

Homeowner's Handbook

How to buy and sell your home with confidence



ASSOCIATION OF SASKATCHEWAN REALTORS®



WORKING WITH A REAL ESTATE SALESPERSON

Buying or selling a home is generally one of the largest financial transactions you will ever make. It is important to consider the kind of legal relationship you might be entering into with the real estate agent you choose to assist you.

The term “agent” is often used interchangeably with: real estate salesperson, associate broker, broker, REALTOR®, registrant or the real estate brokerage with whom they are employed. This brochure will refer to the individual representative as the “salesperson” or “agent” and the real estate brokerage he/she works for as “brokerage”. **When working with a REALTOR®, a member of organized real estate and the Association of Saskatchewan REALTORS®, you will be given an Agency Disclosure Brochure which outlines duties owed in the agency relationship.**

YOUR RELATIONSHIP WITH THE SALESPERSON

When you engage a salesperson to represent you or act on your behalf in a particular matter, an agent/client relationship arises between you and his/her real estate brokerage. This relationship can be created by contract, eg. when you sign a listing contract for the sale of your home, or a buyer's agency contract for representation in buying a home. It can also arise through the implied conduct and activity between you and the salesperson, eg. when the salesperson takes on the role of representing you in viewing properties, obtaining information, or assisting in negotiations. Through these actions and conduct, it may become evident that the salesperson has undertaken to represent you, even though your legal relationship has never been formalized. In the absence of any written listing or buying contract with the real estate brokerage, an agent/client relationship can be created when a salesperson undertakes to do something on your behalf which results in your reliance and acceptance of the salesperson's actions on your behalf.

THE BROKERAGE AND SALESPERSON'S OBLIGATIONS

OBLIGATION IN THE AGENCY RELATIONSHIP

Once an agent/client relationship is formed, the salesperson and his/her real estate brokerage take on the obligations and duty of care intended to protect and promote your best interest in the transaction.

The following outlines some of their duties arising out of an agent/client relationship in a typical real estate transaction:

1. **Loyalty** to serve your best interests ahead of anyone else's, including his/her own, and at all times to exercise good faith and to disclose all known facts and information which may influence your decision.
 2. **Obedience** to follow all of your lawful instructions.
 3. **Confidentiality** to keep confidential your private circumstances, motivations, and
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confidences which you shared with the salesperson or which the salesperson or the real estate firm has learned. Trust is focal to the agency relationship. Accordingly, the brokerage, including those authorized to act on behalf of the brokerage, must maintain confidentiality regarding all matters that could adversely impact the client or in any way undermine that client's position during negotiations.

4. **Competence** to exercise reasonable care and skill in performing all assigned duties.
5. **Accountability** to account for all money, deposits, or other property entrusted to them. This obligation focuses on the agent's regulatory responsibility to **account for and safeguard** money, documents and property entrusted to that agent.
6. **Disclosure** of information both, about the agent client relationship, and that pertaining to the transaction with which they are dealing.

TYPES OF AGENCY RELATIONSHIPS

AGENT REPRESENTS ONE PARTY:

In Saskatchewan, the approach to real estate agency relationships is one that reflects the general understanding and expectation of buyers and sellers. It is generally understood that whether selling or buying, the salesperson and his/her real estate brokerage that you engage and rely on for representation, has formed an agency relationship with you. Through this agency relationship agent/client duties arise.

This approach is reflected in the Association of Saskatchewan REALTORS® (ASR) contracts, "Exclusive Seller's Brokerage Contract" and the "Exclusive Buyer's Brokerage Contract" for residential property. This approach is also reflected in the Saskatchewan Real Estate Commission's mandatory form, "Residential Contract of Purchase and Sale". This is the mandatory form that registrant salespersons are required to use for transactions involving residential properties. It is assumed that unless the parties otherwise agree, the salesperson and the brokerage representing the seller is the seller's agent, and the salesperson and the real estate brokerage representing the buyer is the buyer's agent.

