

Broker-agent and Broker-agent Representative Licensing

General Requirements

The following are general requirements for broker-agents and broker-agent representatives found in the *Broker-agent Licensing Regulation*, B.C. Reg. 201/2017 in force on April 1, 2018. Details of the specific requirements and conditions of licensing may be found in the Licensing Policies and Procedures of the Authority located on its website. For more information, contact the Authority's licensing department at:

licensing@mvsabc.com 604-575-7256 or toll free 1-866-400-3529 www.vehiclesalesauthority.com

What is a broker-agent?

A broker-agent is a person, acting as a business including a sole-proprietor, who assists another person to purchase, lease, exchange or otherwise acquire a motor vehicle for that person's personal use.

The broker-agent can be a corporation, partnership, joint venture, an individual acting as a sole proprietor or any other type of company arrangement.

What is a broker-agent representative?

A broker-agent representative is an individual who on behalf of a broker-agent, assists another person to purchase, lease, exchange or otherwise acquire a motor vehicle for that person's personal use. A broker-agent representative is also an individual who is the sole-proprietor of a broker-agent and providing broker-agent representative services. A broker-agent representative does not have to be an employee of a broker-agent. A broker-agent representative can also include a contractor or it can be a one-off transaction such as a joint venture.

Licence

A broker-agent and a broker-agent representative must possess a licence issued by the Vehicle Sales Authority of B.C. (the "Authority"). The Authority will review a person applying to be licensed, or to renew a licence, as a broker-agent or broker-agent representative, including background and criminal record checks, to assess suitability to be licensed or continue to be licensed. If the broker-agent is a corporation, partnership or other type of company, the Authority will conduct the background check on the partners, officers and directors of the company.

Once issued, the licence is valid for up to one year and must be renewed annually. The licence will list various conditions the broker-agent must abide by to maintain the licence.

A sole-proprietor is required to have a broker-agent licence for the business and a broker-agent representative licence. This requirement is the same for a sole-proprietor operating a motor dealership – registration as a motor dealer and a licence as a salesperson.

Identifying employees (broker-agent representative)

When applying to be licensed or to renew a licence, a broker-agent is required to identify all persons who will be acting as a broker-agent representative along with the broker-agent representative's licence number. If a broker-agent employs anyone who is not licensed to act as a broker-agent representative, the broker-agent will be in breach of its licence and may face a sanction up to and including revocation of its licence.

Adding a broker-agent representative mid-licence

If a broker-agent hires a new employee to be a broker-agent representative mid-term of their licence, they must advise the Authority of this within 14 days. The broker-agent representative is responsible for obtaining their broker-agent representative licence including meeting their education requirements. A broker-agent must not allow an individual to provide the services of a broker-agent representative unless that individual is licensed.

Education

The broker-agent (the business) does not have any education requirements. The broker-agent representative must complete any required education and any continuing education and pay the associated fees.

Business premises

A broker-agent must have a business premises where they must keep their business records. If the business premise is in a residence, the business premise must be kept separate and distinct from the premises occupied as a residence. The broker-agent is required to comply with the requirements of the local government where the business premise is located regarding zoning and bylaws for the operation of a broker-agent business. Before issuing a broker-agent licence, the Authority will require confirmation of a business licence issued by the local government authority or a letter from the local government authority noting no business licence is required.

A broker-agent will be required to display their broker-agent licence at their business premise.

Business records

A broker-agent must keep for at least two years after a transaction or their last communication with a customer, certain business records described by the Regulation. These records must be kept at the business premise registered with the Authority and made available for inspection upon demand by the Authority. The types of records that must be kept are listed in **Schedule A** at the end of this document.

Broker-agent service agreement

Before providing its services to a customer, a broker-agent must have a service agreement in place with that customer. The legislation details the minimum requirements of that service agreement, which includes certain declarations and restrictions on the provision of services. Those details are found in **Schedule B** at the end of this document.

Conflicts of interest

A broker-agent and its employee, the broker-agent representative, are acting as agents for their customer to acquire a motor vehicle. This requires acting in the best interests of the customer and to avoid conflicts of interest. In keeping with 2016 recommendations to end dual agency in the real estate sector, dual agency for broker-agents and broker-agent representative is also being prohibited. The Regulation provides that the general law on conflicts of interest continue to apply to broker-agents and broker-agent representatives and then lists certain conduct which is deemed to be a conflict of interest and prohibited.

If a conflict of interest arises in the middle of providing services to a customer, the broker-agent and the broker-agent representative must bring this to the attention of the customer and end the relationship. For more details, see **Schedule C** at the end of this document.

Registered motor dealers and licensed salespeople

A registered motor dealer who wishes to also provide broker-agent services, must apply to the Authority to do so. The registered motor dealer is not required to pay any fees. If there are no concerns in allowing the registered motor to act as a broker-agent, they will be issued a licence to do so. The motor dealer must meet the remaining requirements of a broker-agent, including not acting in a conflict of interest and having licensed broker-agent representatives.

A licensed salesperson who wishes to act as a broker-agent representative must apply to the Authority to be licensed as a broker-agent representative. There is no fee for a licensed salesperson to apply. If there are no concerns in allowing the salesperson to act as a broker-agent representative, they will be issued a licence to do so, so long as the salesperson is employed and will be engaged as a broker-agent representative by a registered motor dealer who is also a licensed broker-agent.

The education requirements of a broker-agent representative may be waived for the salesperson, so long as the Salesperson Certification Course the salesperson took, included content on the duties and obligations of a broker-agent representative.

