

Confidentiality

This bulletin explains the obligations of brokerages and real estate agents related to confidentiality and the handling of confidential client information under brokerage representation and designated representation.

Summary

Except as is otherwise authorized or required by law, brokerages and real estate agents must not disclose any confidential client information to a third party without the client's written **consent**. It's important to note that who is permitted to access confidential information differs, depending on the type of representation agreement the client is under.

Unless the disclosure of the information is required by law, the client's consent must be obtained **before** confidential client information can be shared with anyone, for any reason. The consent must include enough information for the client to make an informed decision and provide clear written direction to the brokerage or agent.

The consent should answer the following key questions:

1. What information will be disclosed? Clearly specify the information that will be shared.
2. Who will receive this information? Identify the third party or parties who will receive the client's confidential information.
3. What is the purpose of the disclosure? Explain the reason for sharing the information or why it is necessary.
4. Who might benefit from sharing this information and how? Identify who might benefit from this disclosure and explain how the client and the person receiving the information will benefit.

Duty of confidentiality

One of the key duties owed to clients is to maintain the confidentiality of their information. All information gained in the course of representing the client must be protected. The execution of this duty can vary depending on whether the client is under a brokerage representation agreement or designated representation agreement.

The duty of confidentiality is ongoing. Even after the client relationship ends, brokerages and agents must continue to protect and safeguard clients' information.

Brokerages must take reasonable steps to ensure the agents and employees of the brokerage are aware of and understand all information and confidentiality policies and procedures adopted by the brokerage. Agents are expected to follow brokerage policies and procedures.

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Confidential client information under brokerage representation

In a brokerage that operates under brokerage representation, the client's file and confidential information is available to all agents registered with that brokerage and the brokerage's employees, subject to any brokerage policies regarding access to client files.

Under brokerage representation, the knowledge of a specific agent about a client is considered to be available to all of the other agents registered with the brokerage. The brokerage, and all its agents, are representing the client.

Confidential client information under designated representation

If a brokerage enters into a designated representation agreement with a client, only the designated representative(s) named in the agreement are permitted to have access to confidential information about the clients they are representing.

DESIGNATED REPRESENTATIVE

The designated representative must protect the confidential information of every client represented by the designated representative, including by not disclosing a client's confidential information to any other agent employed by the same brokerage or any other person, unless the disclosure is authorized by the client or required by law.

This means, for example, if a team is routinely sharing information about the team's clients, each member of the team must be named as a designated representative in the agreement.

BROKERAGE

The brokerage must protect each client's confidential information, including ensuring that a designated representative does not disclose any confidential information of the designated representative's client to any other agent employed by the brokerage or other person, unless the disclosure is authorized by the client or required by law.

Brokerage access to client information under designated representation

The brokerage requires access to confidential client information in order to fulfil its duty under the legislation to ensure the designated representative's duties are fulfilled under the designated representation agreement. The brokerage continues to have access to client information that is necessary for the creation and administration of the designated representation agreement between the brokerage and the client.

The brokerage must ensure that administrative or support staff employed by the brokerage who might have access to confidential client information or client files do not share the client's information with any agent employed by the brokerage who is not a designated representative for the client.

Personal information

Personal information is also protected under federal privacy legislation. Brokerages and agents must generally obtain a person's consent when they collect, use, or disclose a client's personal information. Personal information can only be used for the purpose for which it was collected and the person to whom the information relates must have consented to the information being used for that purpose.

Things to consider

Brokerages are expected to have policies in place related to the confidential client information, regardless of which type of the representation agreements the brokerage permits. Agents are expected to follow brokerage policies.

Things to consider when developing policies include:

- What information is permitted to be shared during brokerage meetings;
- Office structure — ensuring phone conversations and what might be discussed in client meetings cannot be overheard by others;
- How client files are maintained, accessed, and destroyed and who has access to them;
- What information might be posted or otherwise visible to others in the brokerage office;
- Brokerage deal secretaries or assistants that provide support to multiple real estate agents;
- Securing paper files and limiting who has access to keys for locked cabinets;
- Computer passwords and electronic file storage;
- Email access and who has knowledge of email passwords;
- Desk or other surfaces where printed material might be left out and visible to others; and
- How to prevent clients from sharing information with brokerage employees who should not be receiving it.

Related information

Bulletin No. 2.2 Representation

Bulletin No. 2.3 Representation agreements

Bulletin No. 3.1 Disclosures, consents, and acknowledgements