



Real Estate Council of British Columbia

Selling a Home

IN BRITISH COLUMBIA



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The Real Estate Council of British Columbia protects the public interest by assuring the competency of real estate licensees and ensuring their compliance with the Real Estate Services Act. The Council is accountable to and advises government on industry issues and encourages public confidence by impartially setting and enforcing standards of conduct, education, competency, and licensing for real estate licensees in the province.

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Selling a Home in British Columbia



What is the Real Estate Council of British Columbia?

The Real Estate Council is a regulatory body established by the provincial government. Its mandate is to protect the public by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*. The Council is responsible for licensing real estate representatives, brokers and brokerages, enforcing entry qualifications, and for investigating complaints against licensees and imposing disciplinary sanctions under the Act.

Introduction

Selling or buying a home is the largest transaction most of us ever become involved in. Yet people sometimes take less time over it than they do when buying a new car. That's because it's unfamiliar territory to many of us. We don't all understand the process. We don't know what questions to ask. We may take things for granted, rely on others when we shouldn't, and sometimes we later wish we had known more about the process involved.

The Real Estate Council feels it is important that you understand the procedures and documents you will encounter during the sale of your property as well as the role of other people who may be involved in the transaction. Selling a home is a major event. This booklet will help you to better understand the process.

**Selling or
buying a home
is the largest
transaction
most of us
ever become
involved in**

Working with a Real Estate Licensee

You can sell your own home without the services of a real estate licensee, but selling a home is a complex process.

- » What is the best possible price?
- » Where do you find a buyer?
- » What facts must you disclose?
- » What paperwork is required?
- » Will the contract be legal and binding?
- » How is ownership transferred?
- » What about the existing mortgage?
- » Can the buyer qualify for a mortgage?
- » Who ensures you will get your money?

To handle these problems and many other situations which may arise, you might wish to employ a licensed real estate professional to act as your agent.

Real Estate Licenses



Licensing Requirement

It is important to understand that in British Columbia, the person you hire to assist you to sell your home must be licensed under the provincial *Real Estate Services Act*.

Responsibilities of seller's and buyer's licensees

In every real estate transaction there is a seller and a buyer. A real estate licensee may be employed as an agent for the seller, as an agent for the buyer, or both. Early in the first meeting with a real estate licensee, the licensee should provide you with full disclosure about the nature of his or her relationship with you, as a seller, and any relationship he or she may have with a buyer. The licensee is required by law to provide this information and explain its implications to you.

Your relationship with a real estate licensee

Real estate licensees work within a legal relationship called agency.* The agency relationship exists between you, the principal, and the brokerage, the company under which the individual licensee who is representing you, is licensed. The essence of the agency relationship is that the brokerage has the authority to represent the principal in dealings with others.

One brokerage acts for the buyer and one brokerage acts for the seller

When a seller employs a real estate licensee to help sell his or her property, the licensee becomes the agent of the seller. A buyer may also select a licensee to act as his or her agent. As a seller, you become the principal and the licensee becomes your agent.

Brokerages and their licensees are legally obligated to protect and promote the interests of their principals as they would their own. Specifically, the brokerage has the following duties:

1. Undivided loyalty. The brokerage 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. To account for all money and property placed in a brokerage's hands while acting for the principal.

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

Dual Agency

Dual agency occurs when a brokerage is representing both the buyer and the seller in the same transaction. Since the brokerage 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 dual agency 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:

1. The brokerage will deal with the buyer and the seller impartially.
2. The brokerage will have a duty of disclosure to both the buyer and the seller except that:
 - a. The brokerage 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.
 - b. The brokerage will not disclose the motivation of the buyer to buy or the seller to sell unless authorized by the buyer or the seller.
 - c. The brokerage will not disclose the personal information about either the buyer or the seller unless authorized in writing.
3. The brokerage will disclose to the buyer defects about the physical condition of the property known to the brokerage.

You should not provide a licensee who is not your agent with any information that you would not provide directly to his or her principal.

Remember, it is possible to enjoy the benefits of a licensee's knowledge and experience, regardless of whom that licensee is representing.

**Agency descriptions have been adapted from the Working With a Realtor brochure and used with kind permission from the British Columbia Real Estate Association.*

Choose the licensee who seems best able to render the services and produce the results you are seeking

How do you choose a licensee?

