



Understanding the role of
REAL ESTATE AGENTS

For use in the state of Maryland

LONG & FOSTER[®]
REAL ESTATE

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Everyone involved in a real estate transaction should understand the unique role of real estate agents. This role has been defined over the years by law and by custom.

In the past, real estate agents generally worked for sellers, assisting them in finding qualified buyers for their property. Thus, buyers were typically considered customers and the real estate agent's obligations remained solely with the seller. As the industry changed, more and more homebuyers wanted to have an agent working for them, so exclusive buyer representation became the norm.

In October 2016, Maryland law concerning agency relationships changed. Whether you are considering buying a home or selling a home, it is important that you understand the role of real estate agents and the types of agency relationships that exist.

Is Your Agent Really Your Agent? How Can You Be Sure?

As soon as you begin discussions with a real estate agent, you should understand what type of agency relationship or representation exists between you and the agent.

There are four kinds of agency relationships: Seller Agency, Buyer Agency, Dual Agency and Intra-Company Agency.

Before examining these relationships in further detail, let's review some basic definitions.

Basic Definitions:

- **Agent**
- **Customer**
- **Intra-Company Agency**
- **Principal**
- **Seller Agency**
- **Disclosure**
- **Agency**
- **Buyer Agency**
- **Client**
- **Dual Agency**

An **Agent** is one who represents another, called the **Principal**, in dealing with third persons. Such representation is called **Agency**.

The difference between a **Client** and a **Customer** further defines the nature of agency relationships. A Client is a buyer or seller who has entered into a written agency agreement and is represented by an agent. The agent provides advice and also owes the Client duties of reasonable care: loyalty, disclosure, confidentiality, diligence and accounting.

A **Customer** is a buyer or seller who has not entered into a written agency agreement and is not represented by an agent. A customer is entitled to honest treatment, including disclosure of material adverse facts known to the agent

SELLER AGENCY

Seller Agency is the "traditional" agency relationship. Simply put, the listing agent represents the seller pursuant to a written Listing Agreement and owes the duties of reasonable care to the seller.

Subagency is another type of seller agency. In the Listing Agreement, the seller may authorize the listing company to extend the agency relationship outside itself and its agents. This relationship, called subagency, allows real estate agents from other companies to show the home to buyer customers, meaning, buyers who have not entered into a written buyer agency agreement. In this situation, the listing agent and subagent both represent the seller, while the buyer remains unrepresented.

Seller Agents, as With All Agents, Are Obligated by a Code of Ethics:

- To respond honestly to questions about the property from the buyer.
- To disclose material adverse facts about the property to the buyer.
- To present all buyer offers to the seller promptly.

How Seller Agency Affects the Buyer.

The seller's agent can be helpful to the buyer in a variety of ways. The seller's agent can show the buyer available properties, describe the attributes and amenities of properties, provide information about sources of financing, and submit the buyer's offer to purchase. These are called "ministerial acts". They do not bring about an agency relationship between the buyer and sales agent.

BUYER AGENCY

Just as a written Listing Agreement is required to represent the seller, a written Buyer Representation Agreement is required to represent a buyer, referred to as **Buyer Agency**.

The buyer agent owes the buyer the duties of reasonable care: loyalty, disclosure, confidentiality, diligence and accounting. Additionally, the buyer agent should disclose any material facts or information about the property which are reasonably known to the buyer agent.

Buyers Agents Are Obligated to Reveal to Buyers*:

- Any known willingness of the seller to accept a lower price.
- Facts relating to the urgency of the seller's need to dispose of the property.
- The agent's relationships to the seller or interest in the property for sale.
- Facts affecting the value of the property.
- The length of time the property has been on the market and all other offers or counteroffers.
- Information that would affect the buyer's ability to obtain the property at the lowest price and on the most favorable terms.

**To the extent reasonably known to the Buyer Agent.*

How Buyer Agency Benefits Buyers and Sellers Alike.

By offering the option of buyer agency, a real estate company is able to give buyers who seek representation the same advantages given to sellers—not only can that company represent the buyers' best interests exclusively—it can also provide the knowledge, experience in real estate, and professional integrity required of real estate agents in the State of Maryland.

DUAL AGENCY

When a buyer client of a real estate company becomes interested in property listed by that company, the real estate company, or broker, becomes a dual agent (**Dual Agency**). This means that the company has a legal obligation to represent both parties and a duty to maintain the confidentiality of information obtained from each party.

INTRA-COMPANY AGENCY

When both seller and buyer agree to Dual Agency by signing a Consent for Dual Agency form, the real estate company ("dual agent") will assign one agent to represent the seller (the seller's "intra-company agent"), and another agent to represent the buyer (the buyer's "intra-company agent").

Intra-Company Agents are required to provide the same services to their clients that agents provide in transactions not involving dual agency, including advising their clients as to price and negotiation strategy.

DISCLOSURE

Agency **Disclosure** law requires real estate agents to provide written disclosures to unrepresented parties, explaining who the agent is representing and what the agent's responsibilities are. These written disclosures are prepared by the Maryland Real Estate Commission. If you are an unrepresented buyer or seller, the agent representing the other party will ask you to sign the disclosure form. The purpose of this form (called the "Understanding Whom Real Estate Agents Represent" form) is simply to inform you who the real estate agent represents. This form is not a contract and does not establish an agency relationship between you and the agent. You will be asked to sign the form simply to acknowledge that the agent provided the written disclosure as required by Maryland law.

The duties of the agent in a real estate transaction do not relieve the buyers or sellers from the responsibility to protect their own interests. All agreements should be read carefully to ensure that they adequately express your understanding of the transaction. Also, as a principal, you should ensure that any existing relationship is disclosed to other principals and their agents.

Please note that a real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, you should consult an appropriate advisor.

