

REAL ESTATE BROKERAGE

Practical Guide **for Sellers**



REAL ESTATE BROKERAGE:

The consumer is protected by an effective control and information system

The supervisory structure of real estate brokerage helps ensure and promote competence and integrity within the profession. For consumers, it is reassuring to be able to rely on an independent system whose mission is to ensure their protection.

What you should know about selling your home

Selling a house is a complex and delicate operation. This is why the Nova Scotia Real Estate Commission has prepared this brochure, which contains the main steps you need to follow before, during and after the sale of your home. In it, you will find many useful tips to guide you and help you complete your real estate transaction in a satisfactory manner.

With the compliments of:

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Role of **real estate Industry Members**

Selling real estate requires extensive technical knowledge. This is why we recommend that you use the services of a real estate professional (Industry Member) to make sure that all the steps involved in selling and buying real estate are completed in accordance with good trade practices.

An Industry Member's main function is to act as intermediary in the purchase, sale or rental of real estate. Thus they play a prospecting role by finding real estate for the buyer and a client/customer for the seller. They play a negotiating role by facilitating communications between the parties involved and play an advisory role in helping the parties define their needs and complete their real estate transaction in a satisfactory manner.

Distinction between a real estate broker and a salesperson

A broker is responsible for the supervision of a brokerage, its staff, and Industry Members. A broker ensures the business is run competently and in accordance with the Act, By-Law, and Policies and Procedures.

A managing associate broker is authorized to operate or manage a brokerage under the supervision of a broker, for example, a franchise branch manager. Brokers and managing associate brokers are the only Industry Members authorized to make management decisions and give management directives within a brokerage.

An associate broker is licensed to trade in real estate under the supervision of a licensed broker. This license permits salespeople to achieve and be recognized for possessing a higher level of education. An associate broker and a salesperson have the same responsibilities.

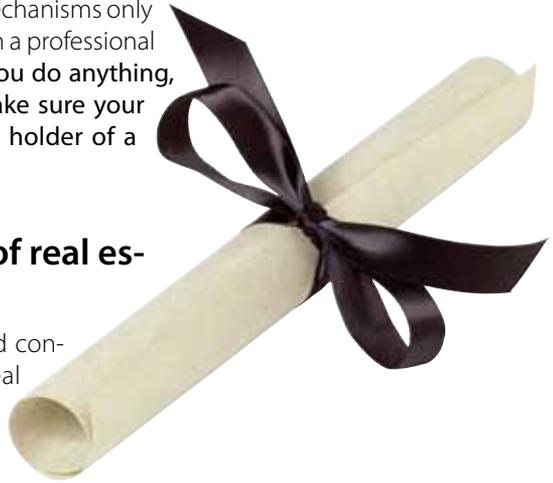


Compulsory licencing

All Industry Members in Nova Scotia must hold a licence issued by the **Nova Scotia Real Estate Commission**. A consumer who carries out a real estate transaction through an unlicensed person is not protected under the **Real Estate Trading Act**, since the protection mechanisms only apply when the consumer deals with a professional recognized under the law. **Before you do anything, check with the Commission to make sure your broker or Industry Member is the holder of a licence issued by the Commission.**

Duties and obligations of real estate Industry Members

Real estate brokerage regulated and controlled to protect the public in real estate transactions. The *Real Estate Trading Act*, the *Commission By-Law* and the *Commission Policies and Procedures* define how the profession should be practiced, so that consumers may be served fairly and competently.



Loyalty to the customer

Industry Members are bound by a strict obligation of loyalty to their clients, whose rights they are bound to promote and protect. They must act equitably toward each party to a real estate transaction.

Obligation to disclose

If your Industry Member has a personal relationship with the other party or if the Industry Member is acting on their own behalf, the Industry Member must inform you prior to the signing of the Agreement of Purchase and Sale.

Similarly, if your Industry Member is to receive compensation from a financial institution or a professional they recommend, they must also inform you in writing and request your approval.

Advising and informing objectively and accurately

The Industry Member must advise and inform the parties to a transaction objectively and must provide them with all the explanations they need to fully understand and appreciate the services being provided. They must also inform the parties of any factor which could negatively impact the transaction.

The Industry Member must also demonstrate the accuracy of the information they provide using relevant documentation. This information verification principle must be upheld throughout the sales process, as the Industry Member is responsible for the information they are providing.







Consumer **protection** mechanisms

Professional development

All Industry Members are required to complete continuing professional education annually. Courses are based on subjects that provide Industry Members with a higher level of skills and knowledge that will aid them in protecting the public.

Entrance examination

The profession's entrance examination ensures that Industry Members possess the knowledge and competence required to provide adequate service.

