



What does it mean to be Represented/ contracted with a REALTOR®?

My Brokerage practices Designated Representation and here is what that means for you! Taking into consideration new legislative changes; below you will see duties and services that can be provided to a client who is under contract with a Designated REALTOR®.

Designated representation agreement/contract

One (or more) of the brokerage's real estate agents is your designated representative. The agent(s) represent(s) you and must promote and protect your best interests. The brokerage and its other agents are required to treat you impartially and objectively.



An important aspect of designated representation is that it reduces the likelihood of multiple representation. You can read more about multiple representation.

Agents in Ontario must be registered, which requires completing the necessary education, and carrying consumer deposit insurance and professional liability insurance.

Services that are provided to both the buyer or seller may differ. But the expectation of the duties owned by a REALTOR® are governed by our code of ethics and our governing body. Your representation agreement/contract must be put in writing and presented to you as soon as possible. Protect yourself by reviewing the details below which are considerations most important to a contract.

The scope, services provided, payment amount with terms, termination of contract provision, agreement expiry date, and holdover clause. This will help to avoid any misunderstandings between you and your REALTOR®

Note: The Brokerage also has a responsibility to you in relation to a Real Estate Transaction under Designated representation. See notes below.



tdibranou@gmail.com



taradrealtor.ca



705.731.9802



Tara Dibranou
REALTOR® ABR® SRES® AEA

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What to consider in an representation agreement/contract!

1. Scope

Your agreement should specify the scope of the engagement.

If you are a seller, this means the agreement will identify the specific property.

If you are a buyer, you should consider the scope of the agreement carefully. Your agreement might identify a specific property, a geographic area you are searching in, a type of property you are looking for, or other specific requirements.

2. Services

The agreement must clearly set out the services you will receive. There is no standard set of services – brokerages offer a variety of service options. You choose the services you want that best meet your needs.

You might enter into an agreement with a brokerage for a specific purpose like, for example, having an agent prepare an offer on a property you want to buy, or viewing a specific property. Some sellers enter into an agreement solely for the purpose of having their property advertised on a local listing service.

3. Payment amount and terms

You and the brokerage decide the amount you will pay for services. The amount is not fixed or approved by RECO, any government authority, or any real estate association or real estate board.

You can agree to pay a fixed dollar amount, a percentage of the sale price, or a combination of both. The representation agreement cannot specify an amount based on the difference between a property's listing price and what it sells for.

Agreements must also identify circumstances in which the amounts agreed to might change and how they will change in each circumstance.

If you are a seller, your agreement needs to clearly indicate:

the amount you agree to pay your brokerage (or how it will be calculated) for the services and representation you receive; the amount (or how it will be calculated) you agree to pay, if any, to compensate the buyer for their brokerage fees; and how the amounts you agree to pay will change if you consent to multiple representation.

If you are a buyer, your agreement needs to clearly indicate:

the amount you agree to pay your brokerage (or how it will be calculated) for the services and representation you receive; how the amount you agree to pay will change if the seller agrees to cover some or all of your brokerage fees; how the amount you agree to pay will change if you consent to multiple representation.

***Important note for buyers:** Generally the seller will pay the commission for the buying agent. However, there may be times where there is a private sale, or the commission being offered by the listing brokerage will not cover the agreed amount of the co-operating Brokerage contract. This could affect the amount you are able to offer for a property. Depending on your financial circumstances, you may not be able to afford to buy a property when the seller does not agree to pay your brokerage fees. *This is why it is important that when looking at properties you find out if the properties of interest are co-operating with the buyer brokerages.



tdibranou@gmail.com



taradrealor.ca



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4. Termination provisions

The agreement should list all circumstances when the agreement can be terminated. Review when the brokerage can terminate the agreement, and make sure you are aware of any penalties or costs that might apply in each case.

Two important circumstances to be aware of:

Multiple representation: You do not have to agree to multiple representation, and your agreement should be clear about what happens in that situation. For example, the agreement could terminate completely, or you might be referred to another brokerage or designated representative for the specific transaction but otherwise remain under the agreement with the brokerage.

Changing your designated representative: If you have entered a designated representation agreement, the brokerage cannot appoint a different designated representative unless you agree. The brokerage may ask to appoint someone else if, for example, your designated representative stops working with the brokerage, or is otherwise not available to provide the services and representation outlined in the agreement.

Expiry date

The agreement's expiry date must appear prominently on the first page. There is no set time or standard term for a representation agreement: it can be in place for a day, a few weeks, or months. Consider how long you want the agreement to remain in place, and make sure you know when your agreement will expire.

5. Holdover clause

Most representation agreements include what is often called a holdover clause. The clause may require you to pay the brokerage fees for a purchase or sale even when the transaction happens after your representation agreement expires. The clause will specify the time the holdover clause is in effect from the date the agreement expires.

For example, let's say you are a seller, and your agreement includes a 30-day holdover clause. This means that even if your agreement has expired, under certain conditions, you might be obligated to pay the brokerage commission if you sell your home during the 30-day holdover period. **Similarly, assume you enter into a buyer agreement that includes a 30-day holdover clause and the agent shows you a home before the expiry of the contract. If you buy the home after the expiry of the agreement, but during the holdover period, you might be obligated to pay the brokerage commission.**

Benefits the brokerage and agent owe to you as a client

Undivided loyalty

Your best interests are promoted and protected by the brokerage or agent representing you. As a client, your interests take priority over the interests of the brokerage, its agents, and any other party.

Disclosure

They must tell you everything they know about the transaction or your client relationship that could have an impact on any decisions you make.

Confidentiality

Your confidential information cannot be shared with anyone outside of the brokerage without your written consent, except where required by law, even after your client relationship ends. This includes, for example, your motivation for buying or selling, and the amount you would be willing to pay or accept.

Avoid conflicts of interest

They must avoid any situation that would affect their duty to act in your best interests. If a conflict arises, they must disclose it to you and cannot provide any additional services to you unless you agree in writing to continue receiving services.

You have responsibilities as a client

- Be clear about what you want and don't want and make sure you share all information that might be relevant (for example, you might want zoning that permits your intended use, maybe a home office or another specific use, or you might not want a property where there has been a violent crime).
- Respond to your agent's questions quickly.
- Understand the terms of your agreement with the brokerage.
- Pay the fees you have agreed on, even if an agreement to buy or sell later falls through because of your default or neglect.

