

Agency - By Jurisdiction

Executive Summary

REAL ESTATE AGENCY

ANNUAL REPORT EXECUTIVE SUMMARY

October 2019

Overview

Each of the 51 domestic jurisdictions surveyed has an extensive legislative and regulatory system addressing real estate agency matters; the three surveyed territories also address agency, but to a lesser extent. While the bulk of the existing agency frameworks were established in their current form in the mid-1990s, most of the surveyed jurisdictions have experienced changes in the past decade. Although many of these changes were conforming, not substantive, minor, or not applicable to this survey, recent significant changes generally included shifts in disclosure standards, agreement requirements, duties owed to buyers and sellers, and other compliance-specific issues.

General Agency Relationship Requirements

Since October 2017, the most significant changes to laws addressing general agency relationships were as follows:

- California addressed transactions performed by electronic means;
- Kansas revised regulations to add references to specific Commission-approved forms and to delete other related content;
- New Mexico significantly revised the state's regulation addressing broker duties and disclosure requirements by adding separate subsections for duties owed to prospective

parties to parties to whom the broker is providing real estate services, as well as adding a provision regarding broker's obligations to other brokers; and

- North Carolina revised the provisions regarding instrument delivery.

Additionally, California, Illinois, and Wisconsin modified some applicable definitions. West Virginia significantly amended and renumbered its regulations across the board. Similarly, Oregon amended most of the cited regulations, but there all of the changes were either minor or not relevant. In 2019, Maryland added a provision prohibiting disclosure of confidential information received from a prospective client without the client's consent. Colorado renumbered and made non-substantive amendments to all its agency laws.

Buyer's and Seller's Agency

States increasingly specify the parameters of buyer's agency. Eighty-one percent of the jurisdictions have specific buyer's agency provisions, addressing statutorily-defined duties, disclosures, and forms for buyer's agents. Some states, including Delaware and Vermont, provide specific agency agreement language for buyer's agents. Nine percent of the surveyed jurisdictions have no specific seller's agency provisions.

From January 2016 to October 2017, the most significant changes to buyer or seller agency requirements were:

- Connecticut amended its agency disclosure provisions as they relate to both buyer's and seller's agents; and
- Ohio enacted legislation related to the treatment by buyer's agents of contemporaneous offers.

From October 2017 to October 2018, California revised provisions related to inspection duties and required disclosures. New Mexico added confidentiality obligations specifically applicable to brokers representing buyers and those applicable to brokers representing sellers.

Twenty percent of the surveyed jurisdictions have no specific buyer's agency provisions in their statutes and regulations.

Designated Agents

A growing number of states (65 percent, up from 47 percent about a decade ago) have specific provisions concerning designated agents. An additional 11 percent have statutes or regulations that effectively define and regulate a designated agent's role without expressly providing for such an agency. Most of the changes to designated agency laws since January 2016 were minor, not substantive, or not specifically relevant to this survey. Twenty-four percent of the surveyed jurisdictions have no designated agency rules.

In 2019, Illinois made it mandatory, rather than optional, that a sponsoring broker entering into a listing or representation agreement specifically designate affiliated or employee licensees to act as legal agents for the sponsoring broker to the exclusion of other such licensees.

Dual Agency

Although the great majority of the surveyed jurisdictions allow dual agency with appropriate disclosures and accompanying consents, four states prohibit dual agency for real estate transactions. Notably, Tennessee is the only state that appears to have no statutory or regulatory provision approving, limiting, or disallowing dual agency.

Several states' rules require specific forms or language to be included in a dual agency agreement. For example, California requires dual agency disclosure using a statutory form, and the District of Columbia requires that the disclosure be printed conspicuously (using bold lettering, all capitals, underlining, or a separate text box).

Of the jurisdictions that revised their dual-agency provisions between January 2016 and October 2017, all of the changes were minor, conforming, or not relevant to this report. In the two years, California revised its confidentiality obligations, and Montana added a provision stating that it is unprofessional conduct for a licensee to act as a dual agent in a transaction without a written agreement from each principal.

Transaction Brokers

Approximately 41 percent of the surveyed jurisdictions make no provision whatsoever for transaction brokers. Another 45 percent have specific rules defining transaction brokerage and outlining transaction brokers' duties and responsibilities. Some jurisdictions provide an alternate name for a transaction broker, such as "facilitator" (Minnesota and New Hampshire) or "statutory broker" (Montana).

The remaining surveyed jurisdictions have provisions that do not specifically address "transaction brokers," but that implicitly regulate activities undertaken by such brokers. For example, Maryland provides an agency exception for ministerial acts (such as writing or conveying offers) in a real estate transaction.

Few states have made recent significant changes to their transaction broker laws. Between January 2016 and October 2018, the most significant change was in South Carolina, which repealed its subagency provisions and added transaction broker provisions. In the past year, the New Mexico Real Estate Commission added a regulation governing "transaction coordinators."

Alabama

Alabama, Definitions

Agency agreement—a written agreement between a broker and a client that creates "a fiduciary relationship between the broker and a principal, who is commonly referred to as a client."

Brokerage agreement—a written agreement between a brokerage firm and a consumer that establishes a brokerage relationship.

Brokerage service—a service, except for rental or property management services, provided by a broker or licensee to another person.

Consumer—a person who obtains information, advice, or services concerning real estate from a licensee.

Client—a buyer or seller with an agency agreement with a broker for brokerage services.

Customer—a person who is provided brokerage services by a broker or licensee but who is not the broker's client.

Dual agency—an agency relationship in which the same brokerage firm represents the seller and the buyer in a real estate transaction, including when

- two or more licensees licensed under the same broker each represent a different party to one transaction; and
- one licensee represents both the buyer and the seller in one real estate transaction.

Informed consent—a consumer's agreement to allow something to happen that is based on full disclosure of facts needed to choose appropriate brokerage services.

Limited consensual dual agent—a licensee who, with the written informed consent of all parties to a transaction, is engaged as an agent for both the buyer and the seller.

Qualifying broker—a broker under whom a corporation, partnership, branch office, or, effective April 3, 2008, a lawfully constituted business organization is licensed, or a broker licensed to do business as a sole proprietorship who is responsible for supervising the acts of the entity and all affiliated licensees.

Single agent—a licensee who is engaged by and represents only one party in a real estate transaction, including

- a buyer's agent, which means a broker or licensee engaged by and representing only the buyer in a transaction; and
- a seller's agent, which means a broker or licensee engaged by and representing only the seller in a transaction.

Sub-agent—a licensee, who is empowered to act for another broker in performing brokerage tasks for a principal and who owes the same duties to the principal as the principal's agent.

Transaction broker—a licensee who “assists one or more parties in a contemplated real estate transaction without being an agent or fiduciary or advocate for the interest of that party to a transaction.”

Section amended 2008.

[Ala. Code § 34-27-81 \(2018\)](#)

Alabama, Designated Agents

No provisions were located specifically applicable to designated agents.

Alabama, Dual Agents

DUTIES

A broker who represents more than one client in a single real estate transaction owes the duties set forth in § 34-27-85(a) to each client, unless the duties to one client violate the licensee’s fiduciary duties to other clients. A broker may provide brokerage services as a limited consensual dual agent only with the prior written informed consent of all of broker’s clients in the transaction.

Section enacted 1995.

[Ala. Code § 34-27-85\(b\), \(c\) \(2018\)](#)

Alabama, General Agency Relationship Requirements

DUTIES

A licensee has the following obligations to all parties to a real estate transaction:

- to provide brokerage services honestly and in good faith;
- to exercise reasonable skill and care;
- to keep confidential information given in confidence or that the licensee knows a reasonable individual would want kept confidential, unless disclosure is required by law, violates a client’s fiduciary duty, becomes public knowledge, or is authorized in writing;
- to account for all property coming into the licensee’s possession that belongs to any party to the transaction;
- to present all written offers in a timely and truthful manner;
- to give written disclosure if the licensee is acting on behalf of himself, his immediate family, or any other individual or entity in which he has a personal interest;

- to represent the client's best interests by placing the client's interests first, unless such loyalty violates § 34-27-84 or is otherwise prohibited by law;
- to disclose all known information that is not confidential, that is material to the transaction, and that is not reasonably discoverable by the client; and
- to fulfill the obligations required by the agency agreement.

When listing an owner's property for sale, the broker or licensee must, at a minimum, "accept delivery of and present to the consumer all offers, counteroffers, and addenda":

- to assist the consumer in negotiating; and
- to answer the consumer's questions relating to the transaction.

DISCLOSURE REQUIREMENTS

As soon as reasonably possible and before a licensee discloses any confidential information, the licensee must provide a written disclosure form, to be signed by the consumer, that describes the alternative types of brokerage services available. Also, a licensee must provide a disclosure form to buyers and sellers, using the Alabama Real Estate Commission's mandatory Real Estate Brokerage Services Disclosure form. The form and an optional Consumer Information Booklet are set forth in Ala. Admin. Code r. 790-X-3-.13. A consumer may enter into a written contract with a broker that contains provisions for services not specifically identified in the written disclosure form.

A broker must adopt a written agency disclosure office policy, enumerating the types of brokerage service arrangements available. The qualifying broker for the brokerage company must provide each licensee with a copy of the agency disclosure policy and explain it to all licensees at least once a year. The office policy must:

- explain single agency, sub-agency, limited consensual dual agency, and transaction brokerage, as described in detail in Ala. Admin. Code r. 790-X-1-.14;
- contain a copy of the disclosure form required by Alabama Real Estate Commission in r. 790-X-3-.13; and

- contain a copy of the broker's sales contract form containing the required agency disclosures.

AGREEMENT REQUIREMENTS

A licensee may act in a real estate transaction as a single agent, a sub-agent, a limited consensual dual agent, or a transaction broker, and an agency relationship must not be assumed, implied, or created without a written agreement that sets forth the agency relationship terms. After disclosure, the consumer may elect the specific type of brokerage arrangement, and the brokerage agreement must state the terms and conditions of the services that the broker will provide.

Statutory section 34-27-84 amended 2005; § 34-27-82 amended 1998; §§ 34-27-83 and -85 enacted 1995. Regulation 790-X-3-.13 amended 2002; r. 790-X-3-.14 amended 1998.

[Ala. Code §§ 34-27-82 \(a\), \(b\), \(c\), \(e\), \(g\), \(h\); -83; -84 \(a\), \(c\); -85\(a\) \(2018\); Ala. Admin. Code r. 790-X-3-.13, -.14 \(2019\)](#)

Alabama, General Applicability of Provisions

A licensee need not comply with § 34-27-82(c) or provide the Real Estate Brokerage Services Disclosure form if the licensee is engaged in transactions with certain entities listed in the statute or engaged in rental or property management services. Licensee's duties, as established in article 4 of the code, supersede any inconsistent duties based upon common law agency principles.

Statutory section 34-27-82 amended 1998; § 34-27-87 enacted 1995. Regulation amended 2002.

[Ala. Code § 34-27-82\(d\), -87 \(2018\); Ala. Admin. Code r. 790-X-3-.13 \(2019\)](#)

Alabama, Other Relevant Provisions

SELF-DEALING

A licensee may advertise property he owns in the same way as any private party, but he must also abide by all relevant laws and rules in all real estate transactions in which he may be involved, whether the subject property is his own, a family member's, or the property of a member of the public.

MISREPRESENTATIONS

A client is not liable for a broker's misrepresentation unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation the client made to the broker. Similarly, a licensee is not liable for providing false information to a party if the false information was provided by a client or customer unless the licensee knows or should have known that the information was false.

Statutory section enacted 1995. Regulation amended 2017.

