

## **Commission Position 16 - Acting as a Transaction-Broker in Particular Types of Transactions**

(Recodification adoption June 7, 2022: CP-31 Commission Position on Acting as a Transaction Broker or Agent in Particular Types of Transactions recodified to CP 16 - Acting as a Transaction-Broker in Particular Types of Transactions)

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A Consumer may enter into either a Transaction-Broker relationship or an Agency relationship with a Broker for any type of real estate transaction (e.g., residential sale, commercial sale, Property Management, commercial leasing, or residential leasing). The fundamental differences between a Single Agent and a Transaction-Broker relationship are that a Single Agent is an advocate with fiduciary duties, while a Transaction-Broker should “remain neutral”, and not advocate. While the license law does not prohibit a Broker from acting as a Transaction-Broker in most real estate transactions, Brokers need to be aware of situations when acting as a Transaction-Broker for one or both parties in the transaction may be problematic, if not impossible. Examples when acting as a Transaction-Broker where neutrality could be difficult are provided below and are not an exhaustive list.

1. Selling or purchasing on a Broker’s own account (whether the property is solely or partially owned or to be acquired by the Broker). When the Broker is acting as a principal in the real estate transaction, it is impossible for the Broker to “remain neutral”. A Broker that is a principal in a transaction has an obligation to disclose their License status (*see* Rule 6.17.B.) and should give the Commission-Approved Brokerage Disclosure to Buyer or Brokerage Disclosure to Seller and check the box indicating that the Broker will treat the buyer or seller as a Customer (*see* CP – 14 Broker Buying Property).
2. Selling or purchasing property for the Broker’s spouse or family member. While acting as a Transaction-Broker in these circumstances is not specifically prohibited, the Broker must exercise care deciding if they can truly “remain neutral” under the circumstances without inadvertently advocating for their spouse or family member. Brokers that reasonably believe they can “remain neutral” must fully disclose their relationship as the spouse or family member of a party and should obtain written informed consent to act as a Transaction-Broker from both parties before proceeding.
3. Selling or purchasing property for a close friend, business associate, or other person where it would be difficult for the Broker to remain neutral. While acting as a Transaction-Broker in these circumstances is not specifically prohibited, the Broker must exercise care deciding if they can truly “remain neutral” under the circumstances without inadvertently advocating for their personal friend, business associate, or such other person. Brokers that reasonably believe they can “remain neutral” must fully disclose their relationship and should obtain written informed consent to act as a Transaction-Broker from both parties before proceeding.
4. Selling or purchasing property for the account of a repeat or regular Consumer where it would be difficult for the Broker to remain neutral (e.g., undertaking as a Transaction-Broker the listing of multiple units, lots or properties such as listing a real estate development or condominium complex for a single developer, listing multiple residential or commercial properties for the same seller that will be sold to different buyers, or listing for lease a multiple unit residential or commercial property that will be leased to different tenants). Acting as a Transaction-Broker in these circumstances is not specifically prohibited. In some instances, the Consumer (e.g., builder) may require the Broker to act as a Transaction-Broker to list multiple properties meaning acting as Transaction-Broker for both parties may not create any conflict. However, the Broker must exercise care deciding if they

*All defined terms referenced in the Commission Position statements are codified in 4 CCR 725-1, Chapter 1 of the Rules regarding Real Estate Brokers.*

can truly “remain neutral” under the circumstances. Brokers that reasonably believe they can “remain neutral” must disclose their relationships. In instances where the Broker previously acted as a Single Agent for one of the Consumers, the Broker should obtain written informed consent from both parties before proceeding.

5. A Broker on a Team wanting to purchase a property on their own account that is listed by the Team. The Team should obtain written informed consent from both parties to act as a Transaction-Broker in the transaction. If consent is granted, the Team must remove the buying Broker from the Listing Contract and take appropriate steps to place a firewall relating to the transaction between the Team and the buying Broker.
6. A Broker representing a family member as a buyer’s agent and the family member wants to put an offer on a property listed by Broker. In this circumstance, a conflict of interest arises. Disclosure of the conflict and consent from both parties would be required to move forward as a Transaction-Broker in the transaction. If one or both parties don’t consent to the conflict, then the Broker should remove themselves entirely from the transaction. The Broker may still be able to collect a referral fee for an introduction of business. (*see* CP 3 – RESPA and Referral Fees).

Before acting as a Transaction-Broker in transactions where neutrality could be difficult, the Broker should consider whether the Transaction-Brokerage relationship is suitable under the circumstances by consulting with the Broker’s Employing or Supervisory Broker, making any necessary disclosures, and obtaining written informed consent if the Broker and the Consumers wish to continue with the Broker’s involvement in the transaction.