

# CLARIFICATIONS ON THE AMENDMENTS TO THE ACT

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The duties and obligations of residential real estate brokers as of June 10, 2022 depending on whether or not a brokerage contract is signed

In order to “represent” a seller or a buyer and defend his interests, a broker must have signed a written brokerage contract with this person.



In order to claim that he “represents” a seller or a buyer and that he is “defending” his interests, the broker must have signed a written brokerage contract with this person.



# SUMMARY

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## ROLE OF BROKERS BASED ON THE SITUATION

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## SELLER'S BROKER | He represents the seller.

He has a brokerage contract to sell with the seller.

- ✓ He must have signed a written brokerage contract to sell with the seller.
- ✓ He represents and defends the interests of the seller only.
- ✓ He cannot have a brokerage contract to sell and a brokerage contract to purchase for the same transaction, i.e. he cannot be in a **double representation** situation.
- ✓ He must terminate his brokerage contract to purchase in case of double representation.
- ✓ He does not represent or defend the interests of the buyer, even if the latter is not represented by a broker.
- ✓ He must inform the buyer who is not represented by a broker that he must represent and defend the interests of the seller. He must inform the buyer that he does not represent him or defend his interests. He must recommend that the buyer seek his own representation by a broker. If the buyer still chooses not to be represented, the broker must inform him that he has an obligation to treat him fairly.\*
- ✓ He must provide fair treatment\* to the buyer, whether or not the latter is represented by a broker.
- ✓ He must advise the seller based on the latter's needs and on the confidential and strategic information concerning him.
- ✓ He must verify the information he provides and be able to prove the accuracy thereof.
- ✓ He must not disclose any confidential or strategic information concerning the seller.
- ✓ He has an obligation to collaborate with brokers who so request.
- ✓ He must verify the identity and legal capacity of the party whom he represents and those of any other party to the transaction who is not represented by a broker.
- ✓ His remuneration is specified in the brokerage contract to sell.

\* **Fair treatment:** Providing objective information about all the facts relevant to the transaction and the rights and obligations of all parties to the transaction, whether or not they are represented by a broker.

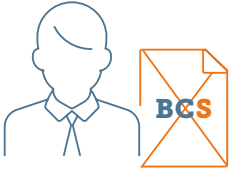


## BUYER'S BROKER | He represents the buyer.

He has a brokerage contract to purchase with the buyer.

- ✓ He must have signed a written brokerage contract to purchase with the buyer.
- ✓ He represents and defends the interests of the buyer only.
- ✓ When signing the brokerage contract to purchase, he must inform the buyer in writing that the contract could be terminated if he wanted to present a promise to purchase for an immovable for which he is also acting as the seller's broker, i.e. in case of double representation. He does not represent or defend the interests of the seller, even if the latter is not represented by a broker.
- ✓ He must inform the seller who is not represented by a broker that he must represent and defend the interests of the buyer. He must inform the seller that he does not represent him or defend his interests. He must recommend that the seller seek his own representation by a broker. If the seller still chooses not to be represented, the broker must inform him that he has an obligation to treat him fairly.\*
- ✓ He must provide fair treatment\* to the seller, whether or not the latter is represented by a broker.
- ✓ He must carry out his activities in a spirit of collaboration.
- ✓ He must verify the information he provides and be able to prove the accuracy thereof.
- ✓ He must advise his buying client based on the latter's needs and criteria and on the confidential and strategic information concerning him.
- ✓ He must not disclose any confidential or strategic information concerning the buyer.
- ✓ He must verify the identity and legal capacity of the party whom he represents and those of any other party to the transaction who is not represented by a broker.
- ✓ His remuneration is specified in the brokerage contract to purchase. He can also receive the remuneration due to him under the brokerage contract to sell. In this case, the remuneration indicated in the brokerage contract to purchase must be reduced by the amount that the agency or broker of the seller will share in accordance with the brokerage contract to sell.

\* **Fair treatment:** Providing objective information about all the facts relevant to the transaction and the rights and obligations of all parties to the transaction, whether or not they are represented by a broker.



## COLLABORATING BROKER WITHOUT A BROKERAGE CONTRACT

He works *de facto* for the seller.

He causes buyers to be interested in a property put up for sale by another broker.