[Ala. Code § 34-27-86 \(2018\)](#); [Ala. Admin. Code r. 790-X-1-.03\(2\) \(2019\)](#)

Alabama, Relationship with Buyers

No provisions were located that are specifically applicable to buyer's agents.

Alabama, Relationship with Sellers

No provisions were located that are specifically applicable to seller's agents.

Alabama, Term of Relationship

The brokerage agreement must contain a statement of the terms and conditions of the brokerage services to be provided, presumably including the term of the relationship.

Section amended 2008.

[Ala. Code § 34-27-81 \(2018\)](#)

Alabama, Transaction Brokers

DUTIES

When serving as a transaction broker, a licensee's duties are limited to those set forth in [§ 34-27-84](#). A signed brokerage agreement between the parties or, if no signed agreement, the continuation of a transaction brokerage relationship, constitutes "informed consent by the consumer as to the services the consumer shall receive from the broker."

Section amended 1998.

Alaska

Alaska, Definitions

Confidential information—information from or concerning a person that

- a licensee acquired during the licensee's relationship with the person;
- the person reasonably expects to be kept confidential;
- the person has neither disclosed nor authorized to be disclosed to a third party;
- if disclosed, would be to the person's detriment; and
- the person is not obligated to disclose to the other party.

Designated licensee—includes

- a licensee who works for a broker and represents a party in a real estate transaction when another licensee working for the same broker represents an unrepresented person in the same transaction; or
- a broker who represents a person in a real estate transaction when another licensee working for the broker represents another person in the same transaction.

Neutral licensee—a licensee who

- provides specific assistance to both the buyer and the seller in the same transaction; and

- does not represent either party.

Sections 08.88.391 and 08.88.990 amended 2008; § 08.88.695 enacted 2004.

[Alaska Stat. §§ 08.88.391\(c\), .695, .990 \(2018\)](#)

Alaska, Designated Agents

A licensee who works for a broker may represent or provide specific assistance to a person even if the broker or another licensee who works for the broker represents or provides specific assistance to another party in the same transaction. The broker must designate which licensee is the designated licensee for the seller and which is the designated licensee for the buyer.

Unless the broker is the designated licensee, the relationship between a person and a designated licensee does not extend to

- the broker for whom the designated licensee is working,
- another licensee who works for the broker, or
- an owner of the business that employs the broker.

A broker may have a different designated licensee working for the seller and the buyer in the same real estate transaction without creating dual agency or a conflict of interest. Also, a designated licensee may represent a seller in one transaction while representing the buyer in another transaction. Unless the designated licensee is the broker, knowledge received by a designated licensee is not imputed to the broker for whom he or she works, to another licensee employed by the broker, or to an owner of the business that employs the broker.

REQUIRED DISCLOSURES

The extent of the relationship between the broker with the designated licensee must be disclosed to the parties.

Sections enacted 2004.

[Alaska Stat. §§ 08.88.600\(d\), .640 \(2018\)](#)

Alaska, Dual Agents

A licensee who provides services to one party in a real estate transaction represents only that party unless the parties agree otherwise in writing. Therefore, a licensee may not provide services to more than one party in the same transaction, except that

- a licensee may represent one party while providing specific assistance to an unrepresented party;
- a licensee may act as a neutral licensee;
- with the parties' written consent, a licensee may be a party to the transaction; or
- the parties may agree otherwise in writing, except that the licensee's duties when providing specific assistance cannot be waived unless specifically permitted by statute.

REQUIRED DISCLOSURES

A real estate licensee may provide specific assistance as a neutral licensee to both the seller and the buyer in the same real estate transaction if the licensee complies with § 08.88.610, which requires the licensee to obtain a written preauthorization from a person to act as a neutral licensee. If preauthorization is not obtained, when a buyer expresses an interest in acquiring real estate and the licensee is representing the property's seller, the licensee must obtain written consent to act as a neutral licensee before the licensee shows the real estate. The written consent must be on a separate form, entitled "Waiver of Right To Be Represented."

Sections enacted 2004.

[Alaska Stat. §§ 08.88.600, .610, .625 \(2018\)](#)

Alaska, General Agency Relationship Requirements

REQUIRED DISCLOSURES

A broker must disclose in writing to his or her principal the amount of any rebate, compensation, or fee paid to another broker in connection with a transaction. However, a broker need not disclose franchise fees, internal office operating costs, or compensation to a licensee within the broker's office. In this context, "real estate sales transaction" means the sale or purchase of real property, but does not include a rental, lease, or other real estate transaction.

A broker must make the required disclosures when

- the listing contract is signed; and
- the settlement statement is signed.

The above disclosure is "a continuing obligation that is not extinguished by the transfer of title in a real estate transaction."

A broker must adopt a written policy describing the relationships in which a broker and its licensees may engage with a seller, buyer, lessor, or lessee. The broker must make the written policy available to the commission and to the public on request. Also, at the time a person signs a real estate offer, the licensee must provide a written statement indicating whether the licensee represents the buyer, seller, lessee, or lessor, or provides specific assistance to both the buyer and the seller as a neutral licensee. The statement must be contained in a separate paragraph labeled "Licensee Relationships" in the contract between the buyer and seller or in a separate document entitled "Licensee Relationships."

A broker must adopt written policies and procedures that are available to the commission and to the public upon request and that

- require licensees to comply with real estate laws;
- require licensees "to act fairly and honestly in all dealings";

- require licensees to notify the broker (or a designee) of any legal dispute or allegation of wrongdoing;
- require licensees "to maintain regular communication" with the broker (or a designee); and
- identify and describe the relationships in which the broker and licensees who work for the broker may engage with a seller, buyer, lessor, or lessee.

Before a licensee provides specific assistance to a person or when a licensee enters into a contract to provide specific assistance, the licensee must provide the person with a copy of the commission's ["Alaska Real Estate Commission Consumer Disclosure,"](#) dated February 2015.

GENERAL DUTIES

Unless the parties agree to additional duties in writing, a real estate licensee owes the following duties to each person to whom the licensee provides specific assistance:

- to use reasonable skill and care;
- to deal with honesty and in good faith;
- to present all written offers and other written communications to and from the person in a timely manner, even if the real estate is subject to an existing contract or the person is already a party to an existing contract to buy or lease real estate;
- except as otherwise provided, to disclose all known material information regarding the real estate's physical condition if it substantially adversely affects the real estate or a person's ability to perform his or her obligations in the transaction or if the information would "materially impair or defeat" the transaction's purpose;
- to account in a timely manner for all money and property received;

- before providing specific assistance or when entering into a contract to provide specific assistance, to provide a copy of the pamphlet outlining the duties of licensee relationships;
- before providing specific assistance, to obtain a signed document disclosing the licensee's relationship with the person;
- when a person signs a real estate offer, to provide the licensee a written statement indicating whether the licensee represents the buyer, seller, lessee, or lessor, or provides specific assistance to both the buyer and the seller as a neutral licensee;
- not to take actions that are adverse or detrimental to the represented person's interests;
- to disclose any conflict of interest;
- to advise the represented person to obtain expert advice on any matters related to the real estate transaction that are beyond the licensee's expertise; and
- not to disclose confidential information from or about the represented person without his or her written consent, except under subpoena or court order, even after the relationship terminates.

A licensee has no duty

- to investigate any matter that he or she has not agreed to investigate, or that is not known by the seller, prospective buyer, or licensee;
- to disclose, unless otherwise provided by law, events that might affect whether a person wants to buy the real estate;
- to conduct an independent inspection of the real estate;

- to conduct an independent investigation of a person's financial condition; or
- to verify the accuracy or completeness of a statement made by a party or a person the licensee reasonably believes to be reliable.

Statutory sections 08.88.615, 08.88.620, and 08.88.630 enacted 2004; § 08.88.685 amended 2007. Regulation 64.940 amended 2009; r. 64.118 amended 2015.

[Alaska Admin. Code tit. 12, §§ 64.940, .118 \(2019\); Alaska Stat. §§ 08.88.615, .620, .630, .685 \(2018\)](#)

Alaska, General Applicability of Provisions

The statutory provisions of chapter 08.88 that apply to employment relationships and employees also apply to “contracting relationships and independent contractors.”

Section enacted 1998.

[Alaska Stat. § 08.88.910 \(2018\)](#)

Alaska, Other Relevant Provisions

SELF-DEALING

A licensee with a conflict of interest relating to a real estate transaction must

- disclose the conflict to persons adversely affected by the conflict or to their real estate licensees as soon as the conflict is identified;
- confirm the conflict in writing to the principals or their agents as soon as possible after the conflict is identified;
- verbally advise the person of the conflict; and

- begin any written statement regarding the conflict with the following heading, underlined and in bold text: “Disclosure of Conflict of Interest.”

See Alaska Stat. § 08.88.635 for a detailed list of actions that do not constitute adverse or detrimental acts or conflicts of interest.

DISCLOSURE UPDATES

If a change occurs that makes a required, prior written disclosure incomplete, misleading, or inaccurate, the licensee must make a revised written disclosure to all parties as soon as possible. The revised disclosure must include the revision date and be acknowledged by all parties. However, if the licensee’s relationship is not yet completely established, a revised disclosure is not required if the licensee obtains a written pre-authorized consent to changes before the changes occur.

ADDITIONAL RELATIONSHIPS

A licensee may provide real estate services to a party in separate transactions under different licensee relationships if the licensee complies with §§ 08.88.600—08.88.695 when establishing the relationship for each transaction.

WAIVER OF DUTIES

A licensee or a person to whom a licensee provides specific assistance may not waive the duties set forth in §§ 08.88.615 and 08.88.620, except as otherwise permitted under § 08.88.620(5) and (6).

Section 08.88.391 amended 2008; §§ 08.88.605, 08.88.625, 08.88.635, 08.88.665 and 08.88.670 enacted 2004.

[Alaska Stat. §§ 08.88.391\(a\), .605, .625, .635, .665, .670 \(2018\)](#)

Alaska, Relationship with Buyers

BUYER'S AGENT'S DUTIES

Before a buyer makes or accepts an offer, a licensee must disclose to the buyer that a murder or suicide occurred on the property if

- the murder or suicide occurred within one year before the date the licensee first showed the buyer the property; and
- the licensee is aware of the murder or suicide.

A licensee must make a “good faith and continuous effort” to find real estate for a buyer he or she represents, except that a licensee need not

- seek additional real estate to buy while the buyer is a party to an existing contract to buy; or
- show the buyer real estate for which there is no written agreement to pay the licensee compensation.

Sections enacted 2004.

[Alaska Stat. §§ 08.88.615, .620 \(2018\)](#)

[Alaska, Relationship with Sellers](#)

SELLER'S AGENT'S DUTIES

A real estate licensee who represents a seller must make a “good faith and continuous effort” to find a buyer for the real estate, except that a licensee need not seek additional offers while the real estate is subject to an existing contract for sale.

REQUIRED DISCLOSURES

All real estate listing or management contracts must be in writing and must be signed by the broker or the broker's associated licensee and by the client.

Section 08.88.341 amended 1998; § 08.88.620 enacted 2004.

[Alaska Stat. §§ 08.88.341, .620 \(2018\)](#)

Alaska, Term of Relationship

A licensee's relationship begins when the licensee represents or provides specific assistance to the party and continues until the earliest of the following:

- the term agreed to by the parties terminates;
- the parties terminate the relationship by mutual agreement; or
- a party terminates the relationship by giving notice to the other party.

Except as otherwise agreed to in writing, a licensee does not owe any duty to a party after termination, except the following:

- to account for all money and property received; and
- not to disclose confidential information.

Section 08.88.341 amended 1998; § 08.88.660 enacted 2004.

