



Brokerage commissions and fees

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When charging for services in relation to a trade in real estate, a brokerage can use an agreed fixed amount, a percentage of the sale price, or a combination of the two.

Before working with a client or customer, it is important to clearly communicate the fee structure and rate you will charge, and the services you will provide. Communicating clearly ahead of time and getting everything in writing can help avoid problems later on.

When discussing commissions and fees with your clients and customers, you cannot indicate or imply that the rates or amounts are fixed or approved by the Real Estate Council of Ontario, government authorities, real estate associations or real estate boards. It should be clear to the client or customer that the brokerage determines the fee structure and rate.

REBBA 2002 also addresses various forms of specialized commission arrangements as follows:

- **Permitted:** Commission rates that decrease as the sale price increases. For example, a brokerage could set a commission rate of 3% for a sale price between \$200,000 and \$250,000 and 2.5% for a sale price over \$250,000. However, the commission rate cannot increase as the price increases – it can only decrease.
- **Permitted:** Commission rates that decrease if the buyer works with the same salesperson or brokerage. However, this arrangement must be disclosed to those who make a written offer to buy.
- **Prohibited:** Commission rates that are based on the difference between the listing and sale price. For example, you could not list a house for \$250,000 and then when the property sells for \$350,000, charge a 10% commission on the \$100,000 difference.

UPDATE

December 2013

On December 12, 2013, the Ontario government amended REBBA 2002 to allow registrants to make fee arrangements that include a combination of a fixed amount plus a percentage of the sale price.

The rules on fees are in Section 36 of REBBA 2002 and Sections 9 and 25 of the Code of Ethics, which are included below for your ease of reference.

REBBA 2002

Commission and remuneration, scale

36. (1) All commission or other remuneration payable to a brokerage in respect of a trade in real estate shall be an agreed amount or percentage of the sale price or rental price, as the case may be, or a combination of both. If there is no agreement as to the amount of the commission or other remuneration, the rate of it or other basis for determining it shall be that generally prevailing in the community where the real estate is located.
- (2) If the commission payable in respect of a trade in real estate is expressed as a percentage of the sale price or rental price, the percentage does not have to be fixed but may be expressed as a series of percentages that decrease at specified amounts as the sale price or rental price increases.
- (3) No registrant shall request or enter into an arrangement for the payment of a commission or any other remuneration based on the difference between the price at which real estate is listed for sale or rental and the actual sale price or rental price, as the case may be, of the real estate, nor is a registrant entitled to retain any commission or other remuneration computed upon any such basis.

Code of Ethics

Commissions, etc.

9. A registrant shall not indicate to any person, directly or indirectly, that commissions or other remuneration are fixed or approved by the administrative authority, any government authority, or any real estate board or real estate association.

Agreements relating to commission

25. (1) If a brokerage has a seller as a client and an agreement between the brokerage and the seller contains terms that relate to a commission or other remuneration and that may affect whether an offer to buy is accepted, the brokerage shall disclose the existence of and the details of those terms to any person who makes a written offer to buy, at the earliest practicable opportunity and before any offer is accepted.
- (2) Subsection (1) applies, with necessary modifications, to a brokerage that has a seller as a customer, if the brokerage and the seller have an agreement that provides for the brokerage to receive written offers to buy.

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