

Discussion Guide

Exclusive Buyer Representation Agreement (Common Law Brokerages)

Overview:

As of July 1, 2014, Rule 43 of the Real Estate Council of Alberta requires that all industry members use a written service agreement, such as the Exclusive Buyer Representation Agreement (EBRA), to establish client relationships. The following key discussion points will help you ensure your clients understand the EBRA. To assist your discussion, specific clauses in the EBRA are included in brackets. Further understanding of the form can be found in the EBRA Explanatory form.

IMPORTANT: The EBRA must be signed at the beginning of the agency relationship. Never allow a client to sign an agreement they have not read. Consider sending the EBRA in advance of your meeting so the buyer can read it and prepare questions for you to answer.

Discuss the Benefits of a Written Service Agreement: *Why a Written Agreement?*

Written details of services offered and the rights and obligations of the parties help to reduce confusion and misunderstanding. The EBRA provides clear terms that strengthen and clarify the relationship. Review the document with the client and explain that their signature means they have read and agreed to its terms and have had the opportunity to obtain independent advice.

Discuss Roles: *The EBRA sets out the roles of the brokerage, the REALTOR® and the buyer.*

- Get the client's signed confirmation that they have read and understood RECA's Consumer Relationships Guide (14.1(b)). Keep the signature portion on file.
- Review the brokerage responsibilities (2 and 3).
- Review the details of any other services offered (4).
- Include a discussion of how you will handle conflicts of interest (6).
- Reassure the client that their information will be protected (8).
- Review the buyer's responsibilities (5, 9.1 and 10) and discuss the importance of open communication between both of you. (5.1(a)).

Discuss Search Criteria: *Know what your buyer wants, but allow for flexibility.*

- Discover the buyer's wants and needs, financial ability (5.1(c)) and timing requirements.

- Establish the buyer’s search criteria (1). General search terms allow for flexibility as you get to know your buyer better and as they learn about the market. Example: a buyer wants “*a detached house with 3 bed rooms, 2 baths and a den, in neighbourhood X*”. A simpler and more flexible description is “*a single family home in Ourtown*”.
- Discuss the options available in various listing and status types (e.g. for-sale-by-owners, mere postings, conditionally sold, etc.). Discuss how each of these might affect the source of the fee.
- Explain the meaning of material latent defects and what the seller must disclose and what they are not obligated to disclose (5.1(b)(i)).
- Discuss what affects their buying decision; including things only a seller may know, i.e. existence of pets (allergies), traumatic events, past maintenance problems, etc. (5.1(b)(ii)).

Discuss the Fee: *Seldom will a buyer pay the fee, but they must understand how the fee works.*

- The fee section ties the fee to the search criteria (1 and 7.3(a)), so any changes to your client’s criteria should be amended in writing.
- Confirm your client’s permission to ask for the fee from the seller or the seller’s brokerage (7.4).
- Discuss all compensation scenarios – seller pays, buyer pays, buyer pays a portion – and what will happen in the case where a seller will not pay the fee (7.3(a) and 7.5).
- Discuss the pros and cons of the buyer choosing to eliminate properties where the seller will not pay the fee. If this is their choice, add this buyer direction to the search criteria (1).
- Explain that a seller payment above the agreed fee will be paid to the buyer and any shortfall will be paid by the buyer (7.7). Also, clarify that you cannot accept other fees without their written consent. (7.9)
- Describe how you may be entitled to your fee under circumstances where the property was introduced during the term of the EBRA (7.3(b)).
- If you collect a retainer, record the details in writing (7.2). If not, indicate in some way that it will not apply, for example, by crossing out the clause and initialling it.
- Expense reimbursement requires agreement on the expense items and how you will substantiate them (7.8).

Contract Details: *Pay attention to the details – a contract must be clear and complete.*

- Discuss how and when the agreement will end (2.2 and 12).
- Accurately describe the parties, both Brokerage and the Buyer (15 and page 1).
- Number the agreement in the upper right. Ensure this number is included on any schedules addendums or attachments, so that it is clear those documents relate to this agreement.
- Ensure additional terms are clearly stated (11). Clarify that any terms not included do not form a part of the EBRA (13.5) and any changes or attachments to it must be initialed (13.1 and 13.2).
- Explain the methods for document delivery and communication and the risks involved (15.2).
- Review the section on electronic signatures (15.3).

- After you have reviewed the contract, obtain initials on the bottom of each page and have it properly dated, signed and witnessed in the Signatures section.
- Provide the buyer with a copy and obtain their initials to confirm you have done this.

Disclaimer: AREA's Discussion Guides are intended to assist Alberta REALTORS® in developing client relationships. They should not be relied upon for legal advice. REALTORS® are responsible to ensure their activities comply with the Real Estate Act and Rules, their local board rules and the policies of their brokerage.