[Alaska Stat. §§ 08.88.341, .660 \(2018\)](#)

Alaska, Transaction Brokers

Since January 1, 2005, Alaska law provides for neutral licensees. A neutral licensee's duties are limited to the duties established for licensees under § 08.88.615 and the following duties:

- not to take any action that the neutral licensee knows is adverse or detrimental to the interests of the persons for whom the licensee provides services;
- to disclose any conflict of interest in a timely manner to all parties for whom the licensee provides specific assistance;
- to advise all parties to whom the licensee provides specific assistance to obtain expert advice on matter beyond the licensee's expertise;
- not to disclose, without written consent, confidential information from or about any party to whom the licensee is providing specific assistance, except under a subpoena or court order;
- not to disclose without consent, that the buyer is willing to pay more than the offer price, that the seller is willing to accept less than the asking price, or that a party will agree to other financing terms.

A neutral licensee does not violate his or her duties if, with written consent, he or she, in a good faith effort to reach a final agreement,

- analyzes, provides information, or reports the merits of the transaction;
- discusses the price, terms, or conditions that each party would or should offer or accept; or
- suggests compromises.

The knowledge or information of a neutral licensee is not imputed to other clients or to other licensees that work for the same broker.

Sections enacted 2004.

[Alaska Stat. §§ 08.88.645, .650 \(2018\)](#)

Arizona

Arizona, Definitions

Affiliate—a person who controls, is controlled by, or is under common control with the specified person.

Designated broker—the natural person who is licensed as a broker and is either

- designated to act on behalf of an employing real estate, cemetery or membership camping entity; or
- doing business as a sole proprietor.

Employing broker—a person who is licensed or required to be licensed as either

- a broker entity; or
- a sole proprietorship, provided the sole proprietor is a licensed broker.

Real estate employment agreement—for the purposes of § 32-2151, a written agreement by which a real estate broker is entitled to compensation for services rendered.

Real estate sales contract—an agreement in which one party agrees to convey a real estate title to another party on the satisfaction of specified conditions.

Section 32-2151.02 amended 2000; § 32-2101 amended 2018.

[Ariz. Rev. Stat. §§ 32-2101, -2151.02 \(2019\)](#)

Arizona, Designated Agents

No detailed provisions were located regarding designated agents. However, a designated broker may authorize in writing an associate broker who the designated broker employs to review and initial instruments on the designated broker's behalf.

Section amended 2011.

[Ariz. Rev. Stat. § 32-2151.01\(G\) \(2019\)](#)

Arizona, Dual Agents

A licensee may not accept compensation from or represent more than one party to a transaction without all parties' prior written consent.

Regulation amended 2005.

See [Ariz. Admin. Code R4-28-1101\(F\) \(2019\)](#)

Arizona, General Agency Relationship Requirements

DUTIES

A licensee owes a fiduciary duty to the client and must

- protect and promote the client's interests;
- deal fairly with all parties;
- disclose in writing to all other parties any adverse information that materially affects the consideration to be paid, including information that any party is or may be unable to perform, any material property defect; and the possible existence of a lien or encumbrance;

- expeditiously perform all acts contained in the licensee’s agreement;
- not allow a controversy with another licensee to jeopardize, delay, or interfere with a client’s transaction;
- not accept any compensation related to or resulting from a real estate transaction without prior written acknowledgement of the compensation, provided that this prohibition does not apply to compensation paid to a broker by a broker who represents a party in the transaction;
- conform to the standards of practice and competence recognized in the professional community for the specific real estate discipline in which the salesperson or broker engages;
- not provide professional services outside the licensee's expertise without engaging the assistance of a competent person, unless the licensee's lack of expertise is first disclosed to the client in writing;
- exercise reasonable care in ensuring that information material to a client's interests and relevant to the contemplated transaction is obtained and accurately communicated to the client; and
- recommend to a client that the client seek appropriate counsel regarding the “risks of pre-possession or post-possession of a property.”

REQUIRED DISCLOSURES

Before closing, a real estate broker must disclose in writing to all parties

- the name of each employing broker who represents a party to the transaction;
- who will receive compensation from the transaction; and

- any information that materially and or adversely affects the consideration to be paid by any party.

AGREEMENT REQUIREMENTS

A real estate employment agreement must

- be written in clear and unambiguous language;
- fully set forth all material terms, including compensation;
- have a definite duration, stating beginning and expiration dates; and
- be signed by all parties to the agreement.

A real estate employment agreement “is not required for a licensee to represent a party in a transaction.”

RESTRICTIONS

A licensee may not procure, or attempt to procure, a real estate employment agreement from a party who is party to an existing exclusive real estate employment agreement, unless that party has acknowledged in writing that executing additional real estate employment agreements could expose him to liability for substantial additional commissions. This provision does not abrogate any civil liability that may arise out of licensee’s conduct.

Except for owner-listed properties, a licensee must conduct negotiations exclusively through the principal's broker or the broker's representative unless

- the principal waives this requirement in writing, and

- no licensed representative of the broker is available for 24 hours.

Statutory section 2151.02 amended 2000. Regulation R4-28-1102 amended 1999; rr. R4-28-701 and R4-28-802 amended 2002; r. R4-28-1101 amended 2005.

[Ariz. Rev. Stat. § 32-2151.02 \(2019\); Ariz. Admin. Code R4-28-701, -802, -1101, -1102 \(2019\)](#)

Arizona, General Applicability of Provisions

No relevant provisions were located.

Arizona, Other Relevant Provisions

SELF-DEALING

A licensee with an interest or conflict in a transaction may not act in the transaction without informing the other parties, in writing before the parties enter any binding agreement, of his interest or conflict, including that

- the licensee has a license and is acting as a principal;
- the purchaser or seller is a member of the licensee's immediate family;
- the "purchaser or seller is the salesperson's or broker's employing broker, or owns or is employed by the salesperson's or broker's employing broker"; or
- the licensee or a member of his immediate family has a financial interest in the transaction other than the licensee's receipt of compensation for services.

A licensee advertising his or her own property must disclose the licensee's status as both a salesperson or broker and the property owner by placing the words ""owner/agent" in the advertisement.

ASSIGNMENT

An employing broker may not assign a real estate employment agreement to another broker without all parties' written consent at the time of the assignment.

Statutory section amended 2000. Regulations amended 2005.

[Ariz. Rev. Stat. § 32-2151.02\(B\) \(2019\); Ariz. Admin. Code R4-28-502\(C\), -1101\(E\) \(2019\)](#)

Arizona, Relationship with Buyers

No relevant provisions were located.

Arizona, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee must promptly submit to his client all offers to purchase or lease the listed property. Upon receiving the seller's or lessor's permission, a licensee acting on behalf of the seller or lessor may disclose to all offerors the existence and terms of additional offers on the property. A licensee must submit to the client all offers made before closing, even after the client has accepted an offer, unless the client instructs the licensee in writing to stop submitting offers or unless otherwise provided by contract.

Regulation amended 2002.

[Ariz. Admin. Code R4-28-802 \(2019\)](#)

Arizona, Term of Relationship

A real estate employment agreement must have a definite duration and must show a beginning and an expiration date.

Section amended 2000.

[Ariz. Rev. Stat. § 32-2151.02 \(2019\)](#)

Arizona, Transaction Brokers

No relevant provisions were located.

Arkansas

Arkansas, Definitions

Broker's price opinion—an estimate a licensee prepares that

- details the probable selling price of real estate;
- provides a varying level of detail about the real estate's condition, market, and neighborhood and information about comparable sales.

Executive broker—an individual who:

- has a broker's license;
- is employed by or associated with a principal broker as an independent contractor; and
- participates in the activities of a principal broker while under a principal broker's supervision.

Licensee—an individual who holds any type of license issued by the commission, which includes a principal broker, an executive broker, an associate broker, and a salesperson, unless the context requires otherwise.

Principal broker—an individual, acting or expecting to act for another for a fee or other consideration, who

- “sells, exchanges, purchases, rents, or leases real estate” or offers, negotiates or attempts to negotiate the same;
- lists or offers, attempts, or agrees to list real estate;
- auctions or offers, attempts, or agrees to auction real estate;

- participates in an auction;
- buys, sells, or assigns real estate options;
- offers to buy, sell, assign, or otherwise deal in real estate options;
- collects or offers, attempts, or agrees to collect rent;
- advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate;
- assists or directs in procuring prospects or negotiating transactions;
- engages in the business of charging an advance fee in connection with any contract for promoting a real estate sale or lease; or
- performs any of these acts as an employee of or on behalf of the owner of any real estate interest.

Real estate—a real property interest.

Section amended 2017.

Ark. Code § 17-42-103 (LexisNexis 2019)

[Arkansas, Designated Agents](#)

No relevant provisions were located.

[Arkansas, Dual Agents](#)

A licensee may represent more than one party to a real estate transaction pursuant to Arkansas Real Estate Commission regulations.

DUTIES

If a dual or multiple agency relationship is disclosed, a licensee does not breach a duty or an obligation to the buyer or lessee by:

- showing property to other buyers or lessees; or
- acting as an agent or subagent for other buyers or lessees or as an agent or subagent for sellers or lessors.

REQUIRED DISCLOSURES

A licensee may not act for more than one party in a transaction without the knowledge of all parties for whom he acts. A licensee who represents both the seller and buyer or the lessor and tenant must disclose the relationship as required by regulations 8.1 and 8.2. All parties must have given their written consent to the dual representation before or at the time they execute any contract.

Statutory section 17-42-108 amended 2019; § 17-42-311 amended 2019; § 17-42-318 enacted 2011. Regulatory chapter amended 2016.

Ark. Code §§ 17-42-108(a)(2), -311(a)(8), -318 (LexisNexis 2019); [Ark. Real Estate Comm'n Regs. r. 8.3 \(2019\)](#)

Arkansas, General Agency Relationship Requirements

Generally, the common law of agency as supplemented by Ark. Code § 17-42-316 applies to the relationship between a licensee and his or her client.

REQUIRED DISCLOSURES

A licensee must clearly disclose to all parties to a real estate transaction or their agents which party the licensee is representing, as required by the commission.

DUTIES

A licensee "pledges a primary duty of absolute fidelity" to protect and promote the client's interests.

A licensee must:

- use reasonable efforts to further the client's interest;
- exercise "reasonable skill and care in representing the client and carrying out the responsibilities of the agency relationship";
- perform the written agency agreement's terms;
- follow the client's lawful instructions, unless doing so would expose the licensee to liability from another party to a contract;
- perform all required duties in a manner that demonstrates loyalty to the client's interests;
- comply with all statutory and regulatory requirements;
- disclose to the client material facts the licensee is aware of or should be aware of in the exercise of reasonable skill and care and that are not confidential under a current or prior agency or dual agency relationship;
- advise the client to obtain expert advice concerning material matters when necessary or appropriate;
- account in a timely manner;
- keep all confidential information confidential; and
- refrain from disclosing confidential information to a licensee who is not the client's agent.

A licensee acting as an agent must

- protect and promote the client's interests, while dealing honestly with all parties;
- not offer or advertise property without authority;
- quote only the price agreed upon with the owners;
- when acting as sales agent, not accept any commission or other consideration from any source in connection with the property without full written disclosure to the party the licensee represents; and
- not accept compensation from more than one party without full written disclosure to all parties.

A client may not waive the above duties required of a licensee.

AGREEMENT REQUIREMENTS

Arkansas regulations provide that, except for non-exclusive agency agreements, a licensee must "see that the exact agreement of the parties regarding real estate is in writing." The licensee must also "see that clients and other parties to the transaction with whom the licensee deals" receive copies of the signed agreements. The regulations also "strongly recommend" that a licensee obtains a written acknowledgment that the buyer and or seller has received the signed copies.

