownership

Recognition that gives the owner of a property the right to use, enjoy and freely and fully dispose of the property, to the extent of the limits and conditions imposed by law.

Salesperson

A salesperson is a licensed to trade in real estate on behalf of a brokerage under the supervision of a broker.

Title of ownership

Official proof of the right to own a lot and buildings erected thereon.

Trust account

Deposit account in a financial institution in which a real estate brokerage can deposit sums entrusted to it in the course of a real estate transaction.

When presenting an offer, the buyer often gives the listing broker a deposit on the purchase of the real estate. This deposit must be placed in a trust account once there is an accepted *Agreement of Purchase and Sale*.



nova scotia real estate
COMMISSION

We are just a phone call away!

- Licensing information
- Standards of business practice and code of conduct
- Complaints or problems

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