

Personal trades and property interests

This bulletin explains the notice requirements that apply when a real estate agent is acquiring or disposing of an interest in real estate, requirements related to the disclosure of property interests, and related matters.

Summary

PERSONAL TRADES

Before an agent can be involved in a personal transaction in real estate, they must:

1. Provide the required written notice to all parties to the agreement.
2. Obtain an acknowledgement the notice was received from each of the parties.

The notice requirements apply when an agent is directly or indirectly involved in:

- purchasing, leasing, exchanging, or otherwise acquiring, any interest in real estate or making an offer to do so; or,
- divesting any interest in real estate or making an offer to do so.

DISCLOSURE OF PROPERTY INTEREST

The disclosure of property interest requirement applies when an agent is representing a client, and the agent knows or ought to know of an interest in the property that the client is considering buying or selling.

The agent must:

1. Make the required disclosure to their client and every other person making or receiving an offer.
2. Use best efforts to obtain an acknowledgement that the disclosure was made from each person receiving the disclosure.
3. If a person acknowledges the disclosure, provide them with a copy of the acknowledgement.

The notice and disclosure requirements may overlap depending on the specific circumstances.

It is also important to note that an agent's ability to represent a client in the trade may be compromised as a result of the property interest. These situations should be approached cautiously.

These requirements also apply, with necessary modifications, to brokerages.

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Personal trades

An agent might be considering selling their home, purchasing a new home, purchasing a rental property, or leasing a property the agent owns. The notice requirements apply to a situation where an agent is acquiring or divesting themselves of an interest in real estate.

The obligation is to give the required notice to all parties to the agreement. It is not tied to the agent having a client in the trade. The notice obligation is triggered by the agent seeking to personally acquire or divest an interest in real estate.

It does not matter if the agent is unrepresented in the trade or if the agent is under a representation agreement with a brokerage.

An agent must not represent a party to their own personal trade because the conflict of interest is too severe to manage.

STEP 1: PROVIDE WRITTEN NOTICE TO EACH PARTY TO THE AGREEMENT

Before making or receiving any offer, the agent must provide the required notice to all parties to the agreement.

The written notice must include:

- A statement that the agent is a salesperson or broker.
- Full disclosure of all facts within the agent's knowledge that affect or will affect the value of the real estate.
- In the case of acquiring an interest, the details of any negotiation, offer, or agreement by the agent, or on the agent's behalf, for the subsequent sale, lease, exchange, or other disposition of the agent's interest in the real estate to any other person if applicable.

STEP 2: OBTAIN ACKNOWLEDGEMENT OF RECEIPT OF THE NOTICE

Written acknowledgement of receipt of the notice **must** be obtained from each party to the agreement before proceeding.

Property interests

If an agent is representing a client in respect of the acquisition or disposition of a property, and the agent knows of a property interest the brokerage or agent, a person related to the brokerage or agent, the agent's personal real estate corporation, or a person related to the agent's personal real estate corporation, has or may have in the property, the agent must disclose the property interest.

This disclosure requirement is broader than the notice requirement for personal trades. It applies to a person related to the agent, or a person related to the agent's personal real estate corporation.

The obligation to disclose applies not only when the agent knows of a property interest but also when the agent "ought to know".

The agent must make reasonable efforts to determine if a person related to them or a person related to the agent's personal real estate corporation has a property interest in the property their client is considering buying or selling. The agent would be expected to know if they or their personal real estate corporation has an interest in the property.

Remember, your client is a client of the brokerage. Accordingly, the disclosure requirements apply to any property interest the brokerage or any of its agents might have in the real estate.

STEP 1: DISCLOSE THE PROPERTY INTEREST

Timing of the disclosure

Critically important, the disclosure must be made **as soon as possible** after the agent knows or ought to know of the property interest and **before** any offer is made.

Content of the disclosure

The disclosure must contain a description of the property interest. It must provide enough information that the person receiving it understands the nature of the property interest, including any conflict or potential conflict of interest the property interest might create.

If a person other than the agent has the interest in the property, the disclosure must include a description of the relationship between the agent and the person who has the property interest.

Making the required disclosure

The disclosure must be made to the client and to every person making or receiving an offer.

If the agent is representing the seller, the disclosure must be made to the seller client and to each person making an offer.

If the agent is representing a buyer, the disclosure must be made to the buyer client and the seller or the seller's agent.

STEP 2: MAKE BEST EFFORTS TO OBTAIN AN ACKNOWLEDGEMENT

After making the disclosure, the agent must use their best efforts to obtain an acknowledgement from each person who received the disclosure.

STEP 3: PROVIDE A COPY OF THE ACKNOWLEDGEMENT

If a person makes the acknowledgement, the agent must provide the person with a copy of the acknowledgement.

Scenarios

1. The agent is selling their own home.

In this situation, the notice requirements apply. Each party to the agreement must be provided with the notice and acknowledgement of the notice must be obtained before any offer is received.

In this scenario, the agent could not represent a potential buyer in the trade as the conflict of interest is too severe to manage.

2. The agent is purchasing a home (not listed by their employing brokerage).

In this situation, the notice requirements apply, and the agent must obtain an acknowledgement of the notice from each party to the agreement before any offer is made.

3. Agent wants to purchase the property of a seller client.

The seller's agent must act in the best interests of the client, not their own best interests.

In this scenario, the agent could not represent the seller as the conflict of interest is too severe to manage.

As a result of representing the seller, the agent has confidential information about the seller, including their motivation to sell and the price they are willing to accept. Even if the client relationship is terminated, meaning the seller is working with a different brokerage, the agent is obligated to protect the client's confidential information and must not use it for their personal gain.

Some brokerages have policies in place that prohibit their agents from purchasing or attempting to purchase any property listed by the brokerage.

4. The agent is representing their parents in the sale of their home.

In this situation, an agent must make the required property interest disclosure to each buyer considering making an offer on the property.

The agent could not represent a buyer in the trade. Multiple representation requires a neutrality that is not possible in this situation.

5. The agent's buyer client is interested in the property of the agent's family member, listed by another brokerage.

The agent must make the required disclosure to their buyer client, the seller's representative, and the seller.

The agent's buyer client must fully appreciate the nature of the property interest and the potential conflict of interest that might arise before consenting to allow the agent to continue to represent their interests in the trade.

Before seeking consent from their buyer client, the agent must evaluate the potential conflict to determine if the agent is able to effectively promote and protect the best interests of their buyer client and go against their family member under these circumstances.

WHAT DOES A PERSON "RELATED TO THE AGENT" OR "RELATED TO THE PERSONAL REAL ESTATE CORPORATION" MEAN?

This phrase has a specific meaning under TRESA and is defined to include both family and business relationships.

A person is **related** to the agent if:

- the person is a *spouse* of the agent;
- the person is a *child* of the agent;

- the agent is a *child* of the person;
- the person is a relative by blood, marriage, or adoption of the agent or the agent's *spouse* or *child*; or,
- the agent is associated with the other person within the meaning of subsection 1 (2) of TRESA.

Related Information

Bulletin No. 3.1 Disclosures, consents, and acknowledgements

Bulletin No. 3.5 Conflicts of interest