The state's regulations also "strongly recommended" that non-exclusive agency agreements or contracts be in writing.

A licensed Arkansas attorney must approve real estate forms that licensees use in the regular course of business.

RESTRICTIONS

If a firm has an exclusive listing contract, a selling licensee may not contact the seller about showing the property or negotiating its sale without the listing firm's prior permission. The selling licensee must

- present any offers to the firm holding the exclusive listing contract not later than the close of the next business day; and
- forward all earnest money and deposits to the listing firm for deposit in the listing firm's trust account.

The listing firm or its authorized representative must present the offer to the seller, although the selling licensee may accompany the listing licensee with the listing licensee's permission.

A licensee may not knowingly enter into an agency agreement if he has a "reason to believe" that an existing exclusive agency agreement is in force, without first communicating with the broker holding such agreement to confirm its existence. If an exclusive agency agreement is in force, the licensee may not enter into another agency agreement without first advising the client in writing to consult an attorney regarding the risk of liability for two commission payments.

No person may knowingly interfere with the relationship between a licensee and a person or entity. Also, a licensee is not liable for a referral fee if reasonable cause for payment does not exist.

A licensee may prepare, provide, and collect a fee for issuing a broker's price opinion for:

- an existing or potential real estate seller for the listing and selling purposes;
- an existing or potential real estate buyer;
- a "third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease, or acquisition price of real estate; or
- an existing or potential lienholder.

However, a broker's price opinion prepared for an existing or potential lienholder in conjunction with the purchase of a buyer's principal residence may not be used as the primary basis to determine the value of the buyer's principal residence for loan purposes. Also, a broker's price opinion or a licensee's market analysis may not contain the terms "market value", "appraised value", or "appraisal."

Statutory section 17-42-108 amended 1995; § 17-42-702 amended 2019; § 17-42-110 enacted 2011; § 17-42-316 amended 2019. Regulatory chapters amended 2016.

Ark. Code §§ 17-42-108, -110, -316, -702 (LexisNexis 2019); [Ark. Real Estate Comm'n Regs. r. 8.5, 10.10, 10.13 \(2019\)](#)

Arkansas, General Applicability of Provisions

No relevant provisions were located.

Arkansas, Other Relevant Provisions

SELF-DEALING

Licensees may not buy, sell, rent or lease property for themselves or for a corporation or other entity in which they have an interest without first disclosing to the other party the fact that they

- are a licensee and are buying, renting or leasing the property for their own account; or
- have an interest in the property that they are selling, renting or leasing.

The disclosure must be in writing before the parties enter into any sale, rental or lease contract.

Regulatory chapter amended 2016.

[Ark. Real Estate Comm'n Regs. r. 10.11 \(2019\)](#)

Arkansas, Relationship with Buyers

DUTIES

When representing a buyer or lessee in an agency relationship, a licensee generally must:

- use reasonable efforts to locate property at a price and with purchase or lease terms acceptable to the buyer or lessee, unless the client has contracted to purchase or lease or has extended a letter of intent to lease suitable property;
- answer the buyer's or lessee's questions regarding the steps the buyer must take to fulfill a contract's terms;
- provide information to the buyer or lessee regarding offers or counteroffers;
- assist the buyer or lessee in developing, communicating, and presenting offers or counteroffers;
- present an offer to purchase or lease to the seller or lessor (or their agent) in a timely manner; and

- accept delivery of and present any counteroffers to the buyer or lessee in a timely manner.

A licensee must perform the above duties unless the client agrees to waive these duties and signs a waiver that contains the provisions set forth in § 17-42-319.

REQUIRED DISCLOSURES

In any real estate transaction in which a licensee is acting solely as a buyer's or lessee's agent, the licensee must disclose to a potential seller or lessor or his agent, at first contact, the licensee's relationship with the buyer or lessee. The seller's or lessor's agent must convey the disclosure to the seller or lessor in a timely manner.

The disclosure must be:

- in writing, but may initially be made orally and reduced to writing at a convenient time; and
- made before the seller or lessor signs any document related to the transaction.

The licensee must maintain a copy as evidence of the disclosure.

Statutory sections enacted 2011. Regulatory chapter amended 2016.

Ark. Code §§ 17-42-318, -319 (LexisNexis 2019); [Ark. Real Estate Comm'n Regs. r. 8.2 \(2019\)](#)

[Arkansas, Relationship with Sellers](#)

SELLER'S AGENT'S DUTIES

The listing firm or its authorized representative must promptly present all offers received and follow the procedures set forth in detail in regulation 10.12(b).

A licensee representing a seller or lessor in an agency relationship must:

- use reasonable efforts to obtain a purchase or lease offer at a price and with terms acceptable to the seller or lessor;
- accept delivery of and present an offer to the seller or lessor in a timely manner;
- answer the seller's or lessor's questions regarding the steps he or she must take to fulfill the contract's terms;
- provide information to the seller or lessor regarding offers or counteroffers of which the licensee has actual knowledge; and
- assist the seller or lessor in developing, communicating, and presenting offers or counteroffers.

A licensee must perform the above duties unless the client agrees to waive them and signs a waiver that contains the provisions set forth in Ark. Code § 17-42-319.

REQUIRED DISCLOSURES

In any real estate transaction in which a licensee is acting solely as a seller's or lessor's agent, the licensee must disclose to a potential buyer or lessee or his agent, the licensee's relationship with the seller or lessor. The buyer's or lessee's agent, must convey the disclosure to the buyer or lessee in a timely manner. The disclosure must be

- made in a timely manner so as to avoid “eliciting or receiving from the prospective buyer or lessee information which would reasonably be expected to remain confidential and not disclosed to the seller or lessor,” such as needs, motivations, negotiating strategies, or the buyer’s financial situation;
- in writing, but may initially be made orally and reduced to writing at a convenient time, subject to regulation 8.1(c); and
- made before the buyer or lessee signs any document related to the transaction.

The licensee must maintain a copy as evidence of the disclosure.

Statutory sections enacted 2011. Regulatory chapters amended 2016.

Ark. Code §§ 17-42-317, -319 (LexisNexis 2019); [Ark. Real Estate Comm’n Regs. r. 8.1, 10.12 \(2019\)](#)

Arkansas, Term of Relationship

A licensee must include “a specific determinable duration or a specific expiration date” on all written agency agreements or any extensions.

Regulatory chapter amended 2016.

[Ark. Real Estate Comm'n Regs. r. 10.2 \(2019\)](#)

Arkansas, Transaction Brokers

Arkansas law does not address transaction brokers. However, it does permit principal brokers to delegate certain responsibilities to “executive brokers.” The executive broker may:

- be responsible for instructing and supervising salespersons and brokers for whom the executive broker is responsible; and

- close a transaction.

See regulation 10.4 for details regarding the designation of executive brokers and their responsibilities.

Regulatory chapter amended 2016.

[Ark. Real Estate Comm'n Regs. r. 10.4 \(2019\)](#)

California

California, Definitions

Agent—a person acting “under provisions of Title 9 (commencing with Section 2295) in a real property transaction,” including a person licensed as a real estate broker, and under whose license a listing is executed or an offer to purchase is obtained.

Buyer—“a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction;” it includes a vendee or lessee of real property.

Buyer's agent—as of January 1, 2019, “an agent who represents a buyer in a real property transaction.”

Commercial real property—all California real property except single-family residential real property, dwelling units subject to statutory provisions related to hiring real property, a mobile home, or recreational vehicles. As of January 1, 2019, it also includes vacant land.

Dual agent—until January 1, 2019, an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. As of January 1, 2019, an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction.

Listing agreement—until January 1, 2019, a contract between a real property owner and an agent, by which the agent is authorized to sell the real property or to find a buyer. As of January 1, 2019, a written contract

between a real property seller and an agent, pursuant to which the agent has been authorized to sell the real property or to find or obtain a buyer, "including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement."

Listing agent—until January 1, 2019, a person who has obtained a real property listing to act as an agent for compensation.

Real property—until January 1, 2019, includes:

- an estate in property improved with one to four dwelling units;
- any commercial real property;
- any leasehold in the above types of property exceeding one year's duration; and
- mobile homes.

As of January 1, 2019, "real property" includes:

- a single-family residential property;
- multiunit residential property with more than four dwelling units;
- commercial real property;
- vacant land;

- a ground lease with improvements; or
- mobile homes.

Real property transaction—until January 1, 2019, a transaction for the sale of real property in which an agent is employed by a principal to act in the transaction, including a listing or purchase offer. As of January 1, 2019, a transaction for the sale of real property in which an agent is retained by a buyer, a seller, or both a buyer and a seller to act in the transaction, including a listing or a purchase offer.

Sell—a transaction for the transfer of real property from the seller to the buyer, including exchanges of real property, the creation of a real property sales contracts, and transactions for creating a leasehold longer than one year.

Seller—the transferor in a real property transaction, including an owner who lists real property with an agent or who receives an offer to purchase real property he owns from an agent on behalf of another and including both a vendor and a lessor of real property.

Seller's agent—as of January 1, 2019, a person who has obtained a real property listing to act as an agent for compensation.

Statutory section amended 2019.

[Cal. Civ. Code § 2079.13 \(2018\)](#)

California, Designated Agents

No provisions were located specifically applicable to designated agents.

California, Dual Agents

The disclosure form set forth in Cal. Civ. Code § 2079.16 provides that a real estate agent may legally be both the seller's and the buyer's agent in a transaction with both parties' knowledge and consent.

However, effective until January 1, 2019, a listing agent may also be a selling agent, and the combination does not create a dual agency. As of January 1, 2019, a seller's agent may also be a buyer's agent. If a seller or a buyer chooses not to be represented by an agent, that, in itself, does not make the agent a dual agent.

DUAL AGENT'S DUTIES

The disclosure form set forth at Cal. Civ. Code § 2079.16 provides the following duties for an agent representing both the seller and the buyer in a transaction:

- “utmost care, integrity, honesty and loyalty” in dealing with either party; and
- those duties to the seller and the buyer as stated in their respective sections in the form.

CONFIDENTIALITY OBLIGATIONS

Effective until January 1, 2019, when representing both parties, the agent may not, without the party's express permission, disclose that the seller will accept a price less than the listing price or that the buyer will pay a price greater than the offer price.

As of January 1, 2019, when representing both parties in a transaction, a dual agent may not, without a party's express permission, disclose to the other party confidential information, including, but not limited to, facts relating to either party's financial position, motivations, bargaining position, or other personal information that may impact price. This includes the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered.

Statutory sections amended 2018.

[Cal. Civ. Code §§ 2079.16, .21, .22 \(2019\)](#)

California, General Agency Relationship Requirements

Until January 1, 2019, a selling agent may not “act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.” This provision is repealed effective January 1, 2019.

An agent may select a specific form of agency relationship not specifically prohibited by statute if the licensee complies with the requirements of Cal. Civ. Code §§ 2079.14 and .17.

DUTIES

A broker must use a standard of care equal to the degree of care that a “reasonably prudent licensee would exercise and is measured by the degree of knowledge through education, experience, and examination, required to obtain a license.”

INSPECTION DUTY

The inspection to be performed pursuant article Cal. Civ. Code § 2079 does not include inspection of

- “areas that are reasonably and normally inaccessible to such an inspection”;
- areas off-site;
- public records or permits concerning the property’s title or use; or
- more than the unit, if the property is a planned development unit, a condominium, or a stock cooperative, provided the seller or broker complies with § 1368.

AGREEMENT REQUIREMENTS

Until January 1, 2019, if a licensee prepares or obtains a party’s signature on an agreement authorizing him to perform the acts for which he is required to hold a license, the licensee must deliver “a copy of the agreement to the person signing it at the time the signature is obtained.”