Brokerage audit

The Registrar ensures that the work methods of real estate Industry Members are in accordance with the rules of the profession. To verify this, the Commission's Compliance Officer carries out inspections of brokerages and makes recommendations as necessary.

Registrar

The Registrar is the senior staff person at the Nova Scotia Real Estate Commission and is responsible for the administration of the Real Estate Trading Act and the Commission By-Law and policies. The Registrar investigates when there is reason to believe that a Industry Member has violated the rules that govern the profession. The Registrar has the authority to lay charges with the Commission's Complaint Review Committee if necessary.

Complaint Review Committee

The Complaint Review Committee has the authority to impose fines, require additional education, and, to suspend or cancel a violator's right to practice if they do not conform with current regulations. It cannot, however, compensate or indemnify victims.

Professional liability insurance

Real estate Industry Members are required to take out errors and omissions insurance.

Recovery Fund

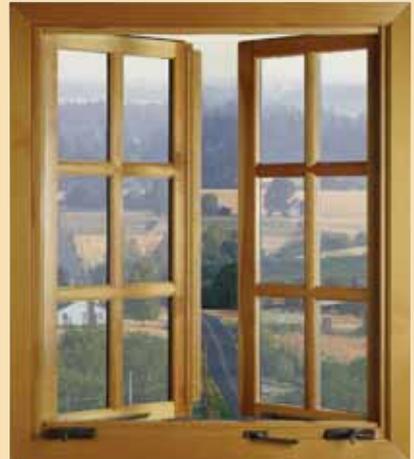
The Recovery Fund has the authority to compensate consumers in case of fraud or breach of trust where an Industry Member has caused a customer or client a financial loss.

Agency

Industry Members may or may not have an agency relationship with you. If you are a client then, there will be an agency relationship, if you are a customer then there is not an agency relationship. As a client, the Industry Member and brokerage have a much higher level of responsibility to you than if you are a customer. The following sections give an explanation of agency and the obligations Industry Member have to both clients and customers.

Sellers or Buyers Agency - with you as a client

Most sellers and buyers have an agency relationship with a brokerage, the Industry Member has the authority to represent you in dealings with others they are using. When you are in an agency relationship with a brokerage, the Industry Member has the authority to represent you in dealings with others.



Brokerages and their representatives are legally obligated to protect and promote the interests of their principals (clients). Specifically, the Industry Member has the following duties:

- 1) **Undivided loyalty.** The Industry Member must protect the principal's negotiating position at all times, and disclose all known facts which may affect or influence the principal's decision.
- 2) **To obey all lawful instructions** of the principal.
- 3) An obligation to **keep the confidences** of the principal.
- 4) The exercise of **reasonable care and skill** in performing all assigned duties.
- 5) The **duty to account** for all money and property placed in an Industry Member's hands while acting for the principal.

You can expect competent service from your Industry Member, knowing that the brokerage is bound by ethics and the law to be honest and thorough in representing a property listed for sale or representing a buyer. Both the seller and buyer can be represented by their own Industry Members in a single transaction.

Transaction Brokerage - with both the seller and buyer as a client

Transaction Brokerage occurs when an Industry Member or brokerage is representing both a seller and buyer in the same transaction. Since the Industry Member has promised a duty of confidentiality, loyalty and full disclosure to both parties simultaneously, it is necessary to limit these duties in this situation, if both parties consent.

If you find yourself involved in a transaction brokerage relationship, before making or receiving an offer, both you and the other party will be asked to consent in writing to this new limited agency relationship.

This relationship involves the following limitations:

- a) The Industry Member will deal with the Seller **and** the Buyer **impartially**;
- b) **The Industry Member will have a duty of disclosure to both the Seller and the Buyer except that,**
 - i) the Industry Member will not disclose that the Buyer is willing to pay a price or agree to terms other than those contained in the Offer, or that the Seller is willing to accept a price or terms other than those contained in the Listing;
 - ii) the Industry Member will not disclose the motivation of the Buyer to buy or the Seller to sell unless authorized by the Buyer or Seller;
 - iii) the Industry Member will not disclose personal information about either the Seller or the Buyer unless authorized in writing;

- c) The Industry Member will disclose to the Buyer defects about the physical condition of the property known to the Agent;
- d) The Industry Member may disclose all comparable property information to the Seller and the Buyer at any time;
- e) The Industry Member will not be required to disclose to the Buyer or the Seller confidential information obtained through any other existing or former agency relationship.

No Agency - with you as a customer

You may also choose to use the services of an Industry Member without having any kind of agency relationship. This might occur, for example, when you are being shown a property by the Seller's representative.