- ✓ He works *de facto* for the seller.
- ✓ He collaborates with the seller's broker.
- ✓ He does not represent or defend the interests of the buyer, even if the latter is not represented by a broker.
- ✓ He must inform the buyer who is not represented by a broker that he does not represent him, but that he has an obligation to treat him fairly.\*
- ✓ He must give the buyer a written notice explaining his role, obligations and remuneration method. This notice includes an acknowledgement of receipt from the buyer confirming that he has read it and has received the relevant information to fully understand its scope.
- ✓ In addition, all of a broker's general ethical obligations towards members of the public apply to him. For example:
  - He must carry out his activities in a spirit of collaboration.
- He must inform all parties objectively about all relevant facts, especially when visiting properties and drafting a promise to purchase.
- He must verify the information he provides and be able to prove the accuracy thereof.
- He must respect the confidentiality of the information with which he is entrusted and use the personal information he receives from another broker for the sole purpose for which the information is provided.
- He must avoid placing himself in a conflict of interest.
- Since he works for the seller's broker, he could be asked to verify the identity and legal capacity of the unrepresented buyer and to confirm to the seller's broker that this verification had been carried out in accordance with the rules.
- Etc.
- ✓ His remuneration is based on the remuneration sharing indicated in the brokerage contract to sell.

\* **Fair treatment:** Providing objective information about all the facts relevant to the transaction and the rights and obligations of all parties to the transaction, whether or not they are represented by a broker.

## SCENARIO

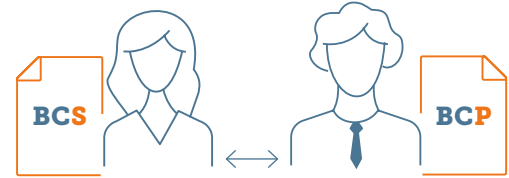
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**Unrepresented  
buyer**

### The seller's broker

- He is bound by a written brokerage contract to sell.
- He represents and defends the interests of the seller only.
- He does not represent the buyer, even if the latter is not represented by a broker.
- He must provide fair treatment to the buyer, which means that he must provide objective information about all the facts relevant to the transaction and about the buyer's rights and obligations in the transaction.
- He must inform the buyer that he represents and defends the interests of the seller.
- He must inform the buyer that he does not represent him.
- He must recommend that the buyer seek his own representation by a broker. If the buyer still chooses not to be represented, the broker must inform him that he has an obligation to treat him fairly.



### The seller's broker

- He is bound by a written brokerage contract to sell.
- He represents and defends the interests of the seller.
- He must provide fair treatment to the buyer.
- His remuneration is specified in the brokerage contract to sell.

### The buyer's broker

- He is bound by a written brokerage contract to purchase.
- He represents and defends the interests of the buyer.
- His remuneration is indicated in the brokerage contract to purchase and shall be reduced by the amount that the agency or broker of the seller will share in accordance with the brokerage contract to sell.

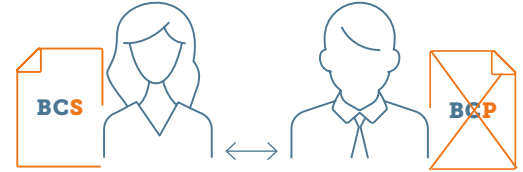


Unrepresented  
seller



## The buyer's broker

- He is bound by a written brokerage contract to purchase.
- He represents and defends the interests of the buyer only.
- He must inform the seller that he represents and defends the interests of the buyer only and that he does not represent the seller.
- He must recommend that the seller seek his own representation by a broker. If the seller still chooses not to be represented, the broker must inform him that he has an obligation to treat him fairly.
- He must provide fair treatment to the seller, which means that he must provide objective information about all the facts relevant to the transaction and about the seller's rights and obligations in the transaction.
- His remuneration is specified in the brokerage contract to purchase.



## The seller's broker

- He is bound by a written brokerage contract to sell.
- He represents and defends the interests of the seller only.
- He does not represent the buyer, even if the latter is not represented by a broker.
- He must recommend that the buyer seek his own representation by a broker. If the buyer still chooses not to be represented, the broker must inform him that he has an obligation to treat him fairly.
- He must provide fair treatment to the buyer, which means that he must provide objective information about all the facts relevant to the transaction and about the buyer's rights and obligations in the transaction.
- His remuneration is specified in the brokerage contract to sell.

## Collaborating broker without a brokerage contract

- He works *de facto* for the seller.
- He does not represent or defend the interests of the buyer, even if the latter is not represented by a broker, as he does not have a written brokerage contract with him.
- He must provide fair treatment to the buyer, which means that he must provide objective information about all the facts relevant to the transaction and about the buyer's rights and obligations in the transaction.
- He collaborates with the seller's broker.
- His remuneration is based on the remuneration sharing indicated in the brokerage contract to sell.

## TO REMEMBER

### **Double representation is prohibited:**

a seller's broker cannot also represent the buyer with whom he has a brokerage contract to purchase.

### **To represent a buyer:**

a written brokerage contract to purchase shall be signed with the buyer because the verbal contract will be void.

A real estate broker who causes a buyer to be interested in a property, without being bound by a written brokerage contract to purchase, does not represent or defend the interests of that buyer.