As of January 1, 2019, if a licensee prepares an agreement authorizing or retaining the licensee to perform any of the acts for which he or she is required to hold a license, or when the licensee obtains a signature on a contract pertaining to those services or transactions, he or she must deliver a copy of the agreement to the person signing it as soon as reasonably. The copy may be provided electronically in transactions pursuant to applicable law if the parties have agreed to "conduct the transaction by electronic means."

Statutory section 2079.2 enacted 1985; § 2079.3 amended 2012; § 10142 amended 2018; § 2079.18 repealed 2018.

[Cal. Bus. & Prof. Code § 10142 \(2019\); Cal. Civ. Code §§ 2079.2, .3 \(2019\)](#)

California, General Applicability of Provisions

The provisions of Cal. Civ. Code article 2079 relating to sale transactions of residential real property comprising one to four dwelling units also apply to

- leases that include a purchase option;
- ground leases of land on which one to four dwelling units have been constructed; or
- real property sales contracts for that property.

Effective until January 1, 2019, article 2079 does not apply to

- transfers that must be "preceded by the furnishing, to a prospective transferee, of a copy of a public report pursuant to Section 11018.1 or Section 11234 of the Business and Professions Code"; and
- transfers that can be made without a public report pursuant to § 11010.4 of the Business and Professions Code, unless the property has been previously occupied.

As of January 1, 2019, article 2079 does not apply to

- sales that must be “preceded by the furnishing, to a prospective buyer, of a copy of a public report pursuant to Section 11018.1 or Section 11234 of the Business and Professions Code”; and
- sales that can be made without a public report pursuant to § 11010.4 of the Business and Professions Code, unless the property has been previously occupied.

Statutory section 2079.1 added 1985; § 2079.6 amended 2018.

[Cal. Civ. Code §§ 2079.1, .6 \(2019\)](#)

California, Other Relevant Provisions

SELF-DEALING

The commissioner may discipline a licensee if, in a transaction in which he is a buyer’s agent, the licensee fails to disclose to a buyer, the nature and extent of the licensee's ownership interests. A licensee must disclose any ownership interests by

- a person related to the licensee by blood or marriage,
- an entity in which the licensee has an ownership interest, or
- any other person with whom the licensee has a special relationship.

DISCLOSURE UPDATES

With the parties’ written consent, a contract between the principal and an agent may be modified or altered to change the agency relationship at any time before performance.

Statutory section 10177 amended 2019; § 2079.23 amended 2014.

[Cal. Bus. & Prof. Code § 10177\(o\)](#); [Cal. Civ. Code § 2079.23 \(2019\)](#)

California, Relationship with Buyers

BUYER'S AGENT'S DUTIES

Pursuant to the relevant language contained in the form set forth at Cal. Civ. Code § 2079.16, a buyer's agent must:

- use utmost care, integrity, honesty, and loyalty in dealing with the buyer;
- to both parties, diligently exercise reasonable skill and care in performing the agent's duties;
- act with honesty, fair dealing and good faith; and
- disclose all known facts that materially affect the property's value or desirability.

AGREEMENT REQUIREMENTS

The commissioner may discipline a licensee who obtains a prospective purchaser's signature (as of January 1, 2019, "a prospective seller's signature") to an agreement that provides that the prospective purchaser (as of January 1, 2019, "prospective seller") "must either transact the purchasing, leasing, renting, or exchanging of a business opportunity property through the broker obtaining such signature, or pay a compensation to such broker if such property is purchased, leased, rented, or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer such property for sale, lease, exchange, or rent."

CONFIDENTIALITY OBLIGATIONS

An agent is not obligated to reveal to either party confidential information obtained from the other party that does not involve the affirmative duties set forth above.

Statutory sections amended 2018.

[Cal. Bus. & Prof. Code § 10176\(j\) \(2019\)](#); see [Cal. Civ. Code § 2079.16 \(2019\)](#)

California, Relationship with Sellers

Effective until January 1, 2019, a listing agent may also be a selling agent, and the combination does not create a dual agency. As of January 1, 2019, a seller's agent may also be a buyer's agent. If a seller or a buyer chooses not to be represented by an agent, that, in itself, does not make the agent a dual agent.

DUTIES

Pursuant to the relevant language contained in the form set forth at Cal. Civ. Code § 2079.16, a seller's agent has the following affirmative duties:

- to the seller, to act with utmost care, integrity, honesty, and loyalty; and
- to the buyer and the seller, to diligently exercise reasonable skill and care, to act with honesty, fair dealing, and good faith, and to disclose all material facts materially affecting the property's value or desirability.

INSPECTION DUTY

Effective until January 1, 2019, a real estate licensee owes a duty to a prospective purchaser of residential real property of one to four dwelling units or a manufactured home:

- to conduct a “reasonably competent and diligent visual inspection” of the property offered for sale, and
- to disclose to the prospective purchaser all facts materially affecting the property’s value or desirability that an investigation would reveal, provided the broker has a written contract with the seller to find a buyer or cooperates with that broker to find a buyer.

As of January 1, 2019, a real estate licensee owes a duty to a prospective buyer of single-family residential real property

- to conduct a “reasonably competent and diligent visual inspection” of the property offered for sale, and
- to disclose to the prospective buyer all facts materially affecting the property’s value or desirability that an investigation would reveal, provided the broker has a written contract with the seller to find a buyer or cooperates with that broker to find a buyer.

CONFIDENTIALITY OBLIGATIONS

An agent is not obligated to reveal to either party confidential information obtained from the other party that does not involve the affirmative duties set forth above.

REQUIRED DISCLOSURES

As soon as practicable, a selling agent must disclose his relationship to the buyer and seller, whether the agent is acting exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent. The relationship must be confirmed in the purchase contract or in a separate writing signed by all parties before execution of the contract. As soon as practicable, a listing agent must disclose to the seller whether the listing agent is acting exclusively as the seller's agent or as a dual agent, which relationship must also be confirmed in the purchase contract or in a signed separate writing

before the seller executes the contract. The confirmation must be in the form set forth in Cal. Civ. Code § 2079.17(c).

If a consumer information booklet, as described in § 10084.1 of the Business and Professions Code, is delivered to a buyer in connection with the sale of real property, the information is deemed adequate to inform the buyer regarding common environmental hazards, as described in the booklet, that can affect real property.

Until January 1, 2019, a listing and selling agent must provide the seller and buyer with a copy of the disclosure form set forth at § 2079.16, and, generally, must obtain a signed acknowledgment of receipt from the seller or buyer, except that

- a listing agent must provide the disclosure form to the seller before entering into the listing agreement;
- a selling agent must provide the disclosure to the seller as soon as practicable before presenting the seller with a purchase offer, unless the selling agent previously provided the seller with a copy of the disclosure form;
- if the selling agent does not deal on a face-to-face basis with the seller, the listing agent may furnish to the seller the disclosure form prepared by the selling agent or the selling agent may deliver the disclosure form to the seller by certified mail, in which case no signed acknowledgment of receipt is required; and
- the selling agent must provide the disclosure form to the buyer as soon as practicable before executing the buyer's purchase offer, except that if the selling agent does not prepare the offer, the selling agent must present the disclosure form to the buyer no later than the next business day after the selling agent receives the offer.

As of January 1, 2019, a seller's agent and buyer's agent must provide the seller and buyer with a copy of the disclosure form set forth at § 2079.16, and must obtain a signed acknowledgment of receipt from the seller and buyer, except that

- any seller's agent must provide the disclosure form to the seller before entering into the listing agreement; and
- the buyer's agent must provide the disclosure form to the buyer as soon as practicable before executing the buyer's purchase offer, except that if the buyer's agent does not prepare the offer, the buyer's agent must present the disclosure form to the buyer no later than the next business day after receiving the offer from the buyer.

If the seller or buyer refuses to acknowledge receipt, the agent must declare in writing the facts of the party's refusal.

The disclosure form required by Cal. Civ. Code § 2079.14 must have §§ 2079.13 through 2079.24, except § 2079.16, printed on the back, and the text of § 2079.16 printed on the front of the disclosure.

RESTRICTIONS

The commissioner may discipline a licensee who:

- until January 1, 2019, includes a provision permitting the licensee an option to purchase, unless the licensee discloses in writing to the employer the full amount of the licensee's profit and obtains the employer's written consent approving the profit amount; or
- as of January 1, 2019, includes in an agreement with a buyer or seller authorizing the licensee to sell, buy, or exchange real estate (or a business opportunity) for compensation, a provision that allows the licensee an option to purchase, unless the licensee reveals in writing to the buyer or seller the full amount of the licensee's profit and obtains the buyer's or the seller's written consent approving the profit amount.

Statutory sections amended 2018.

[Cal. Civ. Code §§ 2079; 2079.7, .14, .15, .16, .22 \(2019\); Cal. Bus. & Prof. Code § 10176\(h\) \(2019\)](#)

California, Term of Relationship

The commission may discipline a licensee if he claims, demands, or receives compensation under an exclusive agreement that does not contain a definite termination date.

Statutory section amended 2018.

[Cal. Bus. & Prof. Code § 10176\(f\) \(2019\)](#)

California, Transaction Brokers

No provisions were located that relate specifically to transaction brokers.

Colorado

Colorado, Definitions

Broker—the definition of "broker" for purposes of part 8 no longer includes salespersons.

Customer—a party with whom the broker has no brokerage relationship because the party has not engaged a broker.

Designated broker—a broker, designated in writing by an employing broker to serve as a single agent or transaction broker for a party to a real estate transaction, but not including a real estate brokerage firm that consists of only one licensed natural person.

Dual agent—a broker who, with the written informed consent of all parties to a transaction, acts as a limited agent for both the seller and buyer or both the landlord and tenant.

Limited agent—an agent whose duties to a principal are only those set forth in Colo. Rev. Stat. §§ 12-10-404 or 12-10-405, or any additional duties and obligations agreed to by the parties.

Single agent—a broker who is engaged by and represents only one party in a real estate transaction.

Subagent—a broker who is engaged to act for another broker in performing brokerage tasks for a principal and who owes the same obligations and responsibilities to the principal as the principal's broker.

Transaction broker—a broker who assists one or more parties throughout a transaction “with communication, interposition, advisement, negotiation, contract terms, and the closing of such real estate transaction without being an agent or advocate for the interests of any party to such transaction.” Upon written agreement or disclosure, a transaction broker may become a single agent.

Section renumbered and amended 2019.

Colo. Rev. Stat. Ann. § 12-10-402 (LexisNexis 2019)

Colorado, Designated Agents

A real estate broker may have designated brokers working as single agents for a seller or landlord and a buyer or tenant in the same transaction without creating dual agency. Also, an individual broker may be designated to work for both a seller or landlord and a buyer or tenant in the same transaction, either as a transaction broker for both, “as a single agent for the seller or landlord treating the buyer or tenant as a customer, or as a single agent for a buyer or tenant treating the seller or landlord as a customer, but not as a single agent for both.”

DESIGNATED AGENT’S DUTIES

The duties and obligations of a brokerage relationship do not extend to

- the employing broker;
- any other broker employed or engaged by the employing broker who has not been designated; or
- the firm, partnership, limited liability company, association, corporation, or other entity that employs the broker.

CONFIDENTIALITY OBLIGATIONS

When a designated broker serves as a single agent, no knowledge is imputed to the employing or employed broker who has not been so designated.

REQUIRED DISCLOSURES

A designated broker must disclose, pursuant to Colo. Rev. Stat. § 12-10-408, the extent and limitations of his relationship with the seller, landlord, buyer, or tenant working with that designated broker.