The Industry Member you choose to work with in this manner has a legal and ethical duty to provide you with accurate, honest answers to your questions and can provide all these services:

- Explain real estate terms and practices
- Provide and explain forms used
- Assist you in screening and viewing properties
- Inform you of lenders and their policies
- Identify and estimate costs involved in a transaction
- Assist you in establishing your range of affordability
- Prepare offers or counter offers at your direction
- Present all offers promptly

An Industry Member who is not your agent cannot:

- Recommend or suggest a price
- Negotiate on your behalf
- Inform you of their principal's top/bottom line
- Disclose any confidential information about their principal unless otherwise authorized

You should not provide an Industry Member who is not your agent with any information that you would not provide directly to the other party.

All buyers and sellers, whether in an agency relationship with an Industry Member or not, will be given an agency brochure and asked to sign an acknowledgement that they have been provided this agency information and had an opportunity to review it.



The **listing contract** (Seller Brokerage Agreement)

If you entrust the sale of your home to a real estate brokerage, you will be required to sign a listing contract. The listing contract establishes a professional relationship between you and your brokerage for a given period of time. It details the obligations of the brokerage and the seller. It is officially

called the “Seller Brokerage Agreement”.

Types of listing contracts

Exclusive listing contract

In an *exclusive* listing contract, the seller agrees not to use the services of another brokerage for the sale of his property. This type of contract guarantees to the brokerage that their efforts to sell the home will be compensated at the time of the sale. The seller can also expect their brokerage to devote maximum time and effort to sell the property. The brokerage will cooperate with other brokerages unless instructed otherwise by the seller.

Non-exclusive listing contract

In a *non-exclusive* listing contract, the owner retains the right to sell their property through another brokerage of their choice. This type of contract, although it may appear advantageous at first glance, can have a major drawback in that the broker risks losing his compensation to a competing brokerage, regardless of the effort they may have put in, which could lead to devoting less energy to the sale of your property.

Multiple Listing Service® (MLS®)

A property can be listed exclusively with the option of placing it on the MLS®, which is a cooperative marketing system of member brokerages. This means the property is marketed through the MLS® where the information on the property will be shared with all members of the MLS® system. The MLS® is operated under licence by the Canadian Real Estate Association.

Content of the listing contract

The listing contract specifies the obligations to which the brokerage and the seller have agreed. The following are the main elements the contract must contain.

Identification of the parties

The listing contract must identify the parties bound by it and should include the following information:

- Name of the brokerage;
- Name(s) and address(es) of the owner(s). In the case of a company or an estate, the company name and the name of the person representing it must be indicated. If the seller is acting through a representative, a power of attorney must be provided to the broker.

Note: It is very important that your Industry Member verify that you are the sole owner of the real estate. If your spouse is also an owner, you do not have the authority to represent him/her without first obtaining a power of attorney drawn up by your lawyer.

Term of contract

The term specifies when the contract will expire.

Description of the real estate

When you want to sell your home, **several important details must be collected and verified right from the beginning (lot size, amount of taxes, general condition of the house and its main components, and so on)**. It is essential that you provide your Industry Member with all the information pertaining to the real estate, as well as all documents that will allow them to fulfil their role.



The listing contract must contain a detailed description of the real estate, including:

- address;
- lot measurements and area;
- property details; and
- what does or does not remain.

In the case of a condominium, you also have to specify the number of parking and storage spaces included in the sale, and their identification numbers.

Selling price

An essential step in the sale of your home is to set a **realistic** selling price. To do so, you need to know the current status of the market. Your Industry Member can give you an idea of the estimated value of your home by comparing it to similar properties currently up for sale, recently sold or that have failed to sell (expired) in the same area. This will make it easier for you to set a fair and competitive price.

You also have to identify the elements that can act positively or negatively on the value of your home:

- location;
- size;
- age and condition of the real estate;
- number and layout of rooms;
- construction materials used;
- landscaping;
- features specific to the area;
- and so on.



This exercise may lead you to reduce the asking price for your property, because a price that is too high compared to the market will drive buyers away and, therefore, have a direct impact on the amount of time it takes to sell your property. Remember, real estate that remains on the market for too long tends to lose value in the eyes of buyers.

Should the owner wish to change the asking price or any other details during the contract, an "Amendment" form must be completed.

Mortgage Repayment Penalty

If the buyer chooses not to take over your mortgage, which is usually the case, you will have to pay back your mortgage loan and have the mortgage cancelled at your expense. The cancellation of your mortgage loan may carry a penalty which you will have to pay at the time of the sale (see page 22, for the detail of expenses to plan for).



