**Agency Disclosure** According to Massachusetts State Law,A real estate broker or salesperson must tell you who he or she represents in a prospective transaction. This disclosure of the relationship the agent has with you or another party must be made in writing at the time of your first personal meeting to discuss a specific property or properties.

**Types of Agent Relationships**

**Sellers Agent**

If you engage the services of a broker/listing agent to sell your property, you become the broker/agents CLIENT. That broker/agent represents YOU, the seller, and owes you undivided loyalty, confidentiality and accountability. In negotiating for the best price and terms, he/she must put your interests first, called fiduciary duty.

**Buyer's Agent**

You may engage the services of a broker/agent to represent you exclusively as a buyer of real property. In this case, the broker/agent represents YOU and is accountable to you. He/She must obey your instructions and keep confidential anything you say that may affect your purchase of real property. In negotiating for the best prices and terms, he/she must put your interests first, called fiduciary duty. A Buyers agent is typically paid for by the transaction, and although you may not pay them, they do not work for free. A buyer’s agent contract and your loyalty will help your agent stay diligent to your needs.

**Disclosed Dual Agent**

An Agent can work for both the buyer and the seller on the same property **provided the agent gets the consent of both parties and provides each with a written notice of the relationship**. In this case, the agent is considered a "disclosed dual agent." This agent owes both the seller and buyer a duty to deal with them fairly and honestly. In this type of agency relationship, the agent does not represent either the seller or the buyer exclusively, and neither party can expect the broker's undivided loyalty. Undisclosed dual agency by an agent/ broker is illegal.

**Facilitator**

When a real estate agent works as a facilitator that agent assists the seller or buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator, and the broker with whom the facilitator is affiliated, owe the seller and buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. The role of facilitator applies only to the seller and buyer in the particular property transaction involving the seller and buyer. Should the seller and buyer expressly agree, a facilitator relationship can be changed to become an exclusive agency relationship, with either a seller or a buyer.

**Licensed Brokers and Salespersons**

Only licensed real estate brokers and salespersons can assist you with the purchase, sale, lease or exchange of real property. The license must be current and in an Active status. This assistance includes a number of services, such as examining property for basic valuations (not to be confused with the services of a licensed appraiser), negotiating purchase, sale or lease agreements, maintaining escrow accounts, and advertising.

To become licensed, an applicant must satisfactorily complete the agent curriculum in real estate approved by the Board and pass a written examination conducted by the Board's testing service.

A **real estate broker** negotiates agreements to sell, exchange, purchase, rent or lease interests in real property for a fee, commission or other valuable consideration for another person. A broker is responsible for accepting and escrowing all funds, such as a deposit placed on the purchase of a home, and for finalizing transactions. A real estate broker must supervise any transactions conducted by a salesperson.

A **real estate salesperson** engages in the same activities as a broker, although a salesperson also has no authority or control over escrow funds.

A salesperson must be affiliated with a broker, either as an employee or as an independent contractor, and work under the supervision of the broker. A salesperson cannot operate his/her own real estate business.

**Things Buyers Should Know when Dealing with a Real Estate Agent**

* Who does the real estate agent represent? The agent may represent the Buyer or the Seller, or both. If the agent is a Facilitator he does not represent either party. It is very important that the agent provide you with a disclosure of who he or she represents prior to any discussions about the transaction.
* Be cautious. Do not reveal too much personal information, especially when working with a seller's agent or a facilitator. Disclosing financial information or information regarding your urgency to make a deal may undermine your bargaining position if the agent conveys it to the seller.
* Make sure the real estate agent is licensed, active and in good standing with the Board. (Check that both the broker's and salesperson's licenses have not been subject to disciplinary action, such as a suspension or revocation.) Call (617) 727-2373.
* You can negotiate the amount of any deposit.

**Deposits**

Both parties need to be clear about who will hold any deposit funds and what will happen in the event of a dispute between the parties. All agreements should be in writing, and no party should sign an agreement or pay any money until they are comfortable that they understand the terms.

If a broker accepts money from you for any reason, that broker must deposit the payment in an escrow account, a bank account which is maintained specifically as a depository for funds belonging to others, in a timely manner. The money must be kept in the escrow account until the transaction is successfully completed or is terminated. *It is illegal for a broker to mingle your funds with his own*.

If a salesperson accepts your payment or deposit, this salesperson is acting as escrow agent, and must turn over this money to the broker with whom she or he is affiliated.

* If you make an offer to purchase a property listed by a broker, the broker or salesperson is required to convey your offer to the owner of the property.
* You can negotiate the terms of an offer, and purchase and sale agreement.

**Purchase and Sales Agreement**

A Purchase and sales agreement is the contract between the buyer and seller noting the terms concerning the purchase of the house (real property). Essentially, it controls the sale of the home from seller to buyer. It includes information on what is being sold, the sale price, your financing, the type of title you will get, the closing date, the amount of deposit you have paid over and how much of the house price you are financing.

**Typical negotiable items include:**

The amount of the deposit, the closing date, the number of loan applications you will file and the main terms of such loan (e.g., that you are trying for a fixed rate loan that does not exceed a specific percentage and number of years). You may also rid the agreement of deposit dispute clauses or include one more favorable to you as the buyer, should the sale fall through.

Allow enough time in the Offer agreement to obtain financing. The Offer agreement should also specify how many applications for financing constitute "good faith." Repeated unsuccessful applications can be costly and time consuming. Investigate "pre-approval" before house hunting so you are clear about financial limitations.

If the broker or the seller makes any important promises or representations about the property or what will be included in the sale, those promises must be contained in the final Purchase and Sale.

Allow enough time in the Offer to have a professional home inspection performed. Use references from your buyer’s agent or friends, not the seller's broker, they work for the other side.

On the day of the closing, before papers are passed, make one final walk through of the property to be sure it is in the agreed upon condition.

* It is often wise to seek legal advice prior to signing any documents concerning the purchase of real estate. Ask questions. Don't sign anything including a contract for representation by a real estate agent until it has been explained to your full satisfaction.

**Your Responsibility as a Consumer**

Whether you are a buyer, a seller, landlord, or a potential tenant, the duties of a real estate broker or salesperson do not relieve you of the responsibility to protect your own interests. If you have questions concerning your particular transaction, pose them to the agent. If you need advice on legal, tax, insurance or other matters, it is your responsibility to consult a professional in those areas.

It is illegal for a broker or salesperson to advise you against using the services of an attorney in any real estate transaction.

Excerpted from Consumer fact sheet from Mass.gov Consumer Affairs and Business Regulations

<http://www.mass.gov/ocabr/government/oca-agencies/dpl-lp/consumer-fact-sheets/consumer-fact-sheet-2.html>