

By David Houck, QB Atomic Realty.

Should Your Real Estate Broker Be a Fiduciary or a Transaction Broker? What's Best for You?

Every now and then, clients ask truly insightful questions. One we were recently asked was: *"Do you work as fiduciaries or as transaction brokers?"* The short answer is—we can do either, depending on what best suits your needs.

In most cases, we believe that acting as a transaction broker better serves both buyers and sellers. Why? Because fiduciary representation comes with certain limitations. When a broker acts as a fiduciary, they owe full loyalty to one party—typically the seller or buyer—not both. If that broker later finds a potential buyer for their fiduciary client, they can't represent both sides without the client waiving fiduciary rights, which creates a dual agency situation. This limits your options and can reduce your buyer or seller pool. After all, a fiduciary "can't serve two masters."

What Is a Fiduciary?

Fiduciaries—such as attorneys or asset managers—owe their clients a high level of trust and loyalty. In law school, we learned to remember fiduciary duties using the acronym OLD CAR:

- Obedience – Follow all lawful instructions from the client.
- Loyalty – Prioritize your client's interests above your own and avoid conflicts.
- Disclosure – Share any relevant information that could benefit your client.
- Confidentiality – Keep your client's personal information and motivations private.
- Accounting – Accurately handle and report all financial matters.
- Reasonable Care – Use skill, diligence, and expertise in service of the client.

What About Transaction Brokers?

Even though transaction brokers are not fiduciaries, they are still held to high professional standards—and in many cases, they offer greater flexibility. Here's what you can expect from a qualified transaction broker:

- Honesty and fair dealing with all parties.
- Compliance with all applicable laws and regulations.
- Execution of all written agreements.
- Competence in their areas of practice.
- Accounting for all funds received or disbursed.
- Confidentiality of sensitive information for both buyer and seller.
 - For example, we do not disclose if a seller is willing to accept less, or if a buyer is willing to pay more—unless authorized to do so.
- Full disclosure of any material facts or conflicts of interest—whether business, personal, or familial.
- Full transparency about any known adverse material facts affecting the property.

- Reasonable care in handling all aspects of the transaction. We back this with a solid understanding of real estate laws and practices, and we ensure everything is documented in writing.

In Summary

Whether you choose fiduciary or transaction broker representation, the most important factor is working with a professional who puts your best interest first—not theirs. We're committed to guiding you through the process with transparency, integrity, and the experience you deserve.

David Houck is the Qualifying Broker of Atomic Realty, (AtomicRealty.net), has over 40 years of real estate experience, a BS degree in math and physics, and a juris doctorate. He is currently volunteering on the NM Association of Realtors forms committee working towards clear concise forms that best serve and protect the public.