Inclusions and exclusions

The question of included or excluded items must be examined closely before the listing contract is signed. This step of the sale process is too often a cause of dispute between sellers and buyers. This is why we recommend that you specify as many elements as possible. The best is to cover each item which could lead to confusion by specifying those which are included and those which are specifically excluded, such as:

- furnace;
- water heater or heat pump;
- air conditioning;
- curtain rods and blinds;
- appliances;
- central vacuum system;
- electrical fixtures;
- alarm system;
- and so on.

Note: See definitions in glossary for fixtures and ch



Condominiums

The listing contract mentions the reserve and contingency funds when this type of real estate is involved. The expenses related to the maintenance and administration of common areas of the property held by the condominium corporation are paid through this fund, which is set up by the condominium to deal with expenses. It is important to note that the sums invested in the fund are not recoverable at the time of the sale of the condominium property. These sums should be considered the same as property taxes.

Occupancy and signing of the deed transfer

The dates of occupancy should be specified in the listing contract. The buyer may propose different dates in the offer to purchase, but these are subject to the seller's approval in the same way as the other clauses in the offer to purchase. However, they can be negotiated if necessary.

Promotional activities

When a listing agreement is being reviewed with your Industry Member, it is a good idea to discuss promotional activities (listing with Multiple Listing System®, advertising, open houses, and so on) to promote the sale of the real estate. These activities must be discussed prior to the signing of the brokerage contract so that the owner-seller knows what to expect.



The Multiple Listing Service® (MLS®) is no doubt one of the most frequently used promotional tools, as it informs the Industry Members who work in your area that your property is on the market. This service is a central directory listing all the real estate for sale in a given region. Now available on the Internet, the Multiple Listing Service® is an effective promotional tool.

If you wish to use this service, you will have to initial the appropriate section on the listing contract.

Brokerage's compensation

The amount and conditions of the brokerage's compensation must be specified in the listing contract. The brokerage's compensation is usually based on a percentage of the real estate's selling price, but it can also be a fixed sum. The compensation is normally paid on the closing of the sale.

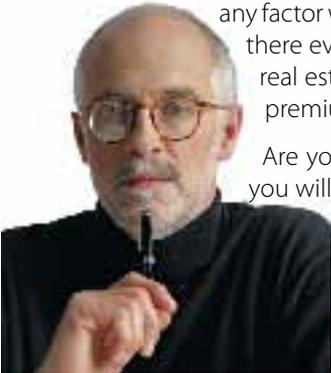
Declarations by the seller

The seller must use reasonable means to provide accurate information to the brokerage. The Property Condition Disclosure Statement must, therefore, include any factor which might reduce the value of the house. For example, was there ever flooding of the house? Is there a particular feature of the real estate which renders it uninsurable or increases the insurance premium?

Are you a non-resident? If so, you must provide a guarantee that you will pay certain taxes imposed by the federal authorities. This is usually accomplished by holding back a percentage of the proceeds at closing until the tax requirements (Capital Gains Tax) are resolved. This is done by your lawyer.

Obligations of the seller

The listing contract clearly states the obligations of the seller. These obligations deal with exclusivity, the contract term and the details describing the real estate.



Obligations of the brokerage

The obligations of the brokerage are also specified in the listing contract. They deal with loyalty, competence, duty to inform and verify information, advertising, obligations to disclose, conflicts of interest, and so on.

Signing of the listing contract



Take the time to read your contract with your broker or Industry Member before signing it and do not hesitate to ask questions if any clause is unclear.

Verification of information

Your Industry Member will give you a copy of your home's detailed information sheet so that you can make sure the statement on the listing contract reflects reality. If the sheet contains errors, the Industry Member must correct them and give you a revised copy. The listing sheet will be used to market the property and will be supplied to any person interested in the property.

Effective date

The listing contract becomes effective from the time you receive your duplicate of the contract signed by the seller and the Industry Member. The term cannot be changed unless the brokerage and the seller agree.

Holdover clause

Listing agreements contain a clause to protect the brokerage for the work it did during the listing period. The holdover clause requires the seller to pay the commission to the brokerage should a buyer, that was introduced to the property during the listing, enter into a Purchase and Sale Agreement with the seller during the holdover period, usually 180 days after the listing expires.





Showing your home to its best advantage

Part of the success in selling your home depends on the impression which potential buyers will have when they view it. Showing it off properly is therefore of prime importance. Many elements can help get you the best possible price for your property. Some involve up-front expenses, which can probably be recovered when you sell your house. You will find on the next page a *Preparation checklist* to help you plan how you will prepare your home.

First impressions

First impressions have a considerable impact on a person's perception after a visit. Therefore, certain visual aspects must be reviewed. Is the outside of the house in good condition? Do gutters need repairs? Is the garage neat? Have broken windows been replaced? Has the grass been cut and raked? Do the hedges and shrubs need trimming? In winter, has the snow been removed? Does the doorbell work? Are door trimmings in good condition?

