

Topic 2: Who should represent YOU, the buyer?

Topic objective: To inform home buyers about the legal aspects of buyer agency representation

Important!

When choosing an agent, keep in mind the practice law firms went to years ago because of the conflict that arose when firms attempted to represent the opposing parties. They learned they could not adequately serve both parties, therefore, such practice is no longer permitted. Are real estate businesses any different? No! They can no more adequately serve both parties, buyers and sellers, than law firms could serve opposing clients. However, lobbyists for the real estate industry have been instrumental in creating legislation that legalizes the practice of serving both the buyer and seller for in-house transactions. That practice is called designated buyer agency, dual agency, facilitator, or transaction brokerage. Is this practice good for the real estate consumer? Not really. However, it is better for the buyer than buying a home directly from an agent who represents the seller. Whenever possible, the buyer should seek representation from an exclusive buyer agent – one who is not affiliated with a brokerage that lists homes for sale. To find an exclusive buyer agent, [click here](#).

If the agent is working under a “dual agency” or “transaction broker” classification, the agent does not represent either party. In most states, it is required that the home buyer sign a buyer agency agreement with the agent/brokerage firm to secure representation.

When you have an *exclusive buyer agent* representing you, that agent has fiduciary duties to you and only you. These are statutory duties to you, the client. Regardless of whether the duties owed in a particular state are traditional, common-law fiduciary duties or are statutorily defined, they are still owed to the client. These duties include:

- **Undivided loyalty:** The buyer agent is prohibited from advancing any interests adverse to the client's interest or conducting the clients business in such a way as to benefit the seller or his/her own interest.
- **Obedience:** The buyer agent is required to act, following and abiding all lawful instructions, subject to the clients control, but not exceeding the scope of authority conferred by the client.
- **Reasonable care and diligence:** The buyer agent is required to protect the client from foreseeable risks of harm, recommending that the client obtain expert advice or assistance when the clients needs are outside the scope of the agents expertise.
- **Confidentiality:** The buyer agent is prohibited from communicating personal information about the client which would put the client at a disadvantage with others involved with any transaction.
- **Full disclosure:** The agent is required to disclose affirmatively and honestly all information concerning the transaction and property that might affect the decisions a client makes. The agent must always tell the client what he/she knows.
- **Accounting:** The agent is required to safeguard money or property held on behalf of the client.

The agent for the seller has these same fiduciary duties to his/her client, the seller.

Creating a buyer agency representation

A buyer agency representation can be created by a written agreement or an unintentional, accidental, or inadvertent series of actions. For your protection, the buyer should always obtain a written agreement that details the conditions of the buyer representation. The agreement should identify the parties to the agreement, starting and ending dates, description and location of home desired, and how the agent is to be compensated. Other details, such as the agent's duties and buyer's responsibilities, and whether the agreement is an exclusive agreement (which prohibits you from purchasing a home through another agent or FSBO property), are common in most agreements. If the buyer agent is associated with a broker

who lists homes for sale, the agreement will address the option to switch from buyer agency to designated buyer agency, dual agency, transaction broker, and/or facilitator.

To find an exclusive buyer agent, [click here](#).

Self evaluation on home buyer representation

1. The agent who can serve a buyer without the conflicts caused by the broker serving both sellers and buyers is:

a. Designated buyer agent

b. Exclusive buyer agent

c. Transaction broker/facilitator

2. To ensure the proper buyer representation, the buyer should have a written buyer agency agreement.

True False

Answers: 1. (b) 2. (true)