

Conflicts of interest

This bulletin explains the disclosure requirements that apply when the interests of a real estate agent conflict or might conflict with the interests of their client.

Summary

Agents have a duty to promote and protect their client's best interests and should always be guided by what is in their client's best interests. Avoiding conflicts of interest is part of promoting and protecting the best interests of a client.

If a conflict or potential conflict does arise, agents must not provide any further services **until**:

1. The agent has disclosed the conflict or potential conflict.
2. The agent has advised the client or prospective client to seek independent professional advice.
3. The agent has taken steps to ensure the client or prospective client has demonstrated an understanding of the conflict.
4. The agent has obtained the client's or prospective client's consent to receive or continue to receive services, despite the conflict.

A client or prospective client is under no obligation to consent to receive or continue to receive services when the agent's ability to promote and protect their best interests has been compromised.

What is a conflict of interest?

There is no closed list of what might constitute a conflict of interest. A conflict of interest arises in any situation where there is a risk that the agent's ability to promote and protect the best interests of a client may be impacted by the agent's own interests or by the agent's duties to another current client, a former client, or a third party.

Some of the most common and serious conflicts of interest that arise in real estate transactions are addressed separately and specifically in the law and require very specific disclosures and consent. For example, conflicts related to multiple representation, financial benefits, personal trades, and property interests, are all addressed specifically in the law. However, in these circumstances, the requirement to advise a client or prospective client to seek independent professional advice would still apply.

Determining whether there is a conflict, or a potential conflict of interest will depend on the specific circumstances. Agents are reminded that acting in a conflict of interest may expose them, and the brokerage they work for, to the risk of litigation. If there is doubt about whether there is an actual or potential conflict of interest, an agent should speak with their broker of record.

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Brokerages should have policies and procedures in place to help agents identify and address conflicts of interest. Agents are expected to comply with brokerage policies.

Where an agent or brokerage is uncertain about what may be a conflict of interest, they ought to seek legal advice.

Handling a conflict of interest

When a conflict or potential conflict of interest arises, the agent must not provide or continue to provide services to the client or prospective client until the agent has taken the required steps.

STEP 1: DISCLOSE THE CONFLICT

The disclosure must include information about the circumstances giving rise to the conflict of interest or potential conflict of interest, and, where applicable, information about the relationship that results in or could result in the conflict of interest.

While there are no specific requirements related to the content, the disclosure to the client or prospective client must be clear and complete to ensure the client can make an informed decision about whether they want to continue receiving services from the agent when there is a conflict or potential conflict of interest.

The client must be fully aware of the nature and extent of the conflict.

STEP 2: ADVISE THE CLIENT TO SEEK INDEPENDENT PROFESSIONAL ADVICE

After providing the disclosure, the agent must advise the client or prospective client to seek independent professional advice.

The agent should explain to the client that they are unable to provide any advice or opinion related to the conflict or potential conflict, including whether and how it might affect the client or prospective client's decision to receive or continue receiving services.

Independent advice might be provided to the client by a lawyer, an accountant, or other professional.

STEP 3: VERIFY THE CLIENT'S UNDERSTANDING OF THE CONFLICT

Agents must take all reasonable steps to ensure the client or prospective client has demonstrated a reasonable understanding of the conflict. What constitutes reasonable steps will depend on the circumstances.

Reasonable steps might include confirming that the client received independent advice.

To effectively assess the client's understanding of the conflict and its implications, the agent should ask clarifying questions and invite the client to share their understanding of the situation in their own words.

STEP 4: OBTAIN THE CLIENT'S CONSENT

Requesting consent is the final step. After the disclosure is made, the person has had an opportunity to seek independent advice, and the agent has confirmed the client's understanding of the conflict, the agent can seek the client's consent to provide or continue to provide services.

The agent is to make it clear to the client or prospective client that they are not required to consent. If the client or prospective client **does not** consent, the agent **must not** proceed to provide services.

If the client or prospective client consents, the agent is permitted to provide or continue to provide services.

Related Information

Bulletin No. 3.3 Financial benefits

Bulletin No. 3.4 Personal trades and property interests

Bulletin No. 3.2 Multiple representation

Bulletin No. 3.1 Disclosures, consents, and acknowledgements