Indoor aspect

Have cracks been repaired? Are paint touch-ups necessary? Have leaky faucets been repaired? Are there any burnt out bulbs? Do doors need a drop of oil?



Bathrooms

Are bathrooms shiny? Has the bathtub been re-caulked? Are the floors clean?

Kitchen

Is a thorough cleaning required? Are the sink and faucets clean? Are cupboards impeccable both inside and out?



Atmosphere

Have lights been turned on? Is the furnace on if it's cold? Is there a fire in the fireplace when it's cold? Are curtains open during the day? Have you thought of putting on a little soft music? Do your plants and flowers look healthy? Have animals been removed or locked up for the showing? Is ventilation adequate?

Preparation checklist

Make a list of the work required to show your home to its best advantage. The perception of visitors towards it will be even better. Maybe you can do some of the work yourself to help sell your property without going to too much expense. However, some repairs may require the services of a paid professional. Although these may not guarantee that the selling price will go up to compensate for the cost, they will at least increase your chances of selling your property more quickly.



Selling expenses

Expect some additional expenses when selling real estate. Following is a list of the main expenses to plan for (see Table 2).

Table 2

CALCULATING SELLING EXPENSES		
■	Mortgage balance :	\$ _____
+	Real estate brokerage commission:	\$ _____
+	Appraisal fee (if applicable):	\$ _____
+	Legal fees:	\$ _____
+	Disbursements:	\$ _____
+	Mortgage payout penalty:	\$ _____
=	Property tax adjustment:	\$ _____
	Total selling expenses:	\$ _____

Net proceeds from the sale

The net proceeds from the sale is the difference between the selling price of the property and the total selling expenses.

Table 3

CALCULATING THE NET PROCEEDS FROM THE SALE		
■	Selling price of the property	\$ _____
-	Total selling expenses:	\$ _____
=	Net proceeds from the sale:	\$ _____



The Agreement of Purchase and Sale

The Agreement of Purchase and Sale is a contract through which a person undertakes to purchase real estate. In return, the document also indicates that the seller undertakes to sell the real estate once the Agreement of Purchase and Sale has been accepted.

Industry Members in Nova Scotia are required to use standardized forms approved by the Commission for all real estate transactions. These forms make sure that everyone is literally on the same page, reducing errors, omissions and inconsistencies.

Content of the Agreement of Purchase and Sale

The Agreement of Purchase and Sale content is designed to protect both buyers and sellers. It is important to make sure that the information contained therein is in accordance with that of the Seller Brokerage Agreement.

Identification of the parties

The Agreement of Purchase and Sale identifies the parties bound by contract (the seller and the buyer) as well as their addresses.

Object and term of the contract

As its name indicates, the object of the Agreement of Purchase and Sale is the *purchase* of real estate. The term sets a deadline after which the Agreement of Purchase and Sale becomes null and void.

Description of the property

The Agreement of Purchase and Sale contains a detailed description of the property, (including property identification number(s) [PID]) the street address, items to be included and conditions to be met.

If the property is a condominium, the contract must specify the number of parking and storage spaces and their identification numbers.



Price and deposit

The Agreement of Purchase and Sale must indicate clearly the purchase price offered by the buyer. The price statement usually indicates that the payment will be made in full upon the closing.



When presenting an Agreement of Purchase and Sale, the buyer gives the listing brokerage a deposit on the purchase of the property. There is a section to this effect in the Agreement of Purchase and Sale. The deposit must be placed in a brokerage trust account and is deducted from the balance to be paid upon closing. The deposit cheque is deposited into the brokerage's trust account once the offer or counter offer has been accepted.

Declarations and obligations of the buyer

The Agreement of Purchase and Sale contains a clause stipulating that the buyer has examined the property and declares that they are satisfied therewith. In the case of a condominium, the agreement specifies that the buyer will examine the declaration of the condominium, including the by-laws of the condominium and the reserve fund, and declare whether or not the buyer is satisfied therewith. It is, therefore, important to read this document.

Delivery of the real estate

The Agreement of Purchase and Sale contains a clause by which the seller promises to deliver the property in the condition in which it was when the buyer examined it.



Preclosing viewing

The Agreement of Purchase and Sale contains a clause that allows the buyer to view the property, before closing, to ensure it is in the same condition as it was when the offer was made. This is not another inspection; it is a home viewing to confirm the condition of the property hasn't changed since you agreed to buy it.

Costs relating to repayment and cancellation

The costs relating to the repayment and cancellation of any debt secured by a mortgage and not assumed by the buyer must be borne by the seller. This includes mortgage penalties as well as leased equipment fees (furnace, hot water tank, and so on) that are not included on the Agreement of Purchase and Sale as costs to be assumed by the buyer.

