

# TRANSACTION BROKERAGE AGREEMENT FOR COMMON LAW

Approved by the Nova Scotia Real Estate Commission (NSREC) for use by licensees under the *Nova Scotia Real Estate Trading Act*.  
The NSREC is the regulatory body for real estate in Nova Scotia.

This Transaction Brokerage Agreement (the Agreement) is between all parties (the Buyer, the Seller and the Brokerage):

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

Brokerage: \_\_\_\_\_

Transaction Brokerage occurs when a buyer and a seller in agency relationships with the same brokerage agree, in writing, to limit the services provided by the brokerage from that of an agency relationship to that of an impartial facilitator. In an agency relationship, a brokerage is legally obligated to promote a buyer's or a seller's best interests. Under Transaction Brokerage, a brokerage cannot promote the best interests of either buyer or seller because their interests are in conflict.

Buyers and sellers are not obligated to enter into Transaction Brokerage. A buyer and a seller must be provided with an opportunity to obtain independent advice and one party, either buyer or seller, may be referred to another brokerage so both are represented in agency relationships, or one party may agree to be treated as a customer. See the Working with the Real Estate Industry form for more information on all of these options.

This Agreement is entered into by the parties identified above with respect to the property (the Property) known as:

\_\_\_\_\_ PID(s)/Serial #: \_\_\_\_\_

## 1. Transaction Brokerage

- 1.1. Transaction Brokerage occurs when a real estate brokerage enters into an agreement, in which the brokerage acts as an impartial facilitator for the Seller and the Buyer in the same transaction. Entering into Transaction Brokerage requires the written consent of all parties and must be done prior to an offer being prepared.
- 1.2. The Brokerage is only permitted to practice Transaction Brokerage with the fully informed and voluntary written consent of the Buyer, the Seller and the Brokerage.

## 2. What the Brokerage Cannot Do

- 2.1. In Transaction Brokerage, the Transaction Facilitator cannot:
  - a) provide utmost loyalty to the Buyer and the Seller;
  - b) act in the best interests of either the Buyer or the Seller;
  - c) offer advice or recommendations to either the Buyer or the Seller; and
  - d) disclose confidential information learned in the previous relationships to either the Buyer or the Seller.
- 2.2. The Transaction Facilitator shall not disclose the following without the informed written consent of the Buyer or the Seller. **These are examples, but are not limited to:**
  - a) that the Buyer may be prepared to offer a higher price or terms other than those contained in the offer to purchase;
  - b) that the Seller may be prepared to accept a lower price or terms other than those contained in their Brokerage Agreement;
  - c) the motivation of the Buyer or the Seller for wishing to respectively purchase or sell the Property; and
  - d) subject to clause 2.1 (d) of this Agreement, confidential information relating to the Buyer or the Seller and other information disclosed at any time in confidence by either to the Transaction Facilitator.

## 3. What the Brokerage Can Do

- 3.1. In Transaction Brokerage, the Transaction Facilitator can:
  - a) treat the interests of both the Buyer and the Seller in a fair and impartial manner;
  - b) disclose all other potential conflicts of interest;
  - c) exercise reasonable care and skill in the performance of its mandate under this Agreement;
  - d) promptly present to the Buyer and the Seller all offers and counter-offers, even when the Property is already the subject of an Agreement of Purchase and Sale;
  - e) keep the Buyer and the Seller informed regarding the progress of the transaction to the extent required in this Agreement;
  - f) disclose to the Buyer, all material latent defects affecting the Property known to the Transaction Facilitator;
  - g) disclose to the Buyer that there are competing offer(s) and backup offer(s) on the Property;
  - h) disclose to the Seller, all material facts relevant to the Buyer's ability to purchase the Property known to the Transaction Facilitator.
  - i) provide real estate statistics and information on the Property, including comparable property information, upon request by the Buyer or the Seller;
  - j) offer the names of real estate service providers, upon request by the Buyer or the Seller;
  - k) hold all monies received in respect to the transaction in trust in accordance with the provisions of the *Nova Scotia Real Estate Trading Act*, its Regulations and the NSREC Bylaw; and
  - l) ensure compliance with the Brokerage's policies and procedures governing the Transaction Facilitator, the *Nova Scotia Real Estate Trading Act*, its Regulations, the NSREC Bylaw and the Brokerage's support staff.

## 4. Prior Agreements

- 4.1. All provisions in the Buyer Brokerage Agreement and Seller Brokerage Agreement shall remain the same with the exception of the Brokerage's obligations that were modified by this Agreement.

**5. This Agreement**

5.1. The parties agree that:

- a) this Agreement will be governed by the laws of the Province of Nova Scotia and the Seller, the Buyer and the Brokerage will submit to the jurisdiction of the Courts of the Province of Nova Scotia for the resolution of any disputes that may arise out of this Agreement;
- b) no amendment to the terms of this Agreement shall be effective unless it is in writing and signed by the Seller, the Buyer and a Brokerage Representative;
- c) if there is conflict or discrepancy between any provision added to this Agreement and any provision in the standard pre-set portion hereof, the added provision will supersede the standard pre-set provision to the extent of such conflict or discrepancy; and
- d) this Agreement will be read with all changes of number and gender required by the context.

**6. Acceptance**

All parties, having received and read both this Agreement and the Working With the Real Estate Industry form, and having been given the opportunity to request further information concerning this Agreement and the representation relationships described in the Working With the Real Estate Industry form.

All parties hereby agree and acknowledges having read and accept this Agreement on the terms set forth. The Buyer and the Seller have received a true copy of this Agreement.

Signed and delivered in the presence of:

In Witness whereof I have hereunto set my hand:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

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Buyer

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Date

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Witness

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Seller

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Date

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Witness

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Seller

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Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Brokerage Representative

\_\_\_\_\_  
Date