AGENT REPRESENTS BOTH PARTIES:

It may arise that your salesperson, or another salesperson in his/her real estate brokerage, also represents the person who wishes to buy your home (or represents the owner of the home you are interested in buying). When this happens, a conflict of interest arises and the real estate brokerage can only continue to represent both parties if both parties consent to the joint representation and acknowledge the impact that the joint representation will have on the agent's duties. You will be asked to sign a "Limited Dual Agency Acknowledgement" form to acknowledge your understanding of and agreement to the impact of 'Limited Dual Agency' on the agent's duties. The terms of that acknowledgement will set out the agreed limits of the agency duties outlined in the ASR "Agency Disclosure Brochure". When both parties agree to 'Limited Dual Agency', the salesperson and his/her brokerage's relationship to both parties is tempered by the requirement for fairness and evenhandedness. The brokerage will ***not*** represent the interest of either the buyer or the seller to the advantage of one over the other.

The salesperson will limit his/her duties as outlined in the "Limited Dual Agency Acknowledgement" form. When this conflict arises, if both seller and buyer consent to 'Limited Dual Agency' and agree to a variation of the agent's obligations and duties, the agency relationship(s) may continue.

If you have any questions or concerns about 'Limited Dual Agency' and the impact it will have on the agency obligations and duties you expect from your salesperson, you should discuss your concern with the salesperson involved before entering an agent/client relationship. A good time, for example, would be when the salesperson reviews the "Agency Disclosure Brochure".

NO AGENCY REPRESENTATION:

Apart from a single agency relationship (where the brokerage represents one party) or 'Limited Dual Agency' relationship (where the brokerage represents both parties), it is possible to engage the services of a salesperson without you and the real estate brokerage establishing an agent/client relationship. An example of this might be when you call a salesperson in response to an ad or a sign on a property, or when you attend an open house and deal with the salesperson representing the seller. In these instances, the salesperson should make it clear to you that in showing you a particular property, he or she is representing the seller alone. Even though it is clear between you and the salesperson that the salesperson is not representing you (you would expect to be treated as a customer), the salesperson still owes certain regulatory, legal and ethical responsibilities to you which include the following:

1. **Honesty and Fairness** in response to all of your questions concerning real property the salesperson is promoting.
2. **Exercise Care and Skill** in providing accurate information and assistance with the offer to purchase contract, in presenting the offer you submit, in dealing with conditions, in explaining legalities, and overall general assistance.
3. **Disclosure** of agency relationships and material latent defects which may be in the property.
4. **Regulatory Obligations** can be found under *The Real Estate Act* (reference information follows).

One of the disadvantages of dealing with the other party's agent and not having an agent/client relationship with the salesperson assisting you, is that you cannot expect the salesperson to negotiate price and terms on your behalf, or act in your best interest, or disclose all information that may influence your decision. The salesperson owes those duties only to clients, not customers.

MAKING AN INFORMED CHOICE

Your brokerage representative has the responsibility of explaining the options you have when choosing to work with a real estate brokerage. It is in your best interests to understand what obligations and duties you are owed and what limitations there are, or might be, when you

choose a certain relationship. Asking questions and making sure you are satisfied with the answers, before you enter into a relationship with a particular brokerage, is the surest path to success!

CONTRACTS

AUTHORITY TO CONTRACT

In order to enter into a brokerage service agreement, "Residential Contract of Purchase and Sale", or other contractual arrangement, you must have the lawful capacity to enter into such contracts (i.e., you must be the buyer or seller, or have a lawful power of attorney for the seller or buyer, or be the lawfully appointed executor of the deceased owner's estate, etc.). If you do not have such authority you may incur personal liability for misrepresenting your authority.

VERBAL CONTRACTS

Registered real estate salespeople in Saskatchewan are obligated by provincial legislation to communicate all offers, counter-offers, withdrawals, and acceptances in writing. Having all such offers, acceptances, etc., in writing also helps to minimize the risk of misunderstandings and disappointments at a later date.

OFFER TO PURCHASE

In Saskatchewan, *The Real Estate Act* mandates forms to be used by real estate registrants in the purchase and sale of single family residential properties and condominiums.

The "Residential Contract of Purchase and Sale" form, legislated by *The Real Estate Act* (Bylaw 730), is the mandatory form which must always be used by "real estate salespersons" to set out the terms and conditions of a residential trade in real estate. This becomes the contract between a buyer and seller.

As a potential buyer or seller, whether you are a client or customer, you can review copies of the "Residential Contract of Purchase and Sale" and all of the other forms that you may encounter in your anticipated trade in real estate. You should do this early in the transaction so you can become familiar with their basic clauses. Familiarity with the clauses will help you:

- be better equipped to understand the process of negotiating a purchase or sale of a property;
- know what questions to ask your brokerage representative or your lawyer; and
- have a better appreciation for what is involved in the preparation of an offer, counter offer or acceptance.

