

# Multiple representation

This bulletin explains the written multiple representation disclosures, acknowledgements, and consents that are mandatory if a brokerage proposes to have the brokerage, or a designated representative represent more than one client in the same trade. This bulletin also explains the written disclosure that is required to be provided to every other buyer when a brokerage has a seller client and a buyer client in the same trade.

## Summary

### MULTIPLE REPRESENTATION

A brokerage or designated representative is prohibited from representing more than one client in a trade unless:

1. The brokerage makes the mandatory written disclosure,
2. The brokerage makes best efforts to obtain an acknowledgement that the required disclosure was received, and
3. **After** receiving the disclosure, if each of the existing or prospective clients agree, the clients provide written consent to the brokerage or designated representative continuing to represent them in respect of the trade.

Real estate agents should make sure they follow their brokerage's policies related to multiple representation. While permitted by law, some brokerages do not allow the same agent to work with both the seller and buyer in the same trade, to protect the brokerage and its agents from potential litigation.

## What are the risks to clients?

It's important to understand that in the case of "multiple representation" none of the clients are fully represented. The clients no longer receive the full benefit of the client relationship because of restrictions on the services that can be provided, the information that can be shared, and the advice that can be given, in a multiple representation situation.

The brokerage or the designated representative can no longer advocate for the client's best interests. The clients do not receive any advice that might put their interests ahead of the other client, such as the price they should offer or accept or terms that should be included in an agreement of purchase and sale.

As part of the explanation of the impact on commission, it's also important the agent clearly explain that when in multiple representation they are foregoing the advice, opinions, and expertise the agent can offer during the transaction. The agent effectively must act as a facilitator of the transaction. This may result in unforeseen consequences and costs for the client.

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# When does multiple representation arise?

## BROKERAGE REPRESENTATION

Under **brokerage representation**, multiple representation arises when:

- The brokerage has a seller client and one or more buyer clients in the same trade.
- The brokerage has one or more competing buyers in the same trade.

The brokerage and all agents employed by the brokerage must treat the interests of the brokerage's multiple clients in an objective and impartial manner.

## DESIGNATED REPRESENTATION

Under **designated representation**, multiple representation only arises when:

- The same agent is the designated representative for a seller client and a buyer client in the same trade.
- The same agent is the designated representative for more than one competing buyer in the same trade.

The designated representative must treat the interests of their multiple clients in an objective and impartial manner.

## BROKERAGE REPRESENTATION AND DESIGNATED REPRESENTATION

If a brokerage is using **both forms of representation agreements**, multiple representation also arises when the brokerage has more than one client in the same trade and one of the clients is under a brokerage representation agreement.

The brokerage, the designated representative, and all agents employed by the brokerage must treat the interests of the multiple clients in an objective and impartial manner.

# Step 1: Make the required disclosure

## TIMING

The timing of the disclosure is important. While the *RECO Information Guide*, and other agreements or forms, might make a client aware that multiple representation could arise, this does not represent a disclosure of the fact that it has arisen and does not mean that the client has provided consent.

As soon as a brokerage or agent is aware that it has more than one client in the same trade, it must make full disclosure to each of the clients involved. The brokerage and its agents can't take any further steps on behalf of any of the clients until the disclosure is made and each of the clients involved provide their written consent.

Disclosure and consent at the time an offer is submitted is, in almost all circumstances, too late.

Where a prospective client is involved, and entering an agreement would immediately result in multiple representation, the disclosure to the client and prospective client must be made immediately and consent obtained **before** the brokerage enters an agreement with the prospective client.

## CONTENT OF THE DISCLOSURE

The disclosure is intended to clearly communicate to the client the consequences of consenting to multiple representation. The basic principles of the content of the disclosure requirements for multiple representation, but might vary slightly depending on the situation.

Remember, all disclosures, consents, and acknowledgements required by the legislation must be written in plain language that is clear and concise, and must be presented in a manner that brings to the recipient's attention the information that is required to be conveyed. A disclosure must be identified by the prominent placement of the word "disclosure".

### Brokerage proposing to represent more than one client in a trade

The disclosure **must** include the following information:

1. The fact that the brokerage proposes to represent more than one client in respect of the same trade in real estate.
2. The **differences** between the duties the brokerage would have if it represented only one client in respect of the trade and the duties the brokerage would have if it represented more than one client in respect of the trade, including any differences relating to,
  - a. the duties the brokerage would owe to the clients,
  - b. the services the brokerage would provide, and
  - c. the remuneration arrangements the brokerage would have.

### Brokerage proposing to have the designated representative represent more than one client in the same trade

The disclosure **must** include the following information:

1. The fact that the brokerage proposes to have the designated representative represent more than one client in the same trade.
2. The **differences** between the duties the brokerage and the designated representative would have if the designated representative represented only one client in the trade, and the duties the brokerage and the designated representative would have if the designated representative represented more than one client in the trade, including any differences relating to,
  - a. the duties the brokerage and the designated representative would owe to the clients,
  - b. the services the brokerage and the designated representative would provide, and
  - c. the remuneration arrangements the brokerage would have.

