

Realtors May Act as Agents for Both Buyers and Sellers

Q: What are the various types of relationships I might have with a Realtor?

A: The following are types of real estate agency relationships:

- 1) A seller's agent represents only the seller in a sales transaction or only the landlord in a lease transaction;
- 2) A buyer's agent represents only the buyer in a sales transaction or only the tenant in a lease transaction;
- 3) In a "split" dual agency, while the same brokerage firm represents both buyer and seller (or landlord and tenant) in the same transaction, one agent from the firm represents only the buyer (or tenant) while another agent from the firm represents only the seller (or landlord).
- 4) In a "traditional" dual agency, the brokerage and the same agent represent both buyer and seller in the same transaction with no split in duties or loyalty. In this type of relationship, both the brokerage and the agent are dual agents and can only serve to facilitate the transaction.

Q: My Realtor said she can serve as my agent for the sale of my home and also can be the seller's agent in my purchase of a new home. Is that right?

A: Yes, because these are two separate transactions. As the listing agent for the sale of your home, she represents you as a seller's agent. As to the new home you are purchasing, since she is acting as the seller's agent, she would become a "dual agent" if she also represents you as the buyer's agent. This dual agency would require the written consent of both you and the seller in the purchase transaction for your new home.

Q: What if I don't want my Realtor to represent both the seller and me?

A: Both you and the seller must be given a Dual Agency Disclosure Statement containing information necessary to come to an informed decision about being represented by a dual agent. Both parties also must agree to the Realtor's dual agency or the broker's split agency in writing. Also, if, after you have given your consent, a change is made which affects the nature of the relationship, this change must be disclosed by the agent and both parties must be given the opportunity to revoke their consent.

Q: What about conflicts of interest?

A: According to the law, each brokerage firm must establish a policy to insure the confidentiality of the information provided by each client. This confidentiality policy should be set forth in the Consumer Guide provided to you by the brokerage. If, during the course of a dual agency, a brokerage determines that confidential information of one client in a dual agency has become known to the non-management-level licensees of the brokerage that represents the other client, the brokerage must notify both clients and offer to resign.

A dual agent cannot :

- 1) disclose confidential information or information that would have a negative effect on one party's position unless authorized by the client or required by law;
- 2) advocate or negotiate on behalf of either client;
- 3) suggest specific terms, including price, to be offered, accepted, rejected, or countered;
- 4) disclose the terms or price either client is willing to offer or accept to the other client;
- 5) engage in conduct contrary to instructions of either party;
- 6) act in a biased manner.

Q: How should I expect a dual agent to serve me?

A: The broker must disclose his or her dual agency through a Dual Agency Disclosure Statement and gain your written permission to operate as a dual agent. He or she must be honest, and must disclose any property defects, if known. The dual agent also must provide marketing information available from a property-listing service and public records if requested. In addition, the dual agent must prepare and present all offers and counter-offers at the direction of the parties, and must assist both parties in completing the steps necessary to fulfill the terms of any contract as requested.

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