OFFERS, COUNTER OFFERS & ACCEPTANCES

When a buyer finds a property he/she wishes to purchase, it is customary for him/her to make an offer through the brokerage representative. The offer may be accepted, rejected or a

counter offer may be drawn up by the seller and returned to the buyer. If the buyer receives a counter offer, he/she may accept or reject it. If the buyer rejects the counter offer, he/she must make a new offer if they wish to continue negotiations.

The exchange of offers and counter offers will continue until the buyer or the seller accepts the terms proposed by the other party or withdraws from the negotiations. Where buyers and sellers are working with brokerage representatives, the exchange of offers, counter offers, and acceptances is conducted through their representatives.

Buyers and sellers must understand that their brokerage representatives:

- cannot make or accept an offer on their behalf; (with certain exceptions which can be found in the Saskatchewan Real Estate Commission Policy II (K), reference information follows).
- are their representative for the purposes of communicating and receiving notice of offers, counter offers, and acceptances unless written instructions to the contrary have been given by the buyer or seller.

Keep in mind the following exceptions which may apply:

- an offer may generally be withdrawn by the buyer at any time before the seller's acceptance of the offer has been communicated to the buyer;
- a counter offer may be withdrawn by the seller at any time before the buyer's acceptance of the counter offer has been communicated to the seller;
- an acceptance of an offer or counter offer may only be effective once the acceptance is communicated to the party who made the offer or counter offer or to his/her duly authorized agent;
- an acceptance must be communicated in the manner specified and by the time prescribed, if any, in the offer or counter offer;
- when an offer or counter offer has been accepted, there is a binding contract between the buyer and seller, even though the contract may be subject to certain conditions that must be met (for example, the buyer being approved for a mortgage); and
- the seller's brokerage must present all offers to the seller up until completion date, even if there is an accepted offer on the property.

MULTIPLE OFFERS

Sellers may receive multiple offers for their property, particularly in an active real estate market. Buyers and sellers should have an understanding of the process they may encounter if a multiple offer situation arises.

While a seller's brokerage representative must communicate all offers to the seller as they are received, there are no rules governing the order in which a seller must respond to the multiple offers. The seller is not obligated to accept the highest offer. The seller decides which offer to accept, which offer to counter, or if all offers should be rejected.

In Saskatchewan, at the direction of the seller, it is the usual practice that salespersons who are the listing agents inform buyers (through the buyer's agent) when they are in a competing offer situation without disclosure of the terms of any of the competing offers, either directly or by implication. The intention of this rule is to allow buyers the opportunity to make an informed decision as to whether or not to make any amendment to their offer to purchase. Likewise, if circumstances arise where the buyers are no longer in competition with another buyer, the buyer is to be advised of that fact.

Members of the public can expect that when they deal with a real estate registrant in Saskatchewan, the contents of any offer to purchase that they are a party to will be treated with utmost confidence.

For a more complete review of the legislation governing trades in real estate in Saskatchewan you can find the up-to-date versions of *The Real Estate Act*, Regulations, Saskatchewan Real Estate Commission (SREC) Bylaws and Policies on the SREC website at: <http://www.srec.ca>. The Saskatchewan Real Estate Commission is the regulatory body incorporated by statute law to regulate the real estate industry in Saskatchewan.

CONDITIONAL OFFERS

In the purchase of real estate, buyers may want additional information and clarification to learn more about the condition of the property and to identify major defects as well as to ensure that the information given and representations made, by the seller are, in fact, accurate. To help buyers secure the information required the SREC requires all registrants to present to all potential re-sale residential buyers, an "Ancillary Services in the Purchase of Residential Real Estate" form. This form outlines the typical inspections and reports usually requested by potential buyers to determine whether they want to continue with the purchase of the property.

Your real estate salesperson can write conditions in your offer to purchase to allow sufficient time to complete the requested inspections. It is understood that in most instances, the buyer is responsible to pay any costs associated with inspections and reports. The following list is not all-inclusive, but includes the more common reports or inspections usually requested:

INSPECTIONS AND REPORTS

The following are items for buyers to consider when they are preparing an offer to purchase:

APPRAISAL REPORT: An appraisal report is provided by an accredited appraiser and gives an opinion of the value of the property. These reports may be required by mortgage companies to determine whether the value of the property warrants the amount of a mortgage applied against the property.

