

What is My Relationship with My Agent?

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What is the difference between a customer and a client?

This is a critical question when dealing with a real estate transaction and needing to understand your relationship with ‘your’ agent. When working with a real estate licensee, everyone begins as a customer. If you decide to engage the licensee and allow them to represent you in a transaction, you will sign an agency agreement and become a client. If you decide to become a client, there are a few key differences in what you can expect from the licensee (and the real estate company).

1. DUTIES OF A REAL ESTATE LICENSEE TO ALL PARTIES TO A TRANSACTION:

While providing brokerage service to all parties to a transaction, a licensee (the Company and its brokers and salespersons) will do all of the following:

- a) Provide brokerage services to all parties to the transaction honestly and in good faith.
- b) Diligently exercise reasonable skill and care in providing brokerage services to all parties
- c) Disclose to each party all material adverse facts that the licensee knows except for the following:
 - i) Material adverse facts known by the party.

ii)Material adverse facts the party could discover through a reasonably diligent inspection and which would be discovered by a reasonably prudent person under like or similar circumstances.

iii)Material adverse facts, the disclosure of which is prohibited by law.

iv)Material adverse facts that are known to a person who conducts an inspection on behalf of the party.

d)Account for all property coming into the possession of a licensee that belongs to any party within a reasonable time of receiving the property.

1. DUTIES OF A REAL ESTATE LICENSEE TO A CLIENT:

A Client is a party to a transaction that has an agency agreement with a broker for brokerage services. A licensee who is providing brokerage services to a client will do all of the following:

a)Place the client's interests ahead of the interests of any other party, unless loyalty to a client violates the licensee's duties under the consensual dual agency provisions of applicable law.

b)Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.

c)Fulfill any obligation that is within the scope of the agency agreement, except those obligations that are inconsistent with other duties that the licensee has under applicable law.

d)Disclose to a client any financial interests the licensee or the brokerage has in the property or in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction.

While the rules vary slightly from state to state, a customer can generally expect honesty and fairness from all real estate professionals. All known defects to the property must be disclosed, and any money or property given to the licensee must be accounted for. A customer CANNOT expect confidentiality from the licensee, and the licensee will not advocate for a customer's interest. Those duties are reserved for clients.

At what point do you get into an agency relationship?

Most states require a customer to sign an agency disclosure. This is NOT a contract but simply a disclosure explaining the different types of agency relationships that the company offers.

The company (and its agents and brokers) can function as a buyer's agent, seller's agent, dual agent (in some states) or even as a non-agent. These options must be discussed with the customer to ensure that expectations are managed and met. Once the licensee and customer agree on a type of agency representation, the customer will enter into an agency agreement (contract) specifying which type of agency the licensee (and company) will practice for the client.

What is the fiduciary responsibility my agent has?

When representing a client, whether a buyer or a seller, the licensee must protect and promote their client's interests above their own. This means that the client's interest is more important than the agent's commission. The agent's fiduciary duty is to account for any monies given to them by the client, help the client keep within their budget, and protect all verbal and written confidential information given to them by the client. While most of the duties of the agent end at closing, the fiduciary duty of confidentiality never stops. An agent must keep all confidential legal knowledge sacred for the life of the agent.

Summary

As a customer or client, you should trust that your real estate licensees are honest, trustworthy and fair. While a client can expect confidentiality and loyalty that a customer cannot, all parties should be comfortable that real estate licensees must abide by certain rules and laws to protect everyone in the transaction. If you have questions on what representation is available to you, please reach out to one of Peoples Company's professional licensees.