The designated broker relationship must be disclosed in writing to the seller, landlord, buyer, or tenant in a timely manner pursuant to rules promulgated by the commission.

Section renumbered and amended 2019.

Colo. Rev. Stat. Ann. § 12-10-403(6) (LexisNexis 2019)

Colorado, Dual Agents

A broker may not establish dual agency with any seller, landlord, buyer, or tenant.

Section renumbered and amended 2019.

Colo. Rev. Stat. Ann. § 12-10-406 (LexisNexis 2019)

Colorado, General Agency Relationship Requirements

A broker may

- act as a single agent,
- act as a transaction broker, or

- work with a single party in separate transactions pursuant to different relationships only if the broker complies with Colo. Rev. Stat. chap. 12-10, part 4 in establishing the relationship for each transaction.

A broker must adopt a written office policy that identifies and describes the relationships the broker offers to the public. A broker need not offer all of the brokerage relationships enumerated in Colo. Rev. Stat. §§ 12-10-404, -405, and -407.

DUTIES

The public may enter into broker contracts that contain duties, obligations, or responsibilities in addition to those specified in this part 4 of chapter 1210, which are set forth in the relevant agency section below.

REQUIRED DISCLOSURES

A broker must disclose his duties and obligations to the seller and buyer or the landlord and tenant, using disclosure language approved by the commission and in compliance with §§ 12-10-403 and -408.

Brokers must use a Commission-approved form when such a form exists and is appropriate for the transaction. The Commission-approved forms are posted on the [Division of Real Estate's website](#). See § 12-10-403 for "standard forms" that may be used but are other than those approved by the Commission.

A broker with an established relationship with one party must advise any other potential parties at the earliest reasonable opportunity of the established relationship.

A seller, buyer, landlord, or tenant must be advised in any written agreement with a broker that the brokerage relationship

- exists only with the designated broker;
- does not extend to the employing broker or to any other brokers who are not so designated; and

- does not extend to the brokerage company.

AGREEMENT REQUIREMENTS

Generally, a written agreement must state the different brokerage relationships that are available, including buyer agency, seller agency, or transaction-broker status. Upon request, a broker must provide written definitions of the brokerage relationships, as promulgated by the commission.

Before acting on behalf of a party, a broker intending to establish a single agency relationship must enter into a written agency agreement, which must

- disclose the agent's duties and responsibilities, and
- be timely furnished to the prospective party.

Statutory sections renumbered and amended 2019; regulation amended 2017.

Colo. Rev. Stat. Ann. §§ 12-10-403(1), (3), (5); -408(1), (2) (LexisNexis 2019); [4 Colo. Code Regs. § 725-1\(F-1\) \(2019\)](#)

Colorado, General Applicability of Provisions

No relevant provisions were located.

Colorado, Other Relevant Provisions

MISREPRESENTATIONS

A seller, buyer, landlord, or tenant is not liable for a broker's acts or omissions that have not been approved, directed, or ratified by the party.

Section renumbered and amended 2019.

Colo. Rev. Stat. Ann. § 12-10-403(7) (LexisNexis 2019)

Colorado, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's or tenant's agent is a limited agent with the following duties:

- to perform the written agreement's terms;
- to exercise reasonable skill and care;
- to promote the buyer's or tenant's interests with the "utmost good faith, loyalty, and fidelity";
- to seek a price and terms acceptable to the buyer or tenant, unless he is party to a purchase contract, lease, or letter of intent;
- to present all offers in a timely manner, even if the buyer or tenant is already party to a contract;
- to disclose to the buyer or tenant known adverse material facts;
- to counsel the buyer or tenant as to any known material benefits or risks of a transaction;
- to advise the buyer or tenant to obtain expert advice as to material matters beyond the broker's expertise;
- to account in a timely manner;
- to inform the buyer or tenant that he is not liable for the agent's acts unless approved, directed, or ratified; and

- to comply with all applicable laws.

A broker acting as a buyer's or tenant's agent owes no duties to the seller or landlord, except that the broker must disclose to any prospective seller or landlord all known adverse material facts, including, but not limited to, adverse material facts concerning the buyer's or tenant's financial ability to perform and whether the buyer intends to occupy the property as a principal residence.

A buyer's or tenant's agent may

- show properties in which the buyer or tenant is interested to other prospective buyers or tenants,
- show competing buyers or tenants the same property, and
- assist competing buyers or tenants in attempting to purchase or lease a particular property.

CONFIDENTIALITY OBLIGATIONS

A buyer's or tenant's agent may not disclose the following without the buyer's or tenant's informed consent:

- that a buyer or tenant is willing to pay more than the asking price;
- the buyer's or tenant's motivating factors;
- that the buyer or tenant will agree to other financing terms;
- any material information about the buyer or tenant unless disclosure is required by law or failure to disclose would constitute fraud or dishonest dealing; or

- any facts or suspicions regarding circumstances that would psychologically impact or stigmatize any real property.

REQUIRED DISCLOSURES

A buyer's or tenant's agent must obtain the party's written approval before proposing to the seller's or landlord's agent that the buyer's or tenant's agent be compensated by sharing compensation paid by the seller or landlord.

AGREEMENT REQUIREMENTS

Brokers must use a Commission-approved form when such a form exists and is appropriate for the transaction. The Commission-approved forms are posted on the [Division of Real Estate's website](#). See § 12-10-403 for "standard forms" that may be used but are other than those approved by the Commission.

A buyer or tenant may agree that a single agent or transaction broker may share with another broker the compensation paid by the buyer or tenant.

RESTRICTIONS

A buyer's or tenant's agent may cooperate with other brokers, but may not engage subagents.

Statutory sections renumbered and amended 2019; regulation amended 2017.

Colo. Rev. Stat. Ann. §§ 12-10-405; -410(4), (5) (LexisNexis 2019); [4 Colo. Code Regs. § 725-1\(F-1\) \(2019\)](#)

Colorado, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's or landlord's agent is a limited agent with the following duties:

- to perform the written agreement's terms;
- to exercise reasonable skill and care;
- to promote the seller's or landlord's interests with "utmost good faith, loyalty, and fidelity";
- to seek an acceptable price and terms, except that the broker need not seek additional offers while the property is subject to a sale or lease contract or a letter of intent to lease;
- to present all offers in a timely manner, even if the property is subject to a sale or lease contract or letter of intent to lease;
- to disclose to the seller or landlord known adverse material facts;
- to counsel the seller or landlord as to any known material benefits or risks of a transaction;
- to advise the seller or landlord to obtain expert advice as to material matters beyond the broker's expertise;
- to account in a timely manner for money and property received;
- to inform the seller or landlord that he is not liable for the agent's acts that he does not approve, direct, or ratify; and
- to comply with all applicable laws.

A seller's or landlord's agent owes no duty or obligation to the buyer or tenant, except that a broker must generally disclose all known adverse material facts.

A seller's or landlord's agent may, without breaching any duty to the seller or landlord,

- show alternative properties not owned by the seller or landlord to prospective buyers or tenants; and
- list competing properties for sale or lease.

INSPECTION DUTY

A seller's or landlord's agent need not

- conduct an independent inspection of property for the buyer's or tenant's benefit; or
- independently verify the accuracy or completeness of any statements made by the seller, the landlord or an independent inspector.

CONFIDENTIALITY OBLIGATIONS

A seller's or landlord's agent may not disclose the following information without the seller's or landlord's informed consent:

- that a seller or landlord is willing to accept less than the asking price;
- the seller's or landlord's motivating factors;

- that the seller or landlord will agree to financing terms other than those offered;
- any material information about the seller or landlord, unless disclosure is required by law or failure to disclose would constitute fraud or dishonest dealing; or
- any facts or suspicions regarding circumstances that may psychologically impact or stigmatize the property.

REQUIRED DISCLOSURES

Before entering into a brokerage or listing agreement or a sales or lease contract, the identity of the parties paying compensation to any broker must be disclosed to the parties.

A broker intending to work with a buyer or tenant as the seller's or landlord's agent must provide a written disclosure to the buyer or tenant containing

- a statement that the broker is an agent for the seller or landlord, not the buyer or tenant;
- a list of the tasks that the agent intends to perform for the seller or landlord with the buyer or tenant; and
- a statement that the buyer or tenant is not liable for the agent's acts unless the buyer or tenant approves, directs, or ratifies the acts.

AGREEMENT REQUIREMENTS

Brokers must use a Commission-approved form when such a form exists and is appropriate for the transaction. The Commission-approved forms are posted on the [Division of Real Estate's website](#). See § 12-10-403 for "standard forms" that may be used but are other than those approved by the Commission.

A seller or landlord may agree that a transaction-broker or single agent may share the compensation paid by the seller or landlord with another broker.

RESTRICTIONS

A seller's or landlord's agent may cooperate with other brokers, but may not engage or create subagents.

Statutory sections renumbered and amended 2019; regulation amended 2017.

Colo. Rev. Stat. Ann. §§ 12-10-404, -408(2), -410(3), (6) (LexisNexis 2019); [4 Colo. Code Regs. § 725-1\(F-1\) \(2019\)](#)

Colorado, Term of Relationship

An agency relationship begins at the time the broker is engaged by a party and continues until performance or completion of the agreement. If the agreement is not completed, the relationship ends at the earlier of

- the expiration date agreed upon by the parties;
- any termination or relinquishment of the relationship by the parties; or
- one year after the engagement date.

Generally, except as otherwise agreed to in writing, a broker owes no further duty or obligation after termination or expiration of the contract. However, a broker is responsible after termination or expiration of the contract for

- accounting for all money and property; and

- keeping confidential all information made confidential by request or instructions from the engaging party, unless the party grants written consent to disclose such information, disclosure is required by law, or a source other than the broker makes the information public.

Section renumbered amended 2019.

Colo. Rev. Stat. Ann. § 12-10-409 (LexisNexis 2019)

Colorado, Transaction Brokers

A transaction broker is not an agent for either party, and a broker is considered a transaction broker unless the broker and the party establish a single agency through a written agreement.

TRANSACTION BROKER'S DUTIES

A transaction broker must

- perform the terms of any written or oral agreement made with any party;
- exercise reasonable skill and care as a transaction-broker;
- present all offers and counteroffers in a timely manner, even if the property is subject to a sale or lease contract or letter of intent;
- advise the parties regarding the transaction and suggest that they obtain expert advice as to matters beyond the broker's expertise;
- account in a timely manner for all money and property received;
- keep the parties fully informed;

- assist the parties in complying with any contract, including closing the transaction;
- disclose to all prospective buyers or tenants any known adverse material facts;
- disclose to any prospective seller or landlord all known adverse material facts, including adverse material facts pertaining to the buyer's or tenant's financial ability to perform and the buyer's intent to occupy the property as a principal residence;
- inform the parties that they are not liable for the transaction broker's acts; and
- comply with all applicable laws.

A transaction broker may act as follows without breaching any obligation:

- show alternative properties to a prospective buyer or tenant;
- list competing properties;
- show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and
- serve as “a single agent or transaction-broker for the same or for different parties in other real estate transactions.”

INSPECTION DUTY

A transaction broker need not

- conduct an independent inspection of the property for the buyer's or tenant's benefit;
- independently verify the accuracy or completeness of statements made by the seller, the landlord, or independent inspectors;
- conduct an independent investigation of the buyer's or tenant's financial condition; or
- verify the accuracy or completeness of the buyer's or tenant's statements.

