

Understanding Agency Relationships

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Buyers and sellers of real estate are often confused about real estate agency relationships and who agents represent. Many states require that agents give buyers and sellers an agency disclosure form to sign.

The form used in Nebraska, for example, is not an agreement; it is a disclosure. It is not a contract of any kind. It discloses the various natures of possible agency relationships, and all parties must read it to be better prepared to select the desired type of agency relationship.

Single Agency

Agents who represent buyers are working in a single agency capacity as a buyer's agent. Agents who represent sellers are working in a single agency capacity as a listing agent.

Agents who represent clients under a single agency have a fiduciary responsibility to the client—they cannot share confidential information with the other party or the other party's agent. Single agency agents must use care and due diligence to perform duties, disclose all material facts, and be honest.

A buyer's agent and the buyer generally sign a buyer's broker agreement, which lays out the duties and obligations of the agent. In some states, if buyers do not sign a buyer's broker agreement with the agent, that agent does not represent the buyer, they instead become a sub-agent of the seller.?? Sub-agents owe the same duties to the seller as the listing agent. A seller's agent and the seller sign a listing agreement, which also lays

out the duties and obligations of the agent. Listing agents and buyer's agents each owe their clients loyalty, confidentiality, reasonable skill and care, and accountability.

Many agents work as a buyer's agent with buyers and as a seller's agent with sellers, but some agents work solely as exclusive buyer's agents and never take a listing. Other agents work exclusively with sellers and never show a property. Dealing with specialized agents can provide clients with a more focused and cultivated point of view.

Dual Agency with Two Agents

Because all real estate agents are licensed under a real estate broker, it is possible to work with an agent who is licensed by the same broker as the listing agent. This situation creates a dual agency. The agents could work at separate offices and be strangers to each other, but since the same broker licenses them, they are still operating under dual agency when one agent represents the buyer, and the other represents the seller.

An agent may have initially created a single agency relationship with the buyer, but when the buyer chooses a home listed by that agent's broker, the agent's relationship with the buyer changes. Not all single agents note the distinction. In the real world, most of these dual agents talk as dual agency but continue to act closer to single-agency representation.

Laws vary from state to state, but in general, dual agency must be agreed to in writing between the parties.?? Only exclusive buyer's agents and listing agents whose practice focuses solely on listings are never dual agents.

Dual Agency with the Same Agent

A listing agent for a property who also represents the buyer is a dual agent. Dual agents cannot operate in a fiduciary relationship with either party and must treat both sellers and buyers equally. They cannot share confidential information or provide confidential advice. The dual agent cannot advise on home price, terms, or negotiate on anyone's behalf. It is challenging to obtain the highest and best price for the seller when the agent also represents the buyer.

Some buyers say they prefer to work solely with listing agents because they know the agent is receiving both the listing commission and buyer's agent commission. They feel the listing agent is motivated when a buyer makes a purchase offer to get that offer accepted. While some agents operate in that manner, most do not. They might also ask the dual agent to further negotiate the real estate commission to increase the seller's profit on a low-ball offer.

Transaction Agents

To avoid dual agency, some agents will work as transaction agents. Transaction agents do not represent either party and do not protect the interest of the seller or the buyer; they simply facilitate the transaction.

A transaction agent helps to fulfill the obligations of the purchase contract and provides the necessary paperwork for each side. It relieves some of the responsibility incurred when agents take on dual agency and further removes the agent from loyalty.

To learn more or to speak with a Peoples Company real estate agent, please call 855.800.5263 or email Brokerage@PeoplesCompany.com.