



AGENCY DISCLOSURE AND REAL ESTATE TRANSACTIONS IN THE DISTRICT OF COLUMBIA

WHAT YOU SHOULD KNOW ABOUT BROKERAGE RELATIONSHIPS: DEFINING CLIENT OR CUSTOMER

When dealing with a real estate licensee in a real estate transaction, you are usually either a client or a customer of that licensee. A “client” is someone who has formed a contractual brokerage relationship with a licensee (this type of licensee is known as “broker”; other licensees, known as “salespersons,” assist the broker), and the licensee is the client’s agent. Parties who do not have a brokerage relationship with the licensee are “customers.”

When acting as a standard agent, a licensee has certain duties and obligations. The basic duties are defined in District of Columbia law (see the Non-Health Related Occupations and Professions Licensure Act of 1998), and additional duties can be created by a brokerage agreement with a client.

A licensee you choose as your agent is required to represent your interests. A standard agent owes first allegiance to his or her client. Brokerage relationships with an individual licensee also bind the other licensees of the same real estate company.

LICENSEES OWE THEIR CLIENTS STANDARD DUTIES

Standard duties of licensees include:

- Perform the terms of the brokerage agreement
- Promote the client’s best interest by seeking a transaction acceptable to the client
- Provide financial accounting
- Disclose known material facts about the property or the transaction
- Exercise ordinary care
- Maintain client confidentiality, unless the information is required by law to be disclosed or the client consents to disclosure

AGENTS HAVE DUTIES TO CUSTOMERS

Within standard duties, agents must:’ duties include:

- Treat all parties honestly and not knowingly give false information
- Inform all customers and potential customers of the nature of their brokerage relationships, if any
- Disclose adverse material facts pertaining to the physical condition of the property of which the licensee is actually aware
- Comply with the law, including the Fair Housing Act

There are limits on what an agent must tell a customer. Customers may wish to look to other sources for information important to their decisions. Standard agents fall into two categories of representation: Seller Representation and Buyer Representation.

STANDARD SELLER REPRESENTATION

If you are selling property or offering it for lease, and you sign a listing agreement with a licensee, the licensee and his or her brokerage firm (known as the “listing company”) become your agent and you are their client.

Salespersons for other companies who are acting as agents (known as “subagents”) of the listing company and showing it to prospective buyers or tenants are required to seek a transaction on terms acceptable to you, and they owe you the standard agent duties a licensee owes a client (outlined above).

If you are a prospective buyer or tenant who is dealing with a licensee who represents the seller or landlord, remember that you are a customer of that licensee and not a client.

A seller’s representative still can provide valuable services to customers such as showing the property, preparing and presenting offers and counteroffers, comparing financing alternatives, and disclosing known adverse material facts about the physical condition of the property. All agents in a transaction must treat all parties honestly and must not give false information to any parties knowingly. The seller representative’s highest duty is to the seller, not the purchaser.

STANDARD BUYER REPRESENTATION

Prospective buyers and tenants have realized in recent years that they may want to have a licensee of their own representing them in a transaction. They do this by forming their own brokerage relationship usually by written agreement, with a licensee who becomes their agent and owes them the duties of a standard agent. A representative for the prospective buyer or tenant can freely advise the buyer-client about the property.

A seller dealing with a buyer’s agent should remember that in this relationship, the seller is the customer and the licensee is working for the buyer. In many cases, the seller’s listing agent will share the commission with the buyer’s representative, but that does not diminish the buyer representative’s obligation to the buyer.

DUAL BROKERAGE RELATIONSHIPS

The increasing popularity of buyer representation has increased the number of transactions where a licensee might represent both parties to a transaction. This happens, for example, when a buyer or tenant client of a real estate company wants to buy or rent one of the properties that the same real estate company is listing for a seller or landlord client. The duties of loyalty to both clients are created through the company, even if different licensees from that company are working separately with the two clients. In dealing with these situations, there are two ways for the transaction to proceed:

Option 1: Standard Dual Representation

District of Columbia law allows a real estate firm or broker to represent both sides of a real estate transaction as long as all the parties give consent. Because the company has a legal obligation to represent both parties, and may know confidential information about one party of value to the other party, there are limits on what the company or its licensees may do in dual representation cases.

The company or its licensees must not disclose one party's confidential information to another party, such as whether the seller will take a lower price or the buyer will pay a higher price. Generally, information about the motivations of the parties must also be kept confidential.

Option 2: Designated Representation

If all of the parties agree, a real estate company that is acting as a dual representative can designate one of its licensees to represent the seller (or landlord) and a second licensee from its company to represent the buyer (or tenant) in the same transaction.

A supervising broker in the company will oversee the transaction, and that supervising broker (and the company) will still be the dual representative of each party. However, each of the designated representatives will be able to offer full service to his or her assigned client.

The supervising broker must not disclose one party's confidential information to another party. The designated representatives must not share confidential information with each other (they share it with the supervising broker). But when working with their individual clients, each designated representative is free to gather important information from outside sources, free to help with negotiations, and will be thinking first of his or her client's needs and wishes.

You are not required to agree to either of the dual representation situations outlined in Option 1 or Option 2. If you refuse the dual agency relationship or designated representative relationship, the real estate licensee is free to choose which party to represent, and the other party is free to arrange other representation for that transaction.

CONCLUSION

Real estate transactions commonly involve one or more of these brokerage relationships—seller representation, buyer representation or some form of dual representation—and it is important for you to understand which relationships are involved in your transaction.

While this document provides some of the information regarding these relationships, it is not possible to cover them entirely, and you should consult an attorney if you have questions regarding your specific situation.

This publication is not part of, and does not change the terms of, any brokerage agreement or other contract. It is for informational purposes only.