ELECTRICAL INSPECTION: An electrical inspection is an inspection of the electrical components in a home and a report is provided outlining any deficiencies.

ENGINEERS REPORT: A report provided by an engineer on any number of issues such as the structural integrity of the buildings.

ENVIRONMENTAL REPORT: An environmental report is provided to determine if there are any environmental problems with the property. An engineer or consultant specializing in environmental issues usually provides the report.

FURNACE AND CHIMNEY INSPECTION: A furnace and chimney inspection is conducted to determine if the furnace and the chimney meet current safety standards.

GAS LINE INSPECTION: The inspection will determine if any improvements to the property have been built over the gas line into the property and whether the gas line must be relocated.

HOME INSPECTION: A home inspection is an inspection of the condition of a property.

MUNICIPAL COMPLIANCE REPORT: A report from the municipality where the property is located regarding compliance or non-compliance with relevant municipal bylaws, regulations or relaxations granted by the municipality.

PROPERTY CONDITION DISCLOSURE STATEMENT: A Property Condition Disclosure Statement is a statement provided by the seller concerning the condition of the property.

REAL PROPERTY REPORT/SURVEYORS CERTIFICATE: Real Property Report/Surveyors Certificate is a report provided by a land surveyor and shows the legal outline of the property and the locations of all improvements on the land.

SEPTIC/SEWER INSPECTION: A septic/sewer inspection is usually requested to determine if the septic/sewer system is operating properly.

WATER QUALITY/QUANTITY TEST: A water quality/quantity test is usually requested to determine the recovery rate of the water supply and the quality of the water for consumption.

WOOD STOVE/FIREPLACE INSPECTION: A wood stove/fireplace inspection is undertaken to determine if the wood stove or fireplace meets the buyer's insurance requirements.

OTHER REPORT(s): This is not an all-inclusive list there may be other inspections or reports required.

CAVEAT EMPTOR (LET THE BUYER BEWARE)

Almost all resale residential real estate has existing defects or deficiencies of some sort. Caveat Emptor ("Buyer Beware") is a time tested legal maxim that applies to the purchase and sale of most real estate in Saskatchewan. This rule places the responsibility on the buyer for discovering existing defects and deficiencies. It is important for the buyer to conduct his/her own inspections of the property or use the appropriate professionals. Unless the agreement states otherwise, it is assumed that the buyer has had an opportunity to inspect the property, is satisfied with its condition (including all defects and deficiencies), and accepts the property "as is".

A seller has an obligation to reveal 'material latent defects'. 'Material latent defects' are defects that are 'not readily observable' and must be reported to a potential buyer. 'Material latent defects' are defects that:

- Render property dangerous or potentially dangerous.
- Render the property unfit for habitation.
- Render the property unfit for the buyer's purpose, if the purpose is known to seller or brokerage.
- Concern local authority or similar notices received by seller that affect property.
- Concern the lack of appropriate municipal building or other permits.

As a result of the impact of Caveat Emptor, the buyer is strongly advised to make appropriate enquiries about the property or obtain expert advice from a qualified engineer, property or building inspector, or other expert. The seller may provide a 'Property Condition Disclosure Statement' and the buyer should view this at the beginning of the purchase process.

If the buyer wishes to obtain an assurance from the seller on the condition of the property, or any component thereof, the buyer is strongly advised to use the services of a real estate salesperson or lawyer who will be able to incorporate a specific "Subject To" clause into the "Residential Contract of Purchase and Sale".

DEPOSITS

It is a standard practice in the real estate industry for a buyer to include consideration in the form of a deposit with an offer. Consideration is what each party in a contract receives in exchange for its promise to act in a specified way. A significant deposit is a means whereby the buyer is demonstrating a willingness to act in good faith. A brokerage is required by law to hold deposit monies in trust and disburse the monies in accordance with the terms of trust formed through a contractual arrangement. In a residential transaction, brokerages are required to use the Saskatchewan Real Estate Commission's mandatory form, Residential Contract of Purchase and Sale. Contractual provisions in this form relating to the handling of deposits are summarized as follows:

- "If the offer is not accepted, the deposit is refunded to the buyer.
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- If the offer is accepted and the conditions are not satisfied or waived (to the satisfaction of both parties) in writing, the deposit is returned to the buyer.
- If the offer is accepted and all the conditions have been removed in writing but the buyer fails to complete the transaction, the deposit is forfeited to the seller.
- The buyer and seller agree that the provisions for an agreement to disburse trust funds are based on Section 16(a) of *The Real Estate Regulations*.
- The disbursement of the deposit does not prevent either party from seeking a remedy in civil litigation for a breach of contract."

