

Licensee Relationships & Confidentiality

Disclosing Conflicts of Interest

It is imperative that every licensee understands what their options are for representing clients and assisting others in a real estate transaction. Disclosure of representation and conflicts is in the best interest of the public and is each licensee's responsibility legally and ethically to explain these disclosures in a clear and understandable manner for the public.

There are four different types of relationships established by Alaska Real Estate Law:

- Specific Assistance – Licensee owes “Duties owed by a Licensee in all Relationships” as described in the AREC.
- Representation – Licensee owes “Duties Owed by a Licensee when Representing a Party” as described in the AREC.
- Designated Licensee – This occurs when a Licensee represents or provides specific assistance to a party to a transaction and another Licensee within the same company represents or provides specific assistance to the other party in the same transaction.
- Neutral Licensee – This occurs when a Licensee does not represent either party but provides specific assistance to both parties in the same transaction. The parties must authorize the Neutral Licensee relationship by signing the “Waiver of Right to be Represented” form.

12 AAC 64.118. CONSUMER DISCLOSURE. Before a real estate licensee provides specific assistance to a person, or when entering into a contract with the person to provide specific assistance, the real estate licensee shall provide the person with a copy of the commission's *Alaska Real Estate Commission Consumer Disclosure*.

- The elements of the AREC include:
 - Duties that are owed by a licensee
 - Duties that are not owed by a licensee
 - Identification of the licensee or *licensees* that are involved with a buyer or seller – it's important to make sure all licensees, including licensed staff, assistants, transaction coordinators, & buyer representatives are included in the disclosure.
 - Don't forget to check mark who you are or not representing.

Important Note: Signatures, dates & times need to be completed; never alter this form, including the reference footnote.

If a prospect does not feel comfortable signing the AREC Consumer Disclosure, it is possible that you are not explaining it properly. Or, they aren't serious about their property search.

Make sure they understand:

- It is not a contract
- It doesn't obligate them for anything
- The law requires that you provide it for them immediately
- It is for their protection so that they understand who you are representing and who is compensating you.

Make sure you fill in all the information. This is an example of how you might fill in the disclosure for a FSBO if you are representing the buyer but expecting compensation from the seller. That agreement must have been made prior to showing the property along with this disclosure.

Duties that are owed by licensees in all relationships. These duties are owed by all licensees whether or not they are represented. Don't forget you owe these duties to the client of your cooperating broker or the party you are not representing.

- Exercise reasonable skill and care
- Deal honestly and fairly
- Present all written communications in a timely manner
- Disclose all material information regarding the physical condition of a property
- Account for all money and property received

Be especially diligent and careful especially to a party such as a FSBO that does not have representation. Recommend they obtain legal counsel. This is your legal and ethical responsibility.

Duties owed by a Licensee when Representing a Party:

- Duties owed by Licensee in all relationships listed above;
- Not knowingly do anything that is adverse or detrimental to your interests;
- Disclose all conflicts of interests to you in a timely manner;
- If a matter is outside their area of expertise, advise you to seek expert advice;
- Not disclose confidential information, even after the relationship ends, from or about you without written permission, except under a subpoena or court order;
- Make a good faith and continuous effort to accomplish your real estate goals. However, once you have entered into a specific real estate transaction agreement, their efforts refocus on its successful completion

Duties NOT owed by a Real Estate Licensee

Unless agreed in writing otherwise, the following are the duties your Real Estate Licensee does not owe to you:

- To conduct an independent investigation of a property
Obtain the assistance of a contractor, home inspector, or other property expert.
- To conduct an independent investigation of anyone's finances
It is not a licensee's responsibility to obtain credit reports or verify employment.
- To independently verify the accuracy or completeness of a statement made by a party to a real estate transaction or by a person reasonably believed by the licensee to be reliable
- To show or search for properties without compensation

Specific Assistance

- Asking questions regarding confidential information for a real estate transaction;
- Showing pieces of real estate selected for a buyer's *specific needs or desires*;
- Preparing a written offer for a real estate transaction;
- Entering into a personal services contract;

Does not include

- Hosting an open house;
- Casual conversation regarding real estate;
- Receiving calls or electronic inquiries from the licensee's signs, advertisements, or Internet site;
- Providing information regarding a piece of real estate;
- Setting an initial appointment to show a piece of real estate
- Receiving unsolicited information from a buyer or lessee before or after disclosure of a real estate relationship.

Unless the broker is the designated licensee, the relationship, including the duties, obligations, and responsibilities of the relationship, established between a person and a designated real estate licensee does not extend to the real estate broker for whom the designated licensee is working, to another real estate licensee who works for the same real estate broker, or to an owner of the business that employs the real estate broker. The extent or limitations of the relationship between the broker with the designated licensee shall be disclosed to the parties to a real estate transaction.

A designated licensee may represent or provide specific assistance to a person who is a seller in one real estate transaction while representing or providing specific assistance to that person as a buyer in another real estate transaction.

Unless the broker is the designated licensee, when a designated licensee represents or provides specific assistance to a person in a real estate transaction, the knowledge received by the licensee while representing or providing specific assistance to the person is not imputed to the real estate broker for whom the licensee works, to another real estate licensee employed by or under contract to the broker, or to an owner of the business that employs the real estate broker.