### Brokerage is proposing to represent a client and have a designated representative represent another client in the same trade

The disclosures **must** include the following information:

1. The fact that the brokerage represents one or more clients and a broker or salesperson employed by the brokerage represents, as a designated representative, one or more clients in the same trade.
2. With respect to the client the brokerage is representing, the **differences** between the duties the brokerage would have if the brokerage represented only one client in the trade and the duties the brokerage would have if both the brokerage and the designated representative represented their respective clients in the trade, including any differences relating to,

- a. the duties the brokerage would owe to the clients,
  - b. the services the brokerage would provide, and
  - c. the remuneration arrangements the brokerage would have.
3. With respect to the client the designated representative is representing, the **differences** between the duties the designated representative would have if the brokerage did not represent any clients in the trade and the duties the designated representative would have if the brokerage and the designated representative represented their respective clients in the trade, including any differences relating to,
- a. the duties the designated representative would owe,
  - b. the services the designated representative would provide, and
  - c. the remuneration arrangements the brokerage would have.

The disclosure, and related consents, must be specific to each situation. For example, if you have obtained consent to multiple representation from a seller and a buyer and, subsequently, another buyer client expresses an interest in the same property, the brokerage must then disclose that the brokerage or the designated representative is proposing to represent the seller and two buyers in the transaction. All three parties would need to consent before proceeding. To make an informed choice, clients need to understand the nature of the situation they will be in.

#### Independent professional advice

Multiple representation requires an objectivity and impartiality that may not be possible given the financial benefit that might result from representing both the seller and buyer in a transaction. As a result of the potential conflict, the agent is not able to advise the clients on whether consenting to multiple representation would be in the clients' best interests.

In this case, the brokerage must also advise the client to seek independent professional advice before consenting.

## Step 2: Make best efforts to obtain an acknowledgement

Agents must make best efforts to obtain a written acknowledgement from each client or prospective client that the mandatory disclosure has been received. If the client or prospective acknowledges receipt of the disclosure, a copy of the acknowledgement must be provided to the client or prospective client.

## Step 3: If the clients agree, obtain each client's consent to proceed

Clients do not have to consent to multiple representation and the brokerage can only proceed if each of the clients involved agrees. Brokerages must clearly communicate to clients and prospective clients that they do not have to consent to multiple representation and that arrangements can be made to manage the risks to clients in multiple representation, either within the brokerage by way of different designated representatives representing each client or seeking representation from a different brokerage. The terms of a representation agreement should include provisions addressing what will happen if a client does not consent.

**A client can only make an informed decision if they understand the risks of consenting to multiple representation and the options available to them if they choose not to consent.**

## Caution when dealing with prospective clients

A brokerage or designated representative might inadvertently find itself with more than one client in a specific trade. For example:

- One or more of their buyer clients express an interest in a property of their seller client, or
- More than one of their buyer clients expresses an interest in the same property listed by another brokerage.

A brokerage or designated representative **knowingly** entering a client relationship that results in multiple representation assumes additional risk, as doing so conflicts with the duty to act in the best interests of the existing client.

For example, if a buyer approaches a brokerage expressing an interest in a property listed by the brokerage, the brokerage should avoid accepting the buyer as a client. Similarly, if a buyer client asks their designated representative to approach a seller, the designated representative should do so in the best interests of their buyer client and avoid entering a client relationship with the seller.

In both situations, the brokerage or designated representative, where possible, should refer the interested unrepresented buyer or seller to another brokerage or designated representative to avoid the obvious risks for the brokerage, the designated representative, and the existing client that arise when the client relationship is compromised.

## Disclosure of seller client and buyer client to other buyers

If a brokerage has a seller client and a buyer client in the same trade, the brokerage must disclose this fact to every other buyer who makes a written offer. The disclosure must be made as soon as possible after an offer is received, and **before** any offer is accepted by the seller.

This is not a disclosure of multiple representation — it is a disclosure that the brokerage has a seller client and buyer client in the same trade. This disclosure requirement applies even when the seller and buyer are represented by different designated representatives. It does not apply when a brokerage has multiple buyer clients in a trade.

The written disclosure should be provided to the prospective buyer's agent, if there is one, and otherwise to the buyer directly.

### ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURE

Brokerages must make best efforts to obtain a written acknowledgement from every other buyer that the required disclosure has been made and, if an acknowledgement is received by the brokerage, provide a copy of the acknowledgment to the buyer.

## Related information

Bulletin No. 2.2 Representation

Bulletin No. 2.3 Representation agreements

Bulletin No. 3.1 Disclosures, consents, and acknowledgements

Bulletin No. 3.5 Conflicts of interest