There are many ways to find a real estate licensee with a reputation for excellence. Word-of-mouth is one good source. Ask friends, neighbours and fellow employees who have recently bought or sold a house to recommend their choice of a licensee. You might meet a licensee you like at an open house who is showing one of the properties for sale in your neighbourhood. Or, you could contact several local real estate brokerages to inquire if they have a licensee who specializes in selling homes similar to yours. The internet is also a good way to locate licensees who specialize in properties and regions that may be of interest to you. Make appointments with licensees to discuss their range of services, background, knowledge, and fees or commission rates. After these interviews, choose the licensee who seems best able to render the services and produce the results you are seeking.

What will a licensee charge?

In general, licensees work on a commission basis and receive payment only after the successful completion of a sale. As the seller, you will be asked to agree to pay this commission as a fee for the licensee's services. The commission is usually stated as a percentage of the total sale price or as a fixed dollar amount. Note that GST is applicable to commissions. The commission rate is neither fixed by law nor by any real estate board; it is negotiable between you and the licensee you engage to help you. The seller's brokerage traditionally shares this commission/fee with the brokerage working for the buyer.

Listing Contracts



Once you have selected a licensee to work with, that licensee will use market research, along with his or her knowledge and expertise, to assist you in setting the best possible listing price for your home. However, you must keep in mind that the price you set must be attractive to potential buyers under the current market conditions.

Before finalizing the listing price, you may wish to ask your selected licensee to prepare an estimate of the net cash proceeds you will receive on completion of the sale, based on the suggested listing price and the financing arrangements currently in place. After a listing price has been established, you will be asked to sign a Listing Agreement.

Types of Listing Agreements

In British Columbia, the two most common types of listing agreements are:

- » the Exclusive Listing
- » the Multiple Listing

Each type of listing lasts only for the time period which is specified in the agreement. Be sure to take note of what this time period is. An Exclusive Listing gives the seller's brokerage the sole right to sell the property. This means that even if you sell the property to a prospect of your own during the term of the listing, you must pay the agreed commission to the seller's brokerage unless that prospect was specifically excluded on the listing agreement.

You should also be aware that even after the exclusive listing expires, you may be obligated to pay the seller's brokerage a commission if you sell your property to a person who purchases because of the licensee's actions during the time of the listing.

A Multiple Listing differs from an **Exclusive Listing** only in that the seller's brokerage agrees to register your home in a Multiple Listing Service (MLS™) so that its availability is made known to all real estate licensees who are members of the local real estate board.

In this case, the seller's brokerage agrees to share a specified amount of the commission with any other member of the real estate board who is able to find a buyer for your property.

Discuss your objectives with your licensee before deciding which type of Listing Agreement will best suit your needs.

Terms of the Listing Agreement

The Listing Agreement legally defines your arrangement with the brokerage, setting out, at minimum:

- » the price and terms at which you are willing to sell your home
- » the existing financing arrangements and whether this financing can be assumed by a new owner
- » a list of items attached to the building (normally called fixtures) which are not to be included in the sale; for example, a fireplace insert or a crystal chandelier
- » the date on which you can give possession of the home to a new owner
- » the commission payable to the brokerage on the completed sale of your home
- » the time period for which the agreement will be in effect, ending on a specific calendar date
- » It is also advisable to ask your licensee what he or she will do to sell your property, i.e. a marketing plan. If possible, get this in writing.

Before you sign the Listing Agreement, ensure that:

- » all the spaces have been completed to your satisfaction, and
- » you have a thorough understanding of all of the terms it contains, especially the list price, the commission rate, and the length of the contract.

The licensee will provide you with a copy of this agreement which you should keep for future reference.

Remember: Be aware that the Listing Agreement is a contract. You cannot simply back out of the contract without the consent of your licensee. If your licensee says that you can cancel the listing agreement at any time, ensure that you get this in writing.

Responsibilities of the seller

When you employ a licensee, you are responsible for providing him or her with accurate information concerning your home; for example, its age, the current financing arrangements, the condition of the roof and hot water heater, the property taxes, etc. You must disclose both the good features and the defects, including the fact that the basement leaks when it rains! Be honest with your licensee.

The licensee will need your assistance and/or authorization to gather information about such things as the ownership details, the outstanding balance owing on the mortgage, the property's assessed value, and the current zoning of the property.

**When you
retain a
licensee, you
are responsible
for providing
him or her
with accurate
information
concerning
your home**



Offers to Purchase

Once an interested buyer has been found, a written offer to purchase your property will be prepared. This offer is usually recorded on a standard form entitled Contract of Purchase and Sale.

Your licensee will explain to you the process of receiving and reviewing offers. Do not be surprised if you are presented with offers which differ dramatically from your listed asking price; your licensee is under an obligation to bring all written offers to you for your consideration. If several offers are brought to you at once, you are under no obligation to accept any one offer over another.

What should the offer contain?

All offers to purchase your property will contain a number of important details which you must consider.

