

Form 815

for use in the Province of Ontario

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GENERAL USE: This form is required under Section 10 of the Code of Ethics to fulfill the requirements of Information Before Agreements.

The first section of this form highlights that a contract for real estate services is with the brokerage. Each REALTOR® is employed by the brokerage to provide the services of the brokerage. The brokerage falls under the responsibility of the Broker of Record. Also important to note that the consumer is entitled to know the different types of service relationships that are available.

The Commercial REALTOR® Consumer Relationship

In Ontario, the real estate profession is governed by the Real Estate and Business Brokers Act, 2002, and Associated Regulations (REBBA 2002 or Act), administered by the Real Estate Council of Ontario (RECO). All Ontario REALTORS® are registered under the Act and governed by its provisions. REBBA 2002 is consumer protection legislation, regulating the conduct of real estate brokerages and their salespeople/brokers. The Act provides consumer protection in the form of deposit insurance and requires every salesperson/broker to carry errors & omission (E&O) insurance.

When you choose to use the services of a Commercial REALTOR®, it is important to understand that this individual works on behalf of a real estate brokerage, usually a company. The brokerage is operated by a Broker of Record, who has the ultimate responsibility for the employees registered with the brokerage. When you sign a contract, it is with the brokerage, not with the salesperson/broker employee.

The Act also requires that the brokerage (usually through its Commercial REALTORS®) explain the types of service alternatives available to consumers and the services the brokerage will be providing. The brokerage must document the relationship being created between the brokerage and the consumer, and submit it to the consumer for his/her approval and signature. The most common relationships are "client" and "customer", but other options may be available in the marketplace.

The first discussion in this form is about a client relationship. It is important to note that this is the highest level of relationship between a REALTOR® and a consumer. There are duties which the law states are mandatory to a client called fiduciary duties. The "client" arrangement is created through a representation agreement. Clients can be Sellers or Buyers. The representation agreements can come in the form of a Listing Agreement or Buyer Representation Agreement. While in a client relationship the brokerage must protect the interests of the client and not disclose confidential information there is still an obligation to treat all other parties to the transaction with fairness, honesty and integrity.

Client

A "client" relationship creates the highest form of obligation for a Commercial REALTOR® to a consumer. The brokerage and its salespeople/brokers have a fiduciary (legal) relationship with the client and represent the interests of the client in a real estate transaction. The Commercial REALTOR® will establish this relationship with the use of a representation agreement, called a Listing Agreement with the seller and a Buyer Representation Agreement or Mandate with the buyer. The agreement contains an explanation of the services the brokerage will be providing, the fee arrangement for those services, the obligations the client will have under the agreement, and the expiry date of the agreement. Ensure that you have read and fully understand any such agreement before you sign the document.

Once a brokerage and a consumer enter into a client relationship, the brokerage must protect the interests of the client and do what is best for the client. A brokerage must strive for the benefit of the client and must not disclose a client's confidential information to others. Under the Act, the brokerage must also make reasonable efforts to determine any material facts relating to the transaction that would be of interest to the client and must inform the client of those facts. Although they are representing the interests of their client, they must still treat all parties to the transaction with fairness, honesty, and integrity.

There will be instances where a consumer does not wish to have a client relationship with the brokerage. In those instances the consumer can have a customer relationship. The REALTOR® is still required to treat the customer with honesty, fairness and integrity but the services will be on a restricted level.

Customer

A buyer/tenant or seller/landlord may not wish to be under contract as a client with the brokerage but would rather be treated as a customer. A Commercial REALTOR® is obligated to treat every person in a real estate transaction with honesty, fairness, and integrity, but unlike a client, provides a customer with a restricted level of service. Services provided to a customer may include showing the property or properties, taking customer direction to draft an offer and present the customer offer etc. Brokerages use a Customer Service Agreement to document the services they are providing to a buyer/tenant or seller/landlord customer.

Under the Act, the Commercial REALTOR® has disclosure obligations to a customer and must disclose material facts known to the brokerage that relate to the transaction.

It is possible that the brokerage will be representing more than one client in a transaction or where there is more than one offer on a property. Where the brokerage represents more than one client on a transaction this is called multiple representation. In these circumstances there are mandatory requirements that have to be fulfilled. All the clients to the transaction must confirm in writing that they acknowledge, understand and consent to the multiple representation aspect of the relationship.

What Happens When...

Buyer(s) and the seller(s) are sometimes under contract with the same brokerage when properties are being shown or an offer is being contemplated. There can also be instances when there is more than one offer on a property and more than one buyer and seller are under a representation agreement with the same brokerage. This situation is referred to as multiple representation. Under the Act, the Commercial REALTORS® and their brokerage must make sure all buyers, sellers, and their Commercial REALTORS® confirm in writing that they acknowledge, understand, and consent to the situation before their offer is made. Commercial REALTORS® typically use what is called a Confirmation of Co-operation and Representation form to document this situation.

Offer negotiations may become stressful, so if you have any questions when reference is made to multiple representation or multiple offers, please ask your Commercial REALTOR® for an explanation.

REALTORS® must disclose facts that may affect a reasonable buying or selling decision. In order to ensure that the REALTOR® adheres to their buyer's or seller's best interest it is important for buyers and sellers to discuss their needs and wants and any issues that would affect their decision to buy or sell. Hopefully, this would avoid any misunderstandings or unpleasant surprises. Further it is important for consumers to read and understand every contract before that contract becomes finalized

Critical Information

Commercial REALTORS® are obligated to disclose facts that may affect a buying or selling decision. It may be difficult for a Commercial REALTOR® to judge what facts are important. They also may not be in a position to know a fact. You should communicate to your Commercial REALTOR® what information and facts about a property are important to you in making a buying or selling decision, and document this information to avoid any misunderstandings and/or unpleasant surprises.

Similarly, services that are important to you and are to be performed by the brokerage, or promises that have been made to you, should be documented in your contract with the brokerage and its salesperson/broker.

To ensure the best possible real estate experience, make sure all your questions are answered by your Commercial REALTOR®. You should read and understand every contract before you finalize it.

The REALTOR® requires that the buyer or seller acknowledge that they have read, understand and that they have received a copy of this form. At this point in the relationship the consumer is to confirm by their initials whether they will be a client or customer of the brokerage.

Acknowledgement by:

(Names)

I/we have read, understand, and have received a copy of Working with a Commercial REALTOR®

Sellers: As seller(s), I/we understand that

	(Name of Brokerage)
(initial one)	
_____	Is representing my interests, to be documented in a separate written agency representation agreement, and I understand the brokerage may represent and/or provide customer service to other sellers and buyers.
_____	Is not representing my interests, to be documented in a separate written customer service agreement, but will act in a fair, ethical and professional manner.

(Signature)	(Date)

(Signature)	(Date)

Buyers: As buyer(s), I/we understand that

	(Name of Brokerage)
(initial one)	
_____	Is representing my interests, to be documented in a separate written agency representation agreement, and I understand the brokerage may represent and/or provide customer service to other buyers and sellers.
_____	Is not representing my interests, to be documented in a separate written customer service agreement, but will act in a fair, ethical and professional manner.

(Signature)	(Date)

(Signature)	(Date)

The consumer is put on notice that the law requires that the REALTOR® verify the identity of sellers and buyers with whom they are working.

It is important to note that this form is not a contract but rather for information only.

Please note that Federal legislation requires REALTORS® to verify the identity of sellers and buyers with whom they are working.

For the purposes of this information, the term "seller" can be interpreted as "landlord" and "buyer" can mean "tenant." This form is for information only and is not a contract.

EDUCATION ONLY