Ownership documents

The Agreement of Purchase and Sale states the obligations of the seller regarding the titles of ownership. Thus, the seller must supply the buyer with a valid title of ownership, free of any debt, charge or other restriction of private or public law other than the usual easements. The Seller's lawyer must, therefore, supply authentic copies of the deed.

Defect or irregularity

The Agreement of Purchase and Sale has a mechanism to protect the buyer who finds a defect or irregularity in the property after signing the offer to purchase. This is called the Inspection/ PCDS clause.



Declarations and obligations common to the parties

The Agreement of Purchase and Sale contains a number of declarations and obligations which apply to both parties:

- the adjustments relating to property taxes, general taxes, co-ownership expenses, fuel reserves and income or expenses relating to the real estate;
- the date of closing;
- the inclusions and exclusions.

Reference to addendums and schedules

The Agreement of Purchase and Sale may contain a reference to addendums and schedules. These are part of the Agreement of Purchase and Sale.



Conditions of acceptance

The conditions of acceptance of the Agreement of Purchase and Sale sets a deadline for two specific aspects of the offer: *acceptance* and *notification*. The acceptance deadline of the Agreement of Purchase and Sale sets a time and date that the offer is open for acceptance by the seller and by which the buyer must be notified the offer has been accepted. This deadline is important: if not adhered to, the offer is null and void. Once all terms are agreed to by both the buyer and the seller, the offer to purchase becomes an Agreement of Purchase and Sale.



Signatures

The Agreement of Purchase and Sale must include the buyer's and seller's signatures as well as that of their respective spouses, if applicable. Each copy must bear the original signature of each of the parties. In addition, a witness's signature is recommended. Should there be any changes or additions to the wording of the agreement, they must be initialled by all parties.



Remember!

Make sure you read and understand any offer you receive as this will become a legal contract. Ask your Industry Member any questions you may have so that no doubt remains in your mind.

Declarations

Your declarations in the listing contract must also appear in the offer. If some elements do not appear, you can add them using a counter offer.

Checking the dates

Make sure the dates for the closing, the conditions and the occupancy are in accordance with your needs and do not turn over the property until the closing is complete.

Inclusions and exclusions and conditions

Make sure the included and excluded items are indicated in your consent and that the buyer's conditions are achievable in the time period specified.

Receiving offers

As seller, you have the right to receive all offers presented as a result of the listing of your real estate. You are completely free to reply or not reply to them.





The **counter offer**

The owner/seller of real estate may accept or refuse any offer presented to them. They may also make a counter offer. The first purpose of the counter offer is to inform the buyer that the offer, as written has been rejected, but that the seller would be agreeable to the offer if specific changes or additions are made.

The counter offer form may be also be used to include or exclude certain items, change the selling price or simply to further clarify the offer. The Buyer, in turn, may not accept the counter offer and wish to make a new offer.

Conditions of acceptance

The conditions of acceptance in the counter offer set a deadline for its acceptance and notification. Therefore, the deadline for accepting the counter offer is a date and time by which the seller cannot withdraw the counter offer, and by which the acceptance by the buyer is given to the seller in order to be valid.

Any counter offer should include a reasonable deadline (usually between 12 and 24 hours) by which the counter offer must be refused or accepted.



If the counter offer is accepted, the property is considered sold, although the transaction only becomes official upon closing. However, the transaction cannot be completed until all of the conditions of the contract are fulfilled. Therefore, a final deadline must be set for the conditions to be carried out, so the closing can be finalized.





The *property* transfer

Once the offer or the counter offer has been accepted, the next step is to make the transaction official. The two main components at this stage are the title examination and the closing. The property transfer requires the services of a lawyer, but your Industry Member continues to play a central role at this step of the real estate transaction. Among other things, they make sure that all documents required are available and will be of assistance if any problems arise.

Title examination

The lawyer completes the necessary research to guarantee marketable title of ownership. The lawyer verifies that the seller is indeed the owner of the property, whether they have the right and the ability to sell, and if a spouse or other person must consent to the sale, and so on.

All property sales in Nova Scotia are registered through the new Land Registration Act requirements and the government certifies title. This means all property that changes hands in Nova Scotia must be converted over to the new Land Registry System. Should the property not currently be on the new system, it is the seller's responsibility, through their lawyer, to take necessary steps to convert the title to the new system, at the seller's expense.



The closing

The final step of the transaction is the closing which involves the completion of the necessary legal and mortgage documents. This is usually completed after the buyer has completed their preclosing viewing.

Registration of rights of ownership

Once the closing is final, the lawyer registers the transaction with the Registry of Deeds. The lawyer may retain the funds until this step has been completed.