The offer should include:

- » date of the offer
- » full legal names and addresses of both the buyer and the seller
- » full legal description of the property
- » amount of the deposit
- » sale price
- » amount of the cash down-payment and details as to how the remainder of the purchase price will be financed
- » date for completion of the sale
- » date for possession of the property
- » a list of the conditions which must be fulfilled before the sale can take place (normally called subject clauses or conditions precedent)

- » a list of items which are not attached to the building (normally called chattels) but which are to be included in the sale price; for example, drapes, refrigerator, stove, etc.
- » date and time at which the offer expires
- » the signature of the buyer and his or her occupation.

What are your options?

When you receive one or more offers to purchase your home, it is in your own best interest to give considerable time and attention to reviewing each offer carefully. Your licensee will assist you to understand the terms and conditions contained in the offer, and will provide you with any advice you request, but ultimately the decision is yours.

Before you decide, you may wish to have your licensee prepare a revised estimate of the net cash proceeds you will receive on completion of the sale, based on the sale price and financing arrangements stated in the offer.

You have three options:

Accept an offer exactly as it stands

If you decide that you would like to accept an offer, be sure you know the precise meaning of each term in the written offer before you sign the document.

Once you, the seller, sign a Contract of Purchase and Sale agreeing to its terms, and your acceptance has been conveyed to the buyer, it becomes a legally binding contract.

Legally binding means both you and the buyer will be bound by the terms of the contract and must perform your respective obligations as stated. Your performance can be enforced in a court of law.

If you are uncertain about any of the clauses contained in the offer, you may wish to consult a lawyer before signing the contract; however, keep the expiry date of the offer in mind if you decide to postpone acceptance!

Be sure you know the precise meaning of each term in the offer to purchase

Make a counter-offer

If you change anything at all in the original offer, you are considered to have rejected that offer and to be making a new offer from you to the buyer. This new offer is usually referred to as a “counter-offer.”

The risk in making a counter-offer is that if the buyer has changed his or her mind and rejects the counter-offer, you do not have the option to return to the original offer and accept it.

But, the buyer may decide to make another counter-offer back to you and the process of counter-offers could continue until an agreement is reached.

If, after making a written counter-offer, you decide you don't want to sell the property, it may be possible to revoke the counter-offer. Many legal problems can result from the revocation of a counter-offer, so you should seek professional advice about the correct procedure to follow.

Reject the offer

You are under no obligation to accept any offer or to make a counter-offer. If, however, you reject an offer which exactly meets all the terms you agreed to in the Listing Contract which you signed with your listing brokerage, you could be/are legally obligated to pay the commission.

More about “Subject” Clauses

The purpose of a subject clause contained in an offer to purchase is to set out a specific condition that must be fulfilled before the sale can go through.

One common subject clause you might encounter is one in which the buyers make the sale conditional upon their finding the exact amount and type of financing which will enable them to purchase your home.

Another common clause is one in which the buyers make the purchase conditional upon a satisfactory property inspection.

Remember that, if you accept an offer which contains a subject clause, you are effectively taking your property off the market for the period in which the buyers are attempting to meet the condition they have set. Therefore, you should ensure that an agreed upon time for the condition to be met is specified in the offer to purchase.

If one of the conditions contained in a subject clause cannot be met after every reasonable effort has been made to do so, the contract ends and there is no legal obligation to complete the purchase or sale.

As a seller, you may wish to accept an offer containing a subject clause (e.g. subject to the buyers selling their own house) yet still leave yourself free to consider other offers, just in case the buyers are unable to remove the condition. You can do this by having the buyer agree to inserting a time clause in the contract. A time clause will permit you to require the buyer to remove all subject conditions within a short, specified time period if you receive another offer that you would like to accept. If the buyer does not remove the conditions within that time, the conditional contract comes to an end and you are free to accept the second offer.

Financing . . . from the seller's perspective

An offer to purchase will contain information about how the buyer intends to finance his or her purchase.

Existing Financing

If you currently have a mortgage loan on your home, you may be faced with one of two situations:

Having to pay
an interest
penalty will
reduce the
price you will
receive for
your home

The buyer wants to pay cash and has no mortgage

This situation will require you to pay out your existing mortgage and there will probably be an interest penalty for doing this. Remember that having to pay an interest penalty effectively reduces the price you will be receiving for your home.

The buyer offers to assume, or take over, your remaining mortgage loan

In this situation, before agreeing to allow the buyer to assume your mortgage loan, you should ensure that your mortgage lender will release you from any future obligation to repay the monies owing (if the buyer defaults).

