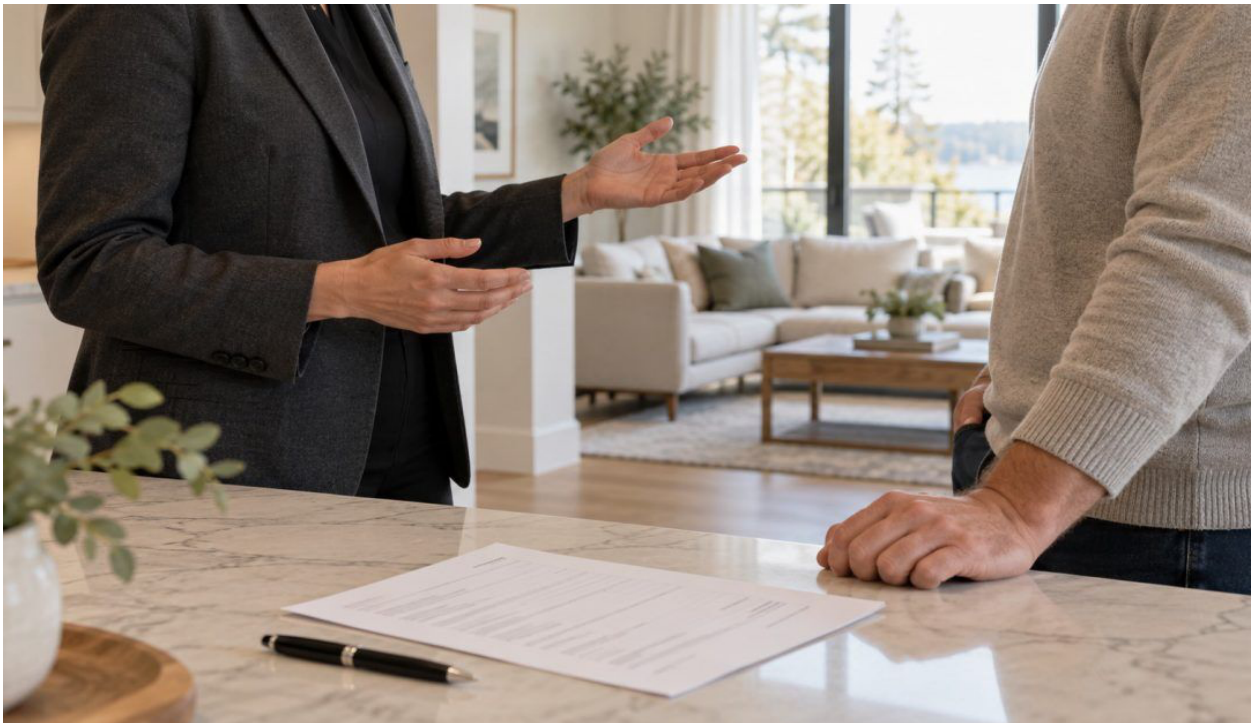
When helpful advice becomes representation: TRESA's hidden risks

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Under TRESA, you can become someone's representative without ever signing a thing.
The paperwork does not decide who you represent. Your conduct does. Most agents think representation starts with a signature. A buyer signs a buyer representation agreement, a seller signs a listing agreement and the relationship begins. Until then, many Realtors believe they are just being helpful.

Under Ontario's Trust in Real Estate Services Act, 2002 (TRESA), that assumption is risky. Since Phase 2 took effect on Dec. 1, 2023, the Real Estate Council of Ontario (RECO) has been clear that a representation agreement can be written, oral or implied. An implied agreement is created by your conduct: what you do, not what you sign. It often happens by accident, when an agent goes a little too far in helping someone who has not signed a representation agreement. Here is how implied agreements arise, the risks they create and how to avoid them.

Two relationships, and no middle ground

TRESA eliminated the old "customer" category. RECO's Bulletin 2.6 is blunt: there is no equivalent to a customer or a customer agreement under TRESA. A buyer or seller involved in a trade is either a client of a brokerage or self-represented. You cannot provide a self-represented party with services, opinions or advice about the trade.

