

## Common Law and Designated Agency FAQ's

Questions	Common Law Agency	Designated Agency
<b>What is it?</b>	Brokerages operate as required by common law. The agency relationship under common law is with the brokerage. Obligations to buyer or seller are outlined in sections 57, 58 and 59 of the <i>Real Estate Act</i> Rules. Current RECA forms reflect common law obligations.	The contract is with the brokerage. The agency relationship is with the industry member. Designated agency relationships are established through written service agreements because you are contracting out of common law which must be done in writing.
<b>What is the benefit?</b>	Retains the status quo. Real estate brokerages already operate under common law.	Consistent with consumer expectations. Consistent with greater independence of industry members and existing practices (but without proper documentation). Eliminates dual agency for the brokerage. Eliminates dual agency and conflicts of interest that arise when two industry members from same brokerage represent the buyer and seller in the same transaction. Industry member is a sole/single agent for their client, unless the industry member represents the buyer and seller in same trade.
<b>Who decides?</b>	Broker decides if brokerage will remain under common law agency or elect to become a designated agency brokerage.	Broker decides if brokerage will remain under common law agency or elect to operate as a designated agency brokerage.
<b>How do I know what agency our brokerage offers?</b>	By default all brokerages automatically operate under common law agency, unless they chose to elect otherwise. They operate as one or the other, but not both concurrently.	Brokers decide voluntarily to become a designated agency brokerage. If a broker elects designated agency, he/she must meet RECA's criteria and notify RECA of the change.
<b>How will it impact my real estate practice?</b>	<ul style="list-style-type: none"> <li>1] Agency relationship is with the brokerage</li> <li>2] Industry members use the real estate forms for common law agency brokerages</li> <li>3] Industry members must know when conflicts in client representation may occur</li> <li>4] Keep clients' confidential information private. There must be information barriers between brokerages.</li> </ul>	<ul style="list-style-type: none"> <li>1] Agency relationship is with the industry member</li> <li>2] Industry members must use the real estate forms for designated agency brokerages</li> <li>3] Industry members must know when conflicts in client representation may occur</li> <li>4] Keep clients' confidential information private. There must be information barriers between industry members in the same brokerage and between brokerages.</li> </ul>

<p><b>What forms do I use?</b></p>	<p>Use the following forms:  - Agency Relationships Guide  - Exclusive Seller Brokerage Agreement  - Exclusive Buyer Brokerage Agreement  - Transaction Brokerage Agreement (for use with exclusive brokerage agreements)  <i>Note:</i> See the Agency Relationships Guide and the three forms which are mandatory in exclusive common law relationships.</p>	<p>Use the following forms:  - Agency Relationships Guide  - Exclusive Seller Designated Brokerage Agreement  - Exclusive Buyer Designated Brokerage Agreement  - Transaction Brokerage Agreement (for use with exclusive designated brokerage agreements)  <i>Note:</i> See the Agency Relationships Guide and three forms which are mandatory in exclusive designated agency relationships.</p>
<p><b>Do I have to use an exclusive buyer agreement?</b></p>	<p>No, you may establish an agency relationship with a buyer without a mandatory form. However, if it is an exclusive right to represent then you should use the Exclusive Buyer Brokerage Agreement.</p>	<p>Yes, designated agency may only be established by entering into a written agreement.</p>
<p><b>How are privacy or confidentiality issues different for each model?</b></p>	<p>Alberta privacy legislation (PIPA) and federal privacy legislation (PIPEDA) require the brokerage and all its industry members to keep a clients' personal information confidential. This is similar to the policies to implement information barriers.</p>	<p>Alberta privacy legislation (PIPA) and federal privacy legislation (PIPEDA) also apply. In designated agency the brokerage must keep information confidential. However, each designated agent must also keep their clients' personal information confidential from other industry members registered with the same brokerage.</p>
<p><b>What happens to my listing if I change brokerages?</b></p>	<p>The listing agreement is with the brokerage and not with the individual industry member. If the industry member moves to another brokerage, the listing agreement will remain with the current brokerage. Your seller must agree to any change in brokerage.</p>	<p>The listing agreement is with the brokerage and not with the individual industry member. If the industry member moves to another brokerage, the listing agreement will remain with the current brokerage. Your seller must agree to any change in brokerage.</p>
<p><b>If my brokerage becomes a designated agency brokerage can we return to a common law brokerage later?</b></p>	<p>Yes, a brokerage would have to cancel its designated agency agreements and sign clients to common law agency agreements.</p>	<p>Yes, a brokerage would have to cancel its designated agency agreements and sign clients to common law agency agreements.</p>
<p><b>What do I have to do to implement designated agency?</b></p>	<p>To become a designated agency brokerage, the broker will need to:  1] Notify RECA that you are a designated agency brokerage  2] Establish policies and procedures for information barriers and designated agency  3] Establish new client relationships with your buyers and sellers through written service agreements</p>	<p>To comply with designate agency brokerage requirements, the broker:  1] Notified RECA that you are a designated agency brokerage  2] Established policies and procedures for information barriers and designated agency  3] Established new client relationships with your buyers and sellers through written service agreements</p>