Contact the financial institution which holds your mortgage to obtain information about your position in each of the above situations. It is a good idea to do this well in advance of signing a Listing Agreement so you will be able to give your licensee accurate information.

Financing by the seller

If you have no existing mortgage, an offer to pay all cash is ideal and, of course, would be your preference.

But the buyer's offer might state that part of the purchase price is to be paid in cash and part is to be paid in payments over a specified period of time at a specified interest rate. In effect, the buyer would be asking you to become the lender.

When you are considering an offer containing a request for "seller financing" (sometimes referred to as a seller take-back mortgage), think about whether or not you want the responsibility of collecting payments over an extended period of time. If you do feel comfortable with such an arrangement, be sure that you verify the buyer's source of income and credit history before making a decision. Ask your licensee or a financial counselor to fully explain the financial significance and the possible consequences of the terms offered.

Seller Beware!



If it is possible, as some individuals suggest, for many people to quickly become very wealthy by dealing in real estate, then unfortunately, other people on the opposite side of the same transactions must, just as quickly, lose some of what they have invested. Usually, those who stand to lose are sellers who agree to be a party to buyers' unorthodox financing arrangement in which the sellers assume risks.

Essentially, there is nothing wrong with most innovative or creative financing if all parties are fully aware of the potential risks and fully understand the possible consequences of such risks. However, the fact is that many owners (sellers) are not aware of the potential disasters which may occur.

It is strongly recommended that you secure competent advice from a real estate licensee or legal counsel before finalizing any real estate contract. This recommendation is much more urgent when the offer you are considering includes terms which could jeopardize you financially.

Be wary of offers which require any of the following:

- » no cash paid as a down-payment
- » an amount of cash being returned to the buyer
- » your equity participation
- » a promissory note without a registered mortgage
- » an agreement to withhold registering a mortgage
- » the seller (you) to secure a new loan before closing
- » terms said to be included, but which are not written in the offer
- » concealing information from a lending institution



Completing the Sale

Your
house
is sold!

The Contract of Purchase and Sale, which you signed, will state the completion day for the transaction. On that day, legal ownership will transfer from you to the new owner in exchange for the purchase price of the property.

Do you need a lawyer or notary public to complete the sale?

While it is the normal practice for the buyer's lawyer or notary to prepare the documents necessary to transfer the legal ownership, it is recommended that you, as the seller, engage legal counsel to act solely on your behalf. Among other things, he or she will protect your interests by:

- » checking the documents prepared by the buyer's lawyer and explaining them to you
- » ensuring that your old mortgage has been properly discharged, if this is required
- » ensuring that you have no further obligation regarding your old mortgage if it is being assumed by the buyer
- » confirming that all payments for which you are responsible have been made
- » arranging for you to sign the transfer documents
- » preparing a statement for you outlining where all the purchase money was disbursed and giving you a cheque for the balance.

What costs can you expect?

- » the commission you agreed to pay your brokerage
- » the legal fees to discharge any existing mortgage whether or not you engage your own lawyer
- » the Goods & Services Tax on the real estate commission and on your legal fees
- » any prepayment penalty levied by the financial institution for early pay-out of an existing mortgage
- » your share of the property taxes for the year if the current year's taxes have not yet been paid, plus any penalties due for late payment of unpaid taxes

The day has arrived!! You have signed the documents, packed your boxes, received your cheque and turned over your keys. Your house is sold!

Complaints about a Licensee

If a concern develops for a consumer as a result of real estate services provided by a licensee, the following steps should be considered:

- » Discuss the concern with the licensee.
- » If the matter is still not resolved, discuss the concern with the managing broker in charge of the brokerage. Most concerns are settled by these two means.
- » If the licensee is also a member of a local real estate board, it may be approached. The board may be able to assist to informally resolve the concern. Real estate boards sometimes investigate conduct that may be in violation of their Code of Ethics and Standards of Business Practice. These boards will refer all matters to the Council where it appears that the *Real Estate Services Act*, Regulation or Rules have been contravened. Please visit www.bcrea.bc.ca for names and addresses of local boards.
- » If satisfaction is still not forthcoming, the concern should be referred to the Real Estate Council at 604-683-9664, toll-free in BC 1-877-683-9664 or on the internet at www.recbc.ca

The Real Estate Council can investigate any complaint about the conduct of a real estate licensee in his or her handling of your real estate transaction. The Council is authorized to discipline a licensee found guilty of wrong doing. It should be noted, however, that the Council does not have the authority to require a licensee to perform under the terms of a contract, nor does the Council have any jurisdiction over sellers who have not performed under the contract. The Council cannot award damages to a complainant from a licensee. Those matters may require legal action.



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