

Discussion Guide

Exclusive Seller 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 Seller Representation Agreement (ESRA) (formerly called a listing agreement), to establish client relationships. The following key discussion points will help you ensure your clients understand the ESRA. To assist your discussion, specific clauses in the ESRA are included in brackets. Further understanding of the form can be found in the ESRA Explanatory Form.

IMPORTANT: when sellers sign the ESRA, they will acknowledge that they have read it and have had the opportunity for independent advice. Never allow a client to sign an agreement they have not read. Consider sending the ESRA in advance of your meeting so the seller 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 ESRA 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 that they have had the opportunity to obtain independent advice.

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

- Ensure the seller has reviewed RECA's Consumer Relationships Guide (17.1(b)).
- Review the brokerage responsibilities (2.1 and 3).
- Review the details of any other service offered (4.2).
- Include a discussion of how you will handle conflicts of interest (8).
- Reassure the client that their personal information will be protected (10.5 and 11.2).
- Review the seller's responsibilities and representations (5 and 6) and discuss the importance of open communication between both of you. (5.1(c)).
- Discuss the seller's responsibility to advise you of offers made or received (5.2 and 11.1).

- Review the Indemnification clause. Here, the seller agrees to pay for claims or lawsuits against the Brokerage and its representatives as a result their reliance on the seller's information (12).

The Property and MLS® Services: *Know the property and describe it properly.*

- Confirm address and legal description (1.1). Check the title and tax notices.
- Discuss attached and unattached goods and carefully detail what the seller wishes to be included and what is not included (1.1).
- For Condominium and Country Residential, ensure proper schedules are attached and the appropriate box is ticked. (1.1)
- Discuss the price to be asked and advise the seller to obtain advice about GST (1.2).
- Discuss the requirement and importance of getting a current RPR (5.1(a)).
- Clearly discuss material latent defects and the seller's requirement to disclose them (13).
- Discuss the benefits of the MLS® system and the requirements for listings on the system (4.1).
- Advise how the listing and sales information will be used (10).

Discuss the Fee: *Sellers usually know there will be a fee. They must understand how the fee works.*

- Describe your fee and how it will be shared with the buyer's brokerage. (9.1 and 9.2)
- Detail when the fee must be paid, including the circumstances where the buyer was introduced during the term of the ESRA (9.3) and where the buyer forfeits (9.8).
- Describe when the fee is not payable (9.6).
- Describe what deposit funds are and how they will be handled by your brokerage. Explain how the deposit may be applied toward the fee (9.4).
- Expense reimbursement requires agreement on the expense items and how you will substantiate them (9.7).
- Explain the brokerage's right to encumber the property for money owned under the ESRA (9.9 and 9.10)
- Review the types of other fees that may be paid and your responsibility to disclose and obtain your client's consent (9.11).

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

- Discuss how and when the agreement will end (2.2 and 15).
- Accurately describe the parties, both Brokerage and the Seller (18 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 (14). Clarify that any terms not included do not form a part of the ESRA (16.5) and any changes or attachments to it must be initialed (16.1 and 16.2).
- Explain the methods for document delivery and communication and the risks involved (18.2).
- Review the section on electronic signatures (18.3).

- 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 seller 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.