The **Nova Scotia Real Estate Commission**

Dealing with professionals to ensure first-rate service!

Created by the *Real Estate Trading Act*, The Nova Scotia Real Estate Commission is an independent, non-government agency, responsible for regulating the real estate industry in Nova Scotia. The Commission's mandate is to ensure consumer confidence in the real estate industry. Among other duties, it ensures that Industry Members carry out their activities in accordance with the Act and regulations currently in effect.

Among the bodies contributing to the protection of the public in the field of real estate brokerage, the Commission Registrar, whose role consists of overseeing the activities of the Industry Members, including auditing their records, accounts and actions. The Registrar may order an investigation and lay charges if an Industry Member refuses to follow the Act and Commission By-Law.

The Commission's Compliance Officer investigates if there is reason to believe that an Industry Member has acted improperly, and may recommend charges to the Registrar if necessary. Any Industry Member who does not act in accordance with the Act and the regulations governing the profession could be charged and required to appear before the Discipline Committee, which has the authority to impose fines, suspend violators or even revoke their right to practice.



The **Recovery Fund** exists to compensate consumers in case of fraud or breach of trust by an Industry Member that results in financial loss to a buyer or seller.

Higher Standards

The Commission is continually monitoring and upgrading the education of Industry Members through continuing professional education.





Do you have a
problem?

Are you dealing with an Industry Member and are unhappy with the service you are getting?

The first thing to do is to discuss the problem with your Industry Member. If you are not satisfied with the outcome of the discussion, contact the broker or managing associate broker where your Industry Member is based. If this does not yield results or if you feel you haven't received information leading you to believe that everything is being handled properly, contact the **Commission's Compliance Officer**, who can get the information you need to clarify the situation and find out about your rights.

Nova Scotia Real Estate Commission

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Amortization

Period required to pay back a mortgage in full through regular payments. The amortization is usually based on fixed terms of 10, 15, 20, 25 or 35 years.

Appraisal

Process which consists in estimating the market value of real estate based on the general condition of its components and its specific features. The appraisal is often the result of a comparison with similar real estate up for sale or recently sold in the same area. It is done by a licensed appraiser.

Cancellation

Cancellation of an agreement or the registration of a right through which one is freed from certain obligations, under certain conditions.

Charge

Amount to be paid according to a preset deadline. Tax payable on the use of a public utility, for example.

Chattels

Personal property which is moveable and not attached, such as furniture and appliances.

Client

A client is any person that is in an agency relationship with an Industry Member. This relationship may be formalized, as in a Seller or Buyer Brokerage Agreement or it may be verbal or as a result of actions of the Industry Member. The client relationship ends once the purchase or lease negotiated closes or the expiration date of the contract. If the Industry Member does not provide disclosure, then it is assumed you are in a client relationship.

Common area/condo fees

Expenses related to the maintenance and management of the common areas of a condominium property. Monthly payment, usually fixed, used to set up a fund to pay for current and unforeseen expenses (repairs, equipment replacement, and so on).

Counter offer

A response from the seller presented in reply to an offer.

Note: The first purpose of the counter offer is to signify refusal by the seller of an offer by the buyer.

Customer

A person who has not engaged or employed the brokerage in an agency capacity or as the person's transaction broker.

Deed transfer tax

Tax imposed by a municipality on any transfer of right of ownership in its jurisdiction.

Deposit

A sum of money that accompanies an offer to purchase real estate to be applied against the purchase price if and when the sale is finalized. The deposit must be placed in a trust account and will be deducted from the balance payable at the closing, or will be returned to the buyer if the sale does not go through. It may also be claimed by the seller if the buyer refuses to complete the sale.

Description sheet/ listing cut

Document on which a brokerage has presented the features (construction year, taxes, measurements, and so on) of real estate listed for sale.

Down payment

Personal contribution of the buyer to the financing of real estate purchase. Cash portion deducted from the selling price, which determines the amount of financing required to complete the purchase.

Note: If the down payment for the purchase of the real estate is less than 25% of the purchase price, the loan must be insured by the Canada Mortgage and Housing Corporation (CMHC) or another mortgage insurer.

Easement

Restriction of the right of ownership for reasons of general interest or public use. Right of access or use of land by others, for a defined purpose (passage, parking, public utilities, and so on).

Financing

Means used by a buyer to acquire real estate. Financial resource, often in the form of a mortgage loan provided to the buyer by a financial institution for the purchase of real estate (see Mortgage).

Fixtures

Items attached to the property or a building and considered part of it, such as plumbing fixtures or a fence. If in doubt as to whether an item is a fixture or a chattel, include it in the Agreement of Purchase and Sale.