CONFIDENTIALITY OBLIGATIONS

A transaction broker may not disclose the following information without all parties' informed consent:

- that a buyer or tenant is willing to pay more than the offered price;
- that a seller or landlord is willing to accept less than the asking price;
- any parties' motivating factors;
- that a party will agree to other financing terms;
- any facts or suspicions regarding circumstances that "may psychologically impact or stigmatize any real property"; or
- any material information about the other party, unless disclosure is required by law or failure to disclose would constitute fraud or dishonest dealing.

No knowledge is imputed between any party and the transaction broker or among persons within a transaction-broker.

REQUIRED DISCLOSURES

Before acting in a transaction, a transaction broker must disclose in writing that

- the broker is not acting as the party's agent, and
- the broker is acting as a transaction broker.

The written disclosure must contain a signature block for the party to acknowledge receipt of the disclosure.

If the transaction broker undertakes any obligations or responsibilities other than those set forth in § 12-10-407, the obligations or responsibilities must be disclosed in a signed written document.

AGREEMENT REQUIREMENTS

Brokers must use a Commission-approved form when such a form exists and is appropriate for the transaction. The Commission-approved forms are posted on the [Division of Real Estate's website](#). See § 12-61-803 for "standard forms" that may be used but are other than those approved by the Commission.

RESTRICTIONS

A transaction broker may cooperate with other brokers, but may not engage or create subagents.

Statutory section 12-61-807 amended 2002; § 12-61-803 amended 20-17; § 12-61-808 amended 2008. Regulation amended 2017.

Colo. Rev. Stat. Ann. §§ 12-10-403(2), -407, -408(2) (LexisNexis 2019); [4 Colo. Code Regs. § 725-1 \(F-1\) \(2019\)](#)

Connecticut

Connecticut, Definitions

Buyer's agent—a real estate broker or salesman who acts in a fiduciary capacity for the prospective buyer or lessee in a real estate transaction.

Commercial real estate transaction—a transaction involving the sale, exchange, lease or sublease of real property other than property containing a building intended to be occupied by no more than four families or a single building lot to be used for family or household purposes.

Confidential information—as used in § 20-325h, facts concerning a person's assets, liabilities, income, expenses, and motivations and previous offers that are not

- authorized to be disclosed by the client,
- general knowledge,
- part of a public record to which access is authorized, or
- otherwise subject to disclosure under Connecticut law.

Dual agent—a licensee who acts in a fiduciary capacity for the seller or lessor and the buyer or lessee in a real estate transaction.

Designated agency—the appointment by a broker of another licensee affiliated with or employed by the broker to solely represent a buyer or tenant as a designated buyer's agent and the appointment of another to represent a seller or landlord as a designated seller's agent in a transaction.

Licensee—a real estate broker or salesperson.

Net listing—a listing contract in which the broker receives as a commission all excess money over a minimum sales price agreed upon by the broker and seller.

Person—“any individual, partnership, association, limited liability company or corporation.”

Real estate broker—a person or entity that, for consideration,

- “lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of, an estate or interest in real estate, or a resale of a mobile manufactured home, . . . or collects or offers or attempts to collect rent for the use of real estate,” and
- is employed by the owner of lots to sell the real estate and “sells or exchanges, or offers, attempts or agrees to negotiate the sale or exchange of,” the lot.

Real estate salesperson—a person affiliated with a broker

- to “list for sale, sell or offer for sale, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate”;
- to offer a mobile manufactured home for resale;
- to lease or rent or offer to lease or rent any real estate;
- to “collect or offer or attempt to collect rent for the use of real estate for or on behalf of such real estate broker”;
- who “offers, sells or attempts to sell the real estate or mobile manufactured homes of a licensed broker”; or

- who, acting as a designated agent, “lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of, an estate or interest in real estate, or a resale of a mobile manufactured home . . . or collects or offers or attempts to collect rent for the use of real estate.”

Seller's agent—a licensee who acts in a fiduciary capacity for the prospective seller or lessor in a real estate transaction.

Residential real property—as used in § 20-325c, one- to four-family residential property located in Connecticut.

Statutory section 20-311 amended 2000; § 20-325h amended 1999. Regulation 20-325d-1 amended 1995; r. 20-328-1a amended 2004.

[Conn. Gen. Stat. Ann. §§ 20-311, -325h \(2018\); Conn. Agencies Regs. §§ 20-325d-1, -328-1a \(2019\)](#)

Connecticut, Designated Agents

A broker may appoint one or more designated agents as additional agents for a seller, landlord, buyer or tenant with regard to a particular transaction.

DESIGNATED AGENT'S DUTIES

The “responsibility to satisfy the respective duties as a seller's or landlord's agent or as a buyer's or tenant's agent” is the designated agent’s primary responsibility. The designated agent is not deemed a dual agent, unless one individual is designated to represent both a seller and buyer in the same transaction.

AGREEMENT REQUIREMENTS

The Commissioner of Consumer Protection has adopted regulations to provide

- a form of written notice to be issued to the consumer upon the appointment of a designated agent, and

- a form of written consent to be signed by all parties.

Section 20-325i enacted 1999; § 20-325j amended 2004.

[Conn. Gen. Stat. Ann. §§ 20-325i, -325j \(2018\)](#)

Connecticut, Dual Agents

The agreement form set forth at regulation 20-325d-2 provides that with both parties' consent, a licensee may represent both the buyer and the seller in the purchase and sale of property.

CONFIDENTIALITY OBLIGATIONS

The agreement form set forth at regulation 20-325d-2 provides that in a transaction in which a licensee represents both the buyer and the seller, the brokerage firm is not required to and may not disclose to either party any confidential information without the express written consent of the party whose information is disclosed, other than information that is related to known material property defects or must be disclosed by law. More specifically, the brokerage firm may not disclose

- to the buyer that the seller will accept less than the asking price;
- to the seller that the buyer will pay more than the offer price;
- the seller's or buyer's motivation; or
- that a seller or buyer will agree to other financing terms.

Property information available through the multiple listing service must be disclosed to both the seller and the buyer.

REQUIRED DISCLOSURES

A dual agent must make a written disclosure of dual agency to all parties by using the dual agency consent agreement set forth in § 20-325g or the dual agency designated agency disclosure notice and consent agreement set forth in the regulations concerning designated agency. A broker who represents both the buyer and the seller must disclose the potential for a dual agency situation in his listing agreement and the buyer agency agreement.

AGREEMENT REQUIREMENTS

Informed consent to dual agency is presumed if the party executes a written consent in the form set forth in § 20-325g before executing any contract or agreement for the purchase, sale or lease of real estate.

Statutory section amended 1998. Regulation amended 2002.

[Conn. Gen. Stat. Ann. § 20-325g \(2018\)](#); [Conn. Agencies Regs. § 20-325d-2\(b\) \(2019\)](#)

Connecticut, General Agency Relationship Requirements

CONFIDENTIALITY OBLIGATIONS

A licensee may not

- reveal confidential information concerning a person the licensee represented;
- use confidential information to the person's disadvantage; or
- use confidential information concerning that person for the licensee's or a third party's advantage, except as required by law, to defend the licensee from wrongful conduct claims or to prevent a crime.

REQUIRED DISCLOSURES

A licensee attempting to negotiate the sale, exchange, or lease of commercial real estate must obtain a listing, buyer or tenant representation agreement, that contains

- for whom the licensee will act or has acted,
- the party's signature,
- the authorization's duration, and

- the amount of any compensation payable to the licensee.

AGREEMENT REQUIREMENTS

A written agreement that establishes the compensation to be paid to a real estate broker for the sale, lease or purchase of real property must contain the following statement in a manner that stands out significantly from the text:

"NOTICE: THE AMOUNT OR RATE OF REAL ESTATE BROKER COMPENSATION IS NOT FIXED BY LAW. IT IS SET BY EACH BROKER INDIVIDUALLY AND MAY BE NEGOTIABLE BETWEEN YOU AND THE BROKER."

See Conn. Gen. Stat. § 20-325c for provisions applicable to brokers obtaining financing for buyers.

RESTRICTIONS

A licensee may not enter into a net listing agreement. If the owner or lessor wants a net listing, "the agreed upon fee must be added and listings made in the usual manner."

A licensee may not interfere with the agency relationship of another licensee or induce a party to a sale contract to breach or terminate the contract in order to substitute a new contract with another of the licensee's principal. A licensee may not attempt to induce a party to breach or terminate an exclusive agency agreement.

Section 20-325b amended 1994; § 20-325h amended 1999; § 20-325c amended 2003. Regulation 20-328-9a amended 1995; r. 20-328-6a amended 2004.

[Conn. Gen. Stat. Ann. §§ 20-325b, -325c, -325h \(2018\); Conn. Agencies Regs. §§ 20-328-6a\(c\), \(d\); -9a \(2019\)](#)

Connecticut, General Applicability of Provisions

No relevant provisions were located.

Connecticut, Other Relevant Provisions

SELF-DEALING

A licensee may not provide professional services concerning a property if the licensee has an interest in the property, unless the interest is disclosed to all parties. A licensee may not acquire an interest in or buy for himself or for a related person or entity, property listed with the licensee, without disclosing to the owner the licensee's relationship. In selling or leasing property owned by the licensee or in which the licensee has an interest, the licensee must reveal the extent of his ownership interest to the prospective buyer or lessee.

MISREPRESENTATIONS

A licensee may not

- misrepresent or conceal any material facts; or

- misrepresent the actual selling price of real estate to any lender or any other interested party.

A broker must exercise diligence at all times in obtaining and presenting accurate information in the broker's advertising and representations to the public.

SUBAGENCY

A real estate broker may not make any unilateral subagency offer or agree to affiliate with a subagent for the sale or purchase of property, without the informed written consent of the person the broker represents. The written consent must

- contain the name and real estate license number of the broker to be appointed as the subagent; and
- notify the person the real estate broker represents that the law imposes vicarious liability on the principal for the subagent's acts.

Statutory section amended 1998. Regulation 20-328-2a amended 1995; r. 20-328-5a amended 2004.

[Conn. Gen. Stat. Ann. § 20-325f \(2018\); Conn. Agencies Regs. §§ 20-328-2a\(a\), \(b\); -5a \(2019\)](#)

Connecticut, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's or lessee's exclusive agent must

- diligently attempt to find property within the prospective buyer's or lessee's specifications; and
- present all offers or counteroffers as quickly as possible, provided that, unless agreed otherwise, the licensee need not continue to show properties after an offer or counteroffer has been accepted.

REQUIRED DISCLOSURES

A buyer's agent must give the disclosure required by regulation 20-325d-2 to the seller or lessor at the beginning of the first personal meeting with the seller or lessor concerning the real property. The disclosure must be

- signed by the seller or lessor and the buyer's agent, and
- attached to any purchase or lease offer or agreement.

A buyer's agent must disclose in writing to the seller or lessor which party the brokerage firm represents, unless the seller or lessor is represented by another broker. The disclosure must be in the form provided by regulation 20-325d-2(a) and need be given only once to each prospective seller, lessor, buyer, or lessee.

On and after January 1, 2018, a licensed real estate broker or salesperson representing a prospective purchaser or lessee in a real estate transaction must disclose, in writing, the identity of his or her client to any party to the transaction who is not represented by another licensed broker or salesperson. The disclosure must be made to the seller or lessor, if the transaction concerns residential real property, at the beginning of the first personal meeting with the seller or lessor concerning the seller's or lessor's real property.

If the seller or lessor refuses to sign the disclosure, the buyer's agent must note the refusal on the party's signature line.

AGREEMENT REQUIREMENTS

Before a licensee attempts to negotiate a purchase, exchange or lease of real estate, other than commercial real estate, on behalf of a prospective buyer or lessee, the licensee must enter into an agency agreement, which must be in writing, signed by and immediately delivered to the parties, and contain all of the terms and conditions of the agreement, including

- the compensation to be paid,
- the date of the agreement, and
- the agreement's expiration date.

