

Review of
New Agreements of Purchase & Sale

Introduction of
Designated Agency & Transaction
Brokerage

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Agenda

- Overview of New Purchase & Sale Agreements
- Related Forms
- Designated Agency Brokerage
- Transaction Brokerage
- Client and Customer Status
- Questions / Concerns / Issues
- Disclosure and Information Brochures

Overview of New Forms

◉ General Changes

> Updating

- original forms were all created at different times over the years
- Wording is now consistent

> Concept

- Splitting all of the P&S Agreements into two parts, except for the New Construction form

Overview of New Forms

◎ Format

- › All forms are now on 8.5 X 11
- › Margins have been increased to reduce cutting off when faxing
- › Headings have been added for ease of use
- › There are now more initial boxes to draw attention to important issues

New P&S Agreements

- ◉ Part I
 - › Common Clauses
- ◉ Part II
 - › Residential
 - › Resale Condominium
 - › Vacant Land – Urban
 - › Vacant Land- Rural
 - › Mini / Mobile Homes
 - › Multi-Unit Residential Income Property
- ◉ Turn Key New Construction

Common Clauses

- ◉ Provides consistency
- ◉ Reduces wastage
- ◉ Check off boxes at top to indicate which Part II is attached
- ◉ Preamble specifies whether the Buyer has or has not viewed the property
- ◉ Clause 3 – pre-closing viewing time
- ◉ Clause 12 – agency relationships are now clearer

Residential & Condominium

- ◎ These forms deal with issues that are specific to most residential and condominium transactions.
- ◎ There are no significant changes to the clauses in these forms.

Vacant Land – Urban & Rural

- ◉ There are slight variations between these two forms.
- ◉ Some clauses are more specific to urban or rural properties, as the case may be.

Mini / Mobile Homes

- ◉ New Form
- ◉ This form should resolve many issues in the past where agreements for this type of property did not properly protect the parties

Multi-Unit Residential Income Property

- ◉ New Form
- ◉ Intended to protect the parties by properly covering off issues specific to multi-unit residential properties
- ◉ Intended for sales involving up to 4 units

Turn Key New Construction

- ◉ Stand alone Purchase & Sale Agreement
- ◉ General revisions – nothing major
- ◉ First page – Calculations
 - > All figures are up to date for current taxes and rebates

Related Forms

- ◉ Amendment to the Agreement of P&S
- ◉ Termination and Mutual Release
- ◉ (A) Schedule “__” Re: Sale of Buyer’s Property
- ◉ (B) Notice / Waiver / Release / Termination
- ◉ (C) Notice of Removal of Schedule “__”

Designated Agency

- *All the agency changes taking place in the real estate industry flow from a national project by real estate regulators called the “Agency Task Force Report”*
- *The report can be found at www.nsrec.ns.ca under Publications*

Designated Agency

- ◉ There will now be two agency models for brokerages to choose to operate under:
 - They can continue to operate, as they do today, under the Common Law
 - They can adopt the new agency model, Designated Agency

Designated Agency

- ◉ Under the Common Law all Industry Members at a brokerage have agency with all seller or buyer clients of the brokerage
- ◉ Under Designated Agency the contract is still with the brokerage, but the agency is only with the specific Industry Member providing the service

Designated Agency

- ◉ Designated Agency is achieved by contracting out of the Common Law
- ◉ Seller or Buyer clients must sign the appropriate *Designated Brokerage Agreement*
- ◉ Brokerages must maintain confidentiality of information by maintaining appropriate information barriers

Designated Agency

- ◉ An Industry Member with a listing is the only person at the brokerage that has an agency relationship with the Seller
- ◉ All other Industry Members with that brokerage can fully represent buyers
- ◉ Limited Dual Agency is eliminated except in a situation where the Industry has both the Seller and the Buyer as a client

Transaction Brokerage

- ◉ Limited Dual Agency (LDA) terminology is being eliminated in 2008
- ◉ Transaction Brokerage will replace LDA under both the Common Law and the Designated Agency models

Transaction Brokerage

- LDA has been practiced poorly by a large portion of the real estate industry
- LDA is a misnomer as it leads some to believe that they can still act as both the Buyer's and Seller's agent and give advice in a limited way

Transaction Brokerage

- ◎ The term “Transaction Brokerage” more accurately describes what the relationship should be
- ◎ The Industry Member acts as a facilitator or middleman, not as either parties’ agent

Transaction Brokerage

- Under the Common Law, anytime both the Buyer and the Seller are represented by the same brokerage as clients in a transaction, they must consent to Transaction Brokerage
- Under Designated Agency, Transaction Brokerage would normally only occur when the same Industry Member represents both the buyer and Seller in the same transaction

Fee Agreement and Seller Customer Status Acknowledgement

- New form introduced last year
- It is designed to prevent unnecessary agency when an Industry Member represents a Buyer and the Seller is a private for sale
- It replaces past practices of the Buyer's Industry Member listing the Seller's property for 24 or 48 hours and creating agency with the Seller that then resulted in the creation of a dual agency situation

Client/Customer Relationships

- Better education has been provided to help Industry Members understand what type of relationship they are in
- Helps to eliminate unnecessary situations where LDA typically was initiated:
 - Person was actually a customer with no agency
 - The Industry Member represents a builder or developer and cannot represent a buyer

Buyer and Seller Customer Status Acknowledgements

- These are two new forms that allow the Salesperson to clearly communicate to the Buyer or Seller that they will be treated as a customer
- It clearly lays out what the Salesperson can and cannot do

Disclosure and Information Brochures

- ◉ Working with a REALTOR®
 - › Replaces the Working with a Real Estate Agent
 - › More clearly outlines Client & Customer
 - › Describes the CL and DA Brokerage models

Disclosure and Information Brochures

- ◉ Information Brochure for Buying or Selling Real Estate
 - › Provides lots of useful information
 - › It is designed to be a resource in Transaction Brokerage situations when the Industry Member cannot give advice

Other Concerns / Issues

Questions?
Comments?

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