Gross Debt Service (GDS) ratio

Portion of the borrower's gross income used to pay monthly housing expenses (principal, interest, taxes, heating).

Inspection

General verification of the state of the main components of real estate (foundation, structure, roof, heating system, electrical system, and so on) to assess condition.

Interest rate

Percentage representing the amount of interest produced by an amount of one hundred dollars. A 5% interest rate will produce an interest amount of \$5 payable to the lender for every \$100 borrowed.

The interest rate is used to calculate the amount to be paid to the lender in exchange for financing to allow the buyer to purchase a real estate.

Licence

Operating permit issued by the Nova Scotia Real Estate Commission to any person or company, who meets the legal requirements to carry out real estate brokerage activities in Nova Scotia. The granting of a license is conditional to the successful completion of a specialized real estate brokerage course and an entrance examination.

Listing contract

Agreement under which a person authorizes a real estate brokerage to act on their behalf for a given period of time, as intermediary in the purchase, sale, rental or exchange of real estate. The listing contract (Seller Brokerage Agreement) details the obligations to which the broker and the seller agree by mutual consent.

In an **exclusive** listing contract the seller agrees, for the term of the contract, not to use the services of a brokerage other than the one with whom they signed the contract. Usually, the exclusive brokerage contract also states that the client who is party to the contract cannot sell the property themselves.

An **open** listing contract is one where the owner retains the right to sell the real estate through a person other than the broker with whom he signed the brokerage contract.

Location Certificate

Document containing a report, in which the land surveyor expresses their opinion on the location and condition of real estate compared to the titles and the legal description as well as laws and regulations governing the real estate. The location certificate indicates whether or not the buildings are on the property, but does not verify any dimensions.

Mortgage

Method of financing in which the real estate is used as collateral for debt repayment.

Mortgage insurance

Insurance purchased by a home buyer to guarantee the payment of the monthly instalments required to reimburse a mortgage in full.

Note: If the down payment for the purchase of the property is less than 25% of the purchase price, the loan must be insured by the Canada Mortgage and Housing Corporation (CMHC) or another mortgage insurer.

Nova Scotia Real Estate Commission

Regulatory body created under the *Real Estate Trading Act* whose mandate is to ensure consumer confidence in the real estate industry by regulating the activities of all real estate brokerages and Industry Members practicing in Nova Scotia.

Offer to purchase

Undertaking by a person to purchase real estate under certain conditions set by that person. Contract through which the seller agrees to sell the real estate once they have accepted the offer to purchase.

Principal

Amount of money borrowed through a mortgage.

Professional liability insurance (Errors and Omissions)

All Industry Members are required to have professional liability insurance. This insurance protects Industry Members against the financial consequences of any fault, error, negligence or omission, which their representatives or themselves could be responsible for in the course of their activities.

Real estate broker

A licensed broker is responsible for the supervision of a brokerage, its staff, and Industry Members. Supervision includes being actively engaged in the management of the business and must be physically available to oversee the business. A broker ensures the business is run competently and in accordance with the Act, By-Law, and Policies and Procedures. Brokers may also trade in real estate.

Real estate brokerage

The professional activity of Industry Members. Brokerage transactions and professional acts carried out by Industry Members concerning the purchase, sale, rental or exchange of real estate. Services which can only be practiced by individuals licensed by the Nova Scotia Real Estate Commission.

Industry Member

A person who holds a license issued by the Nova Scotia Real Estate Commission authorizing them to carry out brokerage transactions on behalf of others for the purchase, sale or rental of real estate.

An Industry Member is only authorized to act for and on behalf of a broker. They act as a representative of the brokerage.

Recovery fund

Fund created under the *Real Estate Trading Act*, to which all Industry Members in Nova Scotia contribute to compensate consumers who are victims of fraud or breach of trust by an Industry Member.

Related expenses

Additional expenses to be paid when buying an real estate, including building inspection, property appraisal, loan application, legal fees, taxes, insurance, and so on.

Right of ownership

Recognition that gives the owner of a property the right to use, enjoy and freely and fully dispose of the property, to the extent of the limits and conditions imposed by law.

Salesperson

A salesperson is a licensed to trade in real estate on behalf of a brokerage under the supervision of a broker

Title of ownership

Official proof of the right to own a lot and buildings erected thereon.

Trust account

Deposit account in a financial institution in which a real estate brokerage can deposit sums entrusted to it in the course of a real estate transaction.

When presenting an offer, the buyer often gives the listing broker a deposit on the purchase of the real estate. This deposit must be placed in a trust account once there is an accepted Agreement of Purchase and Sale.

*A more extensive glossary is available through the Commission's Web site at:

www.nsrec.ns.ca.

See Consumer Information >
Real Estate Glossary.

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