The licensed salesperson must meet the remaining requirements of a broker-agent representative, including not acting in a conflict of interest

Schedule A Business Records

The following are the minimum business records that must be kept by a broker-agent for two years as required by the *Broker-agent Licensing Regulation*, B.C. Reg. 201/2017, section 10:

- (a) a record of the consumers for whom the licensee has acted as a broker-agent;
- (b) a record disclosing to a consumer a conflict of interest between the consumer and the licensee or a broker-agent representative employed or engaged by the licensee;
- (c) financial records related to the licensee's broker-agent business;
- (d) a record of the number of motor vehicles acquired by consumers with the assistance of the broker-agent;
- (e) for each consumer referred to in paragraph (a), the following records, as applicable:
 - (i) a copy of the service agreement referred to in section 7 (2) (c) of the Regulation [see **Schedule B**];
 - (ii) correspondence, notes and other records related to the acquisition or possible acquisition of a motor vehicle by the consumer;
 - (iii) a record of fees for services provided and out of pocket expenses incurred in the course of providing broker-agent services to the consumer and copies of receipts for those services and expenses;
 - (iv) a copy of a lease and related disclosure statement provided by the broker-agent to the consumer on behalf of a lessor as defined in section 57 (1) of the Business Practices and Consumer Protection Act;
 - (v) a copy of a financing statement and related disclosure statement provided by the broker-agent to the consumer on behalf of a loan broker or credit grantor as defined in section 57 (1) of the Business Practices and Consumer Protection Act;
 - (vi) a copy of the agreement of purchase and sale of a motor vehicle;
 - (vii) a copy of a record provided by the broker-agent to the consumer that describes the motor vehicle, its history or its performance characteristics;
 - (viii) a record obtained by the licensee relating to the inspection, repair or reconditioning of a motor vehicle the consumer acquired or considered for acquisition;
 - (ix) a record obtained by the licensee relating to the import or export of a motor vehicle the consumer acquired or considered acquiring.

Schedule B

Service Agreement

Before providing services to a customer, a broker-agent must execute a service agreement with the customer that includes the following minimum information as required by the *Broker-agent Licensing Regulation*, B.C. Reg. 201/2017, section 9:

- (a) the name, contact information and broker-agent licence number of the licensee;
- (b) the name and licence number of any broker-agent representative who provided services to the consumer on behalf of the licensee;
- (c) a complete description and the acceptable history and performance characteristics, if any, of the motor vehicle the consumer wishes to acquire;
- (d) the terms on which the consumer is willing to acquire or finance the motor vehicle, such as the maximum rate of interest and the maximum periodic payment the consumer is willing to pay and the acceptable length of the financing or lease term;
- (e) the amount payable to the licensee for services provided to the consumer, expressed as a fixed amount payable only if a motor vehicle is acquired, or a fee for services that is
 - (i) a fixed amount payable whether or not a motor vehicle is acquired,
 - (ii) a percentage of the actual purchase price of the motor vehicle payable only if the vehicle is acquired,
 - (iii) an amount that exceeds an agreed upon maximum purchase price for the motor vehicle payable only if the motor vehicle is acquired, or
 - (iv) some combination of the fee for services under subparagraphs (i), (ii) or (iii);
- (f) whether the fee for services referred to in paragraph (e) is payable in advance, in instalments or upon delivery of the motor vehicle acquired;
- (g) whether all or a portion of the fee for services referred to in paragraph (e) is payable under a financing or lease agreement for the motor vehicle acquired by the consumer;
- (h) the duration of the agreement and, if different from the duration of the agreement, the time frame, if any, in which the consumer wishes to acquire the motor vehicle.

The service agreement must also include these statements:

- (a) a broker-agent may not act as a broker-agent for a consumer if the broker-agent or a broker-agent representative employed or engaged by the broker-agent has a conflict of interest with the consumer;
- (b) if a broker-agent must end a service agreement because a conflict of interest arises during the term of the agreement, the consumer is only liable to pay
 - (i) the broker-agent's fees for services provided before the date the conflict of interest arises, and
 - (ii) out of pocket expenses incurred before the date the conflict of interest is discovered;
- (c) the consumer will take title from the person disposing of the motor vehicle and not from the broker-agent or a broker-agent representative employed or engaged by the broker-agent;

(d) any cheque, bank draft or money order received from the consumer by a broker-agent or a broker-agent representative employed or engaged by the broker-agent, in payment for the acquisition of a motor vehicle, must

(i) be made payable to a specified trust account of the broker-agent at a savings institution located in British Columbia, and

(ii) identify the trust account in the manner that the trust account is identified in the records of the savings institution;

(e) money held in trust by a broker-agent may only be paid to the person disposing of the motor vehicle on the consumer's direction.

Schedule C

Conflict of Interest

Sub-sections 7(2)(b) and 16(2)(e) of the *Broker-agent Licensing Regulation*, B.C. Reg. 201/2017, prohibits a broker-agent and broker-agent representative from acting for a customer while in a conflict of interest. Section 19 of the Regulation explains that:

...a licensee has a conflict of interest with a consumer in respect of a particular transaction to acquire a motor vehicle if the licensee represents the interests of any person other than the consumer in the transaction or a related transaction including, without limitation, by

- (a) having an interest in the motor vehicle being considered for acquisition by the consumer,
- (b) having an interest in a person who is a party to the transaction,
- (c) having an interest in a person who finances the transaction, or
- (d) receiving compensation from a person other than the consumer.