The rules also require representation to be documented. An oral or implied buyer or seller representation agreement must be reduced to writing as soon as possible and before any buyer makes an offer. The brokerage must sign it and provide it to the buyer or seller for signature. The agreement must set out its term, services, how remuneration is calculated and paid, and any termination provisions.

But missing paperwork does not mean there is no relationship. As RECO's Bulletin 2.3 explains, providing services or representation without a written agreement can create a representation agreement anyway. The relationship exists; the documentation is missing.

How an implied agreement is born

RECO's Bulletin 2.7, Implied Representation Agreements, warns that a relationship can arise when an agent exchanges confidential information, gives advice on a trade, provides services, exercises judgment a consumer might rely on, or communicates or negotiates with others on someone's behalf. In other words, friendly advice or your opinion can create an implied representation agreement, and liability.

None of this sounds dramatic, and that is the problem. A couple at your open house mentions their pre-approval and lease deadline, and you suggest they "come in a bit under list." A past client's friend asks what a condo down the street is really worth, and you text back a quick comparative analysis. A seller who has not listed asks you to "see if your buyer is interested," and you start carrying offers back and forth. Each time, you may have become someone's representative without realizing it.

RECO notes that the risk grows with every action you take and every request a consumer makes. Because representation agreements are with the brokerage, not the individual agent, an implied relationship binds your brokerage, too.

There are two narrow safe zones. You can share general real estate information with anyone, such as factual answers about a property or feature sheets at an open house. If you have a client in the trade, you can also assist another person incidentally to that service, as long as you do not invite them to rely on your skill or judgment.

The hidden risks

1. **Client duties, without clear written terms.** You owe full client duties, with none of the protections. Once an implied agreement exists, RECO says all of the obligations owed to clients apply, including acting in their best interests and protecting their confidential information. Yet nothing in writing defines your services, your term or how you will be paid.

2. **Accidental multiple representation.** If you already act for the seller and your conduct creates a relationship with the buyer, you are in multiple representation without the advance disclosure and written consents it requires. Confidential information may already have crossed the line in both directions. That is a breach on its own, before anything else goes wrong in the deal.

3. **Paperwork that contradicts your conduct.** The Information and Disclosure to Self-represented Party form is important, but it is not a shield. RECO warns that conduct inconsistent with your disclosure can create an implied relationship even after the form is acknowledged.

4. **Compliance failures stack up.** An agent who never realized a client relationship existed may also have missed obligations involving the RECO Information Guide and a written representation agreement. One misunderstanding can produce several breaches.

5. **Commission uncertainty.** Without a written agreement, there is no clear written remuneration term or holdover clause, which can turn a fee dispute into an uphill fight.

6. **Discipline and civil exposure.** A complaint can lead to a hearing before RECO's discipline committee, which can impose fines of up to $50,000 for agents and $100,000 for brokerages. Separately, a consumer who relied on your advice may sue.

Protecting yourself in practice

- Decide early and say it out loud. At the first meaningful conversation, explain whom you represent and whom you do not.
- Get it in writing. Sign the representation agreement before you provide services, and never later than before a buyer makes an offer.
- Make your conduct match your disclosures. Explain the self-represented party form properly, then stay within it.
- Watch your language. Phrases such as "leave it with me" or "here's what I'd offer" invite reliance.
- Hold back with prospects. Avoid opinions of value and questions about confidential motivations until you are engaged.
- Encourage representation whenever a self-represented party starts asking for advice.
- Document your file, noting what you disclosed and when.
- Train your team. Open houses, referrals from past clients and leasing files are common sources of trouble.

Keep your conduct and paperwork aligned

TRESA was designed to give consumers clarity about who is working for them. A written agreement clarifies the relationship, but the parties' actions can create it. If you are acting like someone's representative, you may already be. Make sure your paperwork, disclosures and conduct all tell the same story.