<p><b>Do I need to have an audit from RECA prior to implementing designated agency?</b></p>	<p>No, but you may request a courtesy audit from RECA.</p>	<p>You may request a courtesy audit from RECA.</p>
<p><b>Does a brokerage have to declare to consumers that they operate as a designated agency brokerage?</b></p>	<p>Yes.</p>	<p>Yes. In designated agency, written service agreements are mandatory.</p>
<p><b>Who can take care of my listings when I am sick or away on holidays?</b></p>	<p>Any industry member registered with the same brokerage can look after your listings. In consultation with the seller, an industry member is assigned this responsibility during your absence.</p>	<p>The brokerage in consultation with the seller, would designate another industry member within the brokerage for the period of time you are away. This would be done through an amendment to the agreement. Or an industry member may have been designated on the written service agreement at the time of listing the property.</p>
<p><b>Once designated agent #1 returns to work, what happens if designated agent #2 subsequently finds a buyer for the property?</b></p>	<p>Under common law, the seller's agency agreement is with the brokerage and the second agent would be included in that understanding.</p>	<p>Under designated agency, that is addressed in the Additional Terms (clause 14.0) in the Exclusive Seller Designated Brokerage Agreement. It states that any confidential information gained in one agency relationship may not be used in another agency relationship. Both designated agents would proceed into the transactions as single agents. This assumes that agent 2 has been removed from the Exclusive Sellers Brokerage Agreement. If they remain on the contract and find a buyer, they will need to do the change in representative capacity.</p>
<p><b>What is my requirement if we have 2 competing buyers represented by the same brokerage, but different industry members?</b></p>	<p>In common law brokerages, buyer representatives are in sole agency relationship with each buyer and must disclose the terms and conditions of their competing offers. However, this is not the expectation of the buyers or their representatives. If a buyer brokerage agreement was in place, it would protect the client's confidential information and prevent the attribution of knowledge to the other representatives in the same brokerage.</p>	<p>In designated agency brokerages this is not an issue. Each buyer would have a separate designated agency agreement with their respective buyer agent and the agreement covers the client's protection of confidential information and how this situation would be handled.</p>
<p><b>Which Rules will be affected by designated agency and transaction brokerage?</b></p>	<p>Part 2 – Industry Standards of Practice, Division 1: Standards of Conduct for All Industry Members (<i>Real Estate Act</i> Rules sections 41- 46; Division 2: Real estate Brokerage Standards (sections 47-63). <i>Note:</i> Transaction brokerage procedures for common law brokerages will be effective Oct. 1, 2008 to replace section 59 concerning dual agency with limitations.)</p>	<p>Part 2 – Industry Standards of Practice, Division 1: Standards of Conduct for All Industry members (<i>Real Estate Act</i> Rules sections 41-46; Division 2: Real estate Brokerage Standards (sections 47-63). <i>Note:</i> Designated agency and transaction brokerage procedures for designated agency brokerages will be effective March 1, 2008 when section 58.1 comes into effect</p>

## **Considerations for a Brokerage in Implementing Designated Agency**

1. Your clients' expectations
2. Number and location of industry members in brokerage
3. Level of independence of your industry members
4. Physical layout of the brokerage
5. Security and accessibility of files
6. Electronic/equipment issues such as shared fax, email, computers etc.
7. Establish policies and procedures for information barriers
8. Training of industry members and administrative staff
9. Information barriers and implementation of privacy/confidentiality policies are similar for common law and designated agency models
10. Costs of any necessary changes