

Real Estate Contracts

Who are the Contracting Parties?

Registrants and brokerages must be diligent in the presentation of contracts to clients. All contracts for trades in real estate, as governed by *The Real Estate Act*, Regulations and Bylaws are contracts between the client and the brokerage. The contract is not between the client and the individual registrant. This point of clarification can become significant when a registrant changes brokerages.

Section 53 of *The Real Estate Act* states:

“A broker, branch manager, associate broker or salesperson is deemed to be authorized by the brokerage specified in his or her certificate of registration to act for or on behalf of that brokerage. No broker, branch manager, associate broker or salesperson shall trade in real estate other than for or on behalf of the brokerage stated on his or her certificate of registration.”

The effect of this section is that the registrant is authorized to sign real estate contracts for the brokerage with whom they are registered. This does not mean that the registrant is party to the contract; the brokerage is still the party that is legally required to complete the contract.

If a registrant changes brokerages, any and all listings that the registrant had are still with the former brokerage. If the registrant contacts the clients of this former brokerage and requests those clients to cancel the existing contract, this would be considered interference with a contract and could result in sanctions for a violation of Bylaw 707. This Bylaw states:

“A registrant shall not knowingly approach a seller whose property is subject to an exclusive written agency agreement for the purpose of soliciting an agency agreement for the registrant's brokerage on the seller's property that is currently listed.”

In order to avoid confusion in this area, the registrant and brokerage must both take steps to explain that the actual contract is between the client and the brokerage. In most cases, the broker is the only individual authorized to sign a cancellation of a contract; not the registrant. This practice may vary by brokerage but must be clearly understood by the registrants and the clients.

The worst scenario for a client is to have a contract in place with two different brokerages (and owe two commissions), because the original brokerage did not authorize a cancellation of the agreement. This would not be in the best interests of your client and could result in complaints and/or sanctions.