This section may not be construed to limit the responsibility of a real estate broker, or of an owner of a business that employs that broker, to supervise designated licensees who work for the broker or who work for the business that employs the broker, or to shield the broker or business from vicarious liability for the acts of the designated licensees.

Unless additional duties are agreed to in writing, duties of a neutral licensee are limited to the duties established for real estate licensees under AS 08.88.615 and the following:

- not to take action that the licensee knows is adverse or detrimental to the interest of the persons to whom the neutral licensee provides services to
- to disclose all conflicts of interest in a timely manner
- to advise all parties to obtain expert advice on matters beyond the expertise of the neutral licensee;

- not to disclose without written consent confidential information from or about any of the parties except under a subpoena or another court order, even after the relationship with the party terminates;
- not to disclose without the consent of the person to whom the information relates
 - that the buyer is willing to pay more than the price offered for the real estate;
 - that the seller is willing to accept less than the asking price for the real estate; or
 - that the seller, buyer will agree to financing terms other than those terms offered.
- A neutral licensee does not violate the duties of a neutral licensee if, **with written consent**, the neutral licensee engages in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction:
 - analyzing, providing information on, or reporting on the merits of the transaction to each party;
 - discussing the price, terms, or conditions that each party would or should offer or accept; or
 - suggesting compromises in the parties' respective bargaining positions.

Real Estate Licensees are required by law to provide this document, in conjunction with the "Consumer Disclosure," outlining the duties of a real estate licensee when acting in a neutral capacity.

A Licensee is who is representing a client (Buyer or Lessee) that has interest in acquiring a property where the Seller is also "Represented" by the same Licensee must obtain written approval from both parties to change their working relationship from representation to providing specific assistance in a neutral capacity *prior* to showing the property to the buyer.

Duties owed by the Neutral Licensee

Exercise reasonable skill and care;

- Deal honestly and fairly;
- Present all written communications in a timely manner;
- Disclose all materials information regarding physical condition of a property;
- Account for all money and property received;
- Not knowingly do anything that is adverse or detrimental to your interests;
- Disclose all conflicts of interest to you in a timely manner;
- If a matter is outside their area of expertise, advise you to seek expert advice;
- Not disclose confidential information, even after the relationship ends, from or about you without written permission, except under a subpoena or court order to include:
 - 1) What the buyer/seller is willing to pay or accept for the property
 - 2) What terms the buyer/seller is willing to accept, if different than what was offered

Buyer/Seller authorization must be obtained in order for the Neutral Licensee to engage in the following conduct in a **good faith effort** to assist both parties in reaching final agreement in a real estate transaction:

- Analyzing, providing information on, or reporting on the merits of the transaction to each party;
- Discussing the price, terms, or conditions that each party would or should offer or accept; or
- Suggesting compromises in the parties' respective bargaining positions.

This section is crucial when acting as a neutral licensee.

Analyzing & providing information includes providing a CMA or BOV to one or both of the parties. Remember that suggesting a compromise does not mean providing one of the parties bottom line to the other, or disclosing anything that was told to you in confidence. Example of compromise: You know that occupancy is crucial to the seller, but closing is important to the buyer. Suggest that the parties close on the buyer's terms, but allow seller to remain under occupancy agreement for a time frame that is acceptable to both.

If you do not get this additional authorization from both parties, you are limited as to what information you can provide to the parties, and you cannot suggest compromises.

Exemptions: A real estate licensee is exempt from the signature requirements of AS 08.88.600 – 08.88.695 when the licensee provides specific assistance to

- a corporation that issues publicly traded securities;
- a business that has a net worth in the previous calendar year of \$2,000,000 or more, if the business
- requests the exemption from the licensee; or
- a governmental agency; in this paragraph, “governmental agency” means:
 - a department, division, public agency, political subdivision, or other public instrumentality of the state or federal government, including the University of Alaska, the Alaska Railroad Corporation, the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, and other public corporations.

Conflict of Interest

A conflict of interest arises when a licensee has a present ownership (or leasehold interest) in a property that is the subject of a transaction, whether the property is being sold or leased, or the licensee is whole or part owner of a business interest in a property that is being marketed or considered for lease or purchase. Other conflicts include any familial relationships a licensee has with a person or persons that have a financial interest in a property that is being marketed for lease or purchase. If a licensee is going to receive compensation from someone other than the party they are representing, or someone that is not a party to the transaction, they have a conflict, and if they receive compensation for community association management while simultaneously engaged as a property manager for a unit within the community association, then that too is a conflict.

A real estate licensee who has a conflict of interest relating to a real estate transaction shall disclose that conflict of interest to the persons adversely affected by the conflict or their real estate licensees and confirm the conflict of interest in writing to the persons adversely affected by the conflict or their real estate licensees involved in the transaction as soon as possible after the conflict is identified. The licensee must also verbally advise the person of the conflict, and begin any written statement of the conflict of interest with these words, underlined and written in bold: “**Disclosure of Conflict of Interest.**”