TAX IMPLICATIONS

The purchase and sale of property, including residential property, may have tax implications. You should seek appropriate advice regarding possible tax implications for a transaction before you enter into a contract either as a buyer or a seller.

PROPERTY INSURANCE

Most buyers will want to arrange for property insurance on the property for their own personal protection. Should there be financing on the property, then the lender would normally require property insurance to be in place on closing. Normally, the insurance must be arranged early in the transaction so that the buyer knows he/she is able to obtain the necessary insurance.

Some issuers will require that an insurance inspector view the property to ensure it meets the insurer's requirements. Sometimes issues will be raised about the property's condition or a specific item, such as a woodstove installation.

FINANCIAL TRANSACTIONS REPORTS ANALYSIS CENTRE OF CANADA (FINTRAC)

The real estate salesperson you are working with is required by federal law to ask for and verify personal information. The law requires salespeople to obtain, record, and retain the personal information of their clients, including date of birth and occupation. To do this, they must ask for a government-issued identification document such as a driver's license, passport, etc. You should not provide your Social Insurance card, and it is up to you whether you wish to offer the use of your Saskatchewan Health card as identification. Real estate brokerages are required to keep this personal information confidential and to retain it for five years.

Also, every time funds, such as a deposit, are received by a salesperson during the course of a real estate transaction, he/she is required to record the amount received and how it was obtained. Remember that these two requirements are federal law (the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*) and all real estate salespeople must adhere to its provisions.

LEGAL ADVICE

It is very important that buyers and sellers are comfortable with the documents they are signing. At any time throughout the buying and selling process, you should feel free to contact your lawyer for legal advice.

Sometimes a buyer or seller may insert a clause in a 'Residential Contract of Purchase and Sale' or 'Counter Offer' that allows either party a specified period of time, after acceptance, to have their lawyer review and approve the agreement. Normally, the lawyer would review the agreement to ensure the proper protections are contained for their client and all the necessary issues have been covered off properly.

CLOSING COSTS

When buying or selling a home, please remember that there will be additional costs associated with the closing of the transaction.

As a Seller

The following is a list of some of the typical closing costs when selling a home:

- real estate commission plus GST & PST
- lawyer's fee (discuss this with your lawyer)
- miscellaneous charges incurred by your lawyer; for instance; courier services, title search, ordering copies of encumbrances, photocopying, fax charges, etc.
- your portion of any property taxes
- mortgage discharge fees for any mortgage on your property, your bank and Information Services Corporation (ISC) (formerly known as Land Titles), both will have discharge fees
- any penalty for discharging your mortgage earlier if you have a closed mortgage
- interim financing costs if you are also purchasing a home
- costs of discharging any judgments, builders' liens, etc., against your home
- balance owing on all utilities will have to be paid up to the date of possession

As a Buyer

The following is a list of some of the typical closing costs when buying a home:

- lawyer's fee (discuss this with your lawyer)
 - miscellaneous charges incurred by your lawyer, for instance; title searches, tax search, attending at ISC to register documents such as transfer of title or mortgage, photocopying, courier services, etc.
 - buyer's portion of property taxes
 - fee to verify zoning and obtain a Real Property Report/Surveyors' Certificate or a Municipal Compliance Certificate if necessary
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- interest on your mortgage between possession date and when the ISC office registers the transfer
- any professional services as requested under the Ancillary Services form
- fee for title insurance if required
- utilities, hook-ups and deposits
- insurance on your new home.

This has been a short summary of some of the issues you should consider in the purchase or sale of residential real estate.

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The users of this brochure are cautioned to refer to expert advice should questions arise in its use.

INCLUSIVE LANGUAGE

The language that has been used is meant to be impartial towards both males and females. At times he/she, she/he, he or she and him or her is used. All are meant to be used interchangeably and to include the other gender.

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