

Implied representation agreements

This bulletin explains the risks of implied representation agreements and steps agents can take to avoid creating implied relationships.

Summary

A representation agreement is a **written, oral, or implied** agreement between a brokerage and a person under which the brokerage and the person agree that the person will receive services from the brokerage and will receive representation from either the brokerage or a designated representative, in respect of a trade in real estate.

Implied representation can arise when agents begin providing services, opinions, or advice to any person without a written agreement in place. Implied representation affects not only the agent, but also the brokerage that employs the agent. Representation agreements are always between a person and a brokerage — not between a person and an agent. In some cases, implied representation also leads to multiple representation, increasing the risks to the person, the client, the agent, and the brokerage.

A written agreement clarifies the relationship, including the services to be provided and the type of representation — brokerage representation or designated representation — and creates an entitlement to remuneration.

How implied representation agreements are created

Implied representation agreements are created by the actions of the agent. It can happen accidentally or unintentionally. Often, it is a result of an agent going too far in their attempts to be helpful or providing services to a prospective client in the hope they will sign an agreement after the services have been provided.

While written agreements with clients make a relationship clear, it is not necessarily the agreement that creates representation. Implied representation is a result of the actions of the parties.

The likelihood of creating an implied representation agreement increases with each action an agent takes or each action the buyer or seller requests and includes sharing information.

Agents risk creating implied representation agreements as a result of:

- exchanging confidential information;
- giving advice related to a trade;
- providing services to a person;

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- acting in a way that requires the use of your judgment or discretion on which a buyer or seller might rely;
- communicating with third parties on behalf of the buyer or seller; or
- negotiating on behalf of a buyer or seller.

Limited exceptions

There are two narrow exceptions to what creates an implied representation agreement under the legislation.

Providing information: An agent is permitted to provide general information to a person relating to the business of trading in real estate.

Providing assistance: As a service provided to a client, or incidental to a service provided to a client, an agent may provide assistance to another person without encouraging the other person to rely on the registrant's skill or judgment in respect of a trade in real estate. Remember, assistance can only be provided if an agent has a client in the trade.

Providing information

Agents are permitted to provide information to any person, including prospective clients or self-represented parties. Here are some examples.

A consumer calls you about a listing and asks questions that require factual answers (number of bedrooms, square footage, when it was built). Answering these questions about the property is providing information.

You are holding an open house and provide feature sheets about the property to each person who views the property. This is providing information.

You are speaking at an event about tips for buyers and sellers and answer questions from the audience. This is providing information. You are not creating implied representation agreements with the people attending the session.

When it stops being a casual or informal exchange of information, caution is required. For example, where a buyer begins to share information that is confidential, or you start to offer advice related to a transaction. When you begin providing advice or services, you are creating implied representation.

CLEAR COMMUNICATION

Clear communication with each and every buyer or seller is key to ensuring they understand what information you can provide when you are not representing or providing services to them, and what services and representation are available if they choose to enter a representation agreement.

Providing assistance

It's important to understand the circumstances under which an agent can provide assistance and what assistance an agent is permitted to provide.

The *Information and Disclosure to Self-represented Party* form explains the risks of representing oneself in a real estate transaction and receiving any assistance from an agent representing a client in a trade, and seeks the person's acknowledgement of the fact they are not represented, receiving any services, or under any agreement or contract with the brokerage or agent.

Agents are expected to take steps to confirm the self-represented party understands what it means to proceed through a real estate transaction without the benefit of the services and representation a brokerage or real estate agent can provide.

Aside from encouraging a self-represented party who requires assistance to seek their own representation, risk mitigation involves setting the appropriate expectations by clearly communicating:

- You are representing your client and your client's best interests.
- You do not represent the self-represented party or their best interests.
- You cannot provide the self-represented party with any services, opinions, or advice in respect of the trade.
- Any assistance you might provide to the self-represented party is to benefit your client and your client's interests.
- Any information, including confidential information, that the self-represented party shares with you will be shared with your client, as part of your duties to your client.

CONSISTENCY

Even if the self-represented party acknowledges the *Information and Disclosure to Self-represented Party* form, the agent's conduct must be consistent with the information and disclosure they made to the self-represented party. Conduct that contradicts these communications could create implied representation.

In addition, because the agent has a client in the trade, implied representation would result in multiple representation, leading to other disclosure obligations and the requirement to obtain the related consents.

Dealing with prospective clients

Whether at an open house or meeting with a buyer or seller who is considering engaging your services, you must be cautious that you do not provide services, opinions, or advice. This includes advising potential sellers what their home may be worth or soliciting confidential information from a consumer about their motivation to buy or sell a property. RECO recognizes that a brokerage or real estate agent might share factual information and data about the values of properties to support their proposed marketing strategy for a particular home during a listing presentation.

Despite your best intentions, if you inadvertently create an implied representation agreement, all obligations owed to clients under the legislation apply.

Related information

Bulletin No. 2.1 RECO Information Guide

Bulletin No. 2.2 Representation

Bulletin No. 2.3 Representation agreements

Bulletin No. 2.4 Dealing with a self-represented party