The licensee must immediately deliver a copy of any agency agreement to any party that executed it, if

- the licensee prepared the agreement, and
- the buyer agency agreement relates to a transaction for which the licensee is acting as a broker or salesman.

Statutory section amended 2017. Regulations 20-325d-6 and 20-328-2a amended 1995; rr. 20-325d-2 and 20-325d-5 amended 2002; r. 20-328-6a amended 2004.

[Conn. Gen. Stat. Ann. § 20-325d \(2018\); Conn. Agencies Regs. §§ 20-325d-2\(a\), -5\(b\), -6; 20-328-2a\(c\), \(e\)\(2\); -6a\(a\)\(2\) \(2019\)](#)

Connecticut, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee accepting an exclusive listing must

- make a diligent effort to sell or lease the property listed, and
- submit all offers or counteroffers as quickly as possible, except that unless agreed otherwise, the listing real estate broker need not continue to market the property after an offer or counteroffer has been accepted.

REQUIRED DISCLOSURES

A seller's agent must disclose in writing which party the agent represents, unless another broker represents the buyer or lessee. The disclosure must be in the form provided by regulation 20-325d-2 and need be given only once to each prospective seller, lessor, buyer, or lessee. The seller's agent must give the required disclosure to the prospective buyer or lessee at the beginning of the first personal meeting concerning the party's real estate needs. The disclosure must

- be signed by the prospective buyer or lessee and the licensee; and
- be attached to any purchase or lease offer or agreement.

If the prospective buyer or lessee refuses to sign the disclosure, the seller's agent must note the refusal on the buyer's or lessee's signature line.

On and after January 1, 2018, a licensed real estate broker or salesperson who represents a seller or lessor in a real estate transaction must disclose, in writing, the identity of his or her client to any party to the transaction who is not represented by another licensed broker or salesperson. The broker or salesperson must make the required disclosure if the transaction concerns residential real property, at the beginning of the first personal meeting concerning the prospective purchaser's or lessee's specific needs in the transaction, or if the transaction is a commercial real estate transaction, before the prospective purchaser or lessee signs the purchase contract or lease. Such disclosure must be signed by a prospective purchaser or lessee and attached to any offer or agreement to purchase or lease signed by a prospective purchaser or lessee.

The disclosure to prospective buyers or lessees required by § 20-325d need not be given to individuals who attend an open house, provided

- the licensee conspicuously discloses his agency relationship; and
- no personal meeting concerning the buyer's or lessee's specific real estate needs is held.

The licensee need not give the disclosure to individuals attending a real estate auction, provided the licensee

- conspicuously discloses his agency relationship; and

- provides the disclosure to the successful bidder before the bidder executes a written purchase offer.

AGREEMENT REQUIREMENTS

Before a licensee attempts to negotiate the sale, exchange, or lease of real estate, other than commercial real estate, on behalf of the owner or lessor, the licensee must enter into a listing agreement, which must

- be in writing,
- identify the property,
- contain the terms and conditions of the sale, exchange or lease, including the commission amount, the date of the listing agreement and the agreement's expiration date,
- be signed by all parties, and
- clearly indicate agency relationship.

The licensee must immediately deliver a copy of any listing agreement to all parties.

For listing agreements entered into on or after October 1, 2004, if the broker permits licensees not affiliated with the broker to advertise the real estate, the broker must disclose its permission and all exceptions on the listing agreement and obtain the owner's authorization.

Statutory section amended 2017. Regulations 20-325d-6, 20-325d-7, and 20-328-2a amended 1995; rr. 20-325d-2 and 20-325d-5 amended 2002; r. 20-328-6a amended 2004.

[Conn. Gen. Stat. Ann. § 20-325d \(2018\)](#); [Conn. Agencies Regs. §§ 20-325d-2\(a\), -5\(b\), -6; 20-328-2a\(c\), \(e\)\(2\); -6a\(a\)\(2\) \(2019\)](#)

Connecticut, Term of Relationship

An agency agreement must contain

- the date on which the agency agreement is entered into, and
- the agreement's expiration date.

Regulation amended 2004.

See [Conn. Agencies Regs. § 20-328-6a \(2019\)](#)

Connecticut, Transaction Brokers

No relevant provisions were located.

Delaware

Delaware, Definitions

Associate broker—an individual who holds an associate broker license from the Real Estate Commission and who is "licensed under a broker to sell or offer to sell, or to buy or to offer to buy, or to negotiate the purchase, sale, or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others."

Broker—an individual "who holds a broker license from the Commission and who for a compensation or valuable consideration, is self-employed or is employed directly or indirectly by a brokerage organization to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others." A broker is responsible for providing real estate services and primarily responsible for the day-to-day management and supervision of a brokerage organization.

Brokerage organization—an individual or entity that is not licensed, but is acting as a broker under § 2901 of title 24. The individual or business entity must have a licensed broker.

Client—a member of the public who is "the principal in a statutory agency or common law agency relationship."

Customer—a person who is working with a licensee as "a potential buyer, seller, exchangor, exchangee, tenant, or landlord of real property" or who is consulting with a licensee in one of these capacities, for "the purpose of entering into a brokerage agreement or transaction, but who has not yet entered into a statutory or common law agency relationship" with the licensee.

Designated agent—a licensee who is appointed by a broker and is "working with a customer or client as a statutory agent."

Dual agent—a salesperson, associate broker, broker, or brokerage organization that represents both the buyer and seller or the tenant and landlord as clients in a real estate transaction.

Ministerial task—a task that does not involve the licensee's discretion or exercise of his or her own judgment.

Salesperson—a person who, for consideration, is employed by a broker, "to sell or offer to sell, or to buy or to offer to buy, or to negotiate the purchase, sale, auction or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases" for others.

Statutory agent—a licensee "functioning as party in an agency relationship created according to subchapter II" of chapter 29 as an independent contractor and not as a fiduciary. An agent "offers real estate services to the public to make a market in real estate" by

- bringing a buyer and seller or a landlord and tenant together;
- assisting the parties with advice;
- assisting with negotiations; and
- performing ministerial tasks to complete the transaction.

A licensee is presumed to be a statutory agent unless specifically identified as a common law agent in the brokerage agreement.

Section amended and renumbered 2011.

[Del. Code tit. 24, § 2902\(a\) \(2019\)](#)

Delaware, Designated Agents

A broker may designate one or more associate brokers or salespersons to be the designated associate broker or salesperson of a client to the exclusion of all others in the brokerage organization.

Unless otherwise specified in the sale agreement or lease, notice given only to a designated associate broker or salesperson is also effective notice to that licensee's client. Notice to the broker is not considered notice to the designated licensee or to the client. Notice only to the designated licensee is not considered notice to the broker or the rest of the organization.

For transactions of properties other than one- to four-family residential properties or single lots intended for a one- to four-family residence, designated agents who are not dual agents are exempt from the confidentiality requirements set forth in § 2936(c). Instead, a duty of confidentiality by the agent to the client applies "after a client relationship is formed."

Section amended and renumbered 2011.

[Del. Code tit. 24, § 2936\(a\), \(d\), \(g\) \(2019\)](#)

Delaware, Dual Agents

Licensees may not accept compensation from more than one party to a transaction without timely disclosing that fact to all parties.

A licensee may not function as a common law agent for a transaction concerning a one- to four-family residential property unless:

- he or she has established that relationship in writing; and
- the broker's policy is to represent only the seller or buyer as a single agent for each transaction and never as a dual agent.

Statutory section amended and renumbered 2011. Regulation 8.0 renumbered and amended 2015.

[Del. Code tit. 24, § 2932 \(2019\); 24-2900 Del. Code Regs. § 8.7.4 \(2019\)](#)

Delaware, General Agency Relationship Requirements

Legislation effective February 3, 2012, extensively revised title 24 of the Delaware Code relating to real estate brokers and salespersons. These revisions include, among other changes, amended duties and obligations, the creation of three licensure categories, and the presumption of statutory agency.

For properties of one- to four-family residences or single lots intended for a one- to four-family residence:

- a licensee working for the buyer is presumed to be the buyer's statutory agent;
- a licensee working for the seller is presumed to be the seller's statutory agent; and
- a licensee working for both a buyer and a seller is presumed to be a statutory agent representing both parties as a dual agent.

An onsite licensee for new construction onsite offices selling one- to four-family residences or single lots intended for a one- to four-family residence is presumed to be a statutory agent representing the builder or the seller.

The above agency presumptions "may be rebutted by the Consumer signing a Consumer Information Statement establishing a different agency relationship."

Entering a name and email address on the Internet is sufficient to establish a broker-consumer relationship "for the use of that system," but it, alone, does not create a broker-customer or client relationship for any other purpose.

DUTIES

The duties of confidentiality, as required by § 2936(c), begin "upon first contact between a licensee and the customer." Unless a Consumer Information Statement ("CIS") is signed indicating there is no agency relationship, the other required statutory duties between a licensee and a client begin the earlier of:

- the first scheduled appointment;
- the first property showing;
- the making of an offering; or
- the licensee otherwise working for the client.

(Note that as of February 3, 2012, statutory agency is presumed rather than predicated on the signing of a CIS.)

For transactions exempt from providing the CIS, the agent's duties begin when the parties form an agency relationship.

Licensees have "to the extent applicable to their functions" the following obligations and responsibilities:

- performing the duties required by chapter 29;
- performing the terms of any written brokerage agreement;
- exercising reasonable skill and care;
- advising the parties to obtain expert advice on material matters beyond the licensee's expertise;
- accounting timely for all money and property received;
- helping keep the parties informed regarding the transaction's progress;
- "performing ministerial tasks to assist the parties in complying with the terms and conditions of any contract";
- disclosing to all prospective buyers or tenants any known adverse material facts;
- informing the parties that they are not liable for the licensee's acts, that notice to a designated licensee is considered notice to their client, and that any oral or written statements by a licensee without the party's consent are not binding; and
- complying with all applicable laws, including, without limitation, any fair housing and civil rights laws.

An agent may do the following without breaching any duty to a client or customer:

- list and advertise competing properties;
- show clients or customers properties not owned by the broker's other clients;
- show to others properties in which one client or customer is interested;
- disseminate information that is generally available to licensees;
- assist buyers and sellers in preparing offers and counteroffers, provided the forms advise the parties that they may seek legal advice before signing;
- develop negotiating strategies or options;
- perform ministerial tasks;
- serve as a single agent, subagent, or dual agent for the same parties in different transactions or for different parties concerning the same property;
- cooperate with other licensees, except that for one- to four-family residences (or for lots intended for a one- to four-family residence), "they shall not engage any common law subagents from other brokers or brokerage organizations";
- disclose information among the broker, designated licensee, and office staff working for the brokerage organization on that transaction;
- provide customers with requested factual information; and

- provide clients with relevant factual information.

Licensees have no duty:

- to conduct an independent investigation of the client's or customer's financial condition; or
- to verify independently the accuracy or completeness of financial statements, but if the licensee has actual knowledge of false financial information, the licensee must advise the party to correct it and may not pass on the information he or she knows to be false.

A licensee must cooperate with all other licensees involved in a transaction, unless cooperation is not in the client's or customer's best interest. In order to cooperate, licensees must be reasonably available upon their client's or customer's request to:

- accept delivery of and present to the client or customer offers and counteroffers;
- assist the client or customer in developing, communicating, negotiating, and presenting offers, counteroffers, and related notices until the sale agreement or lease is signed and all contingencies are satisfied or waived;
- answer the client's or customer's questions related to offers, counteroffers, notices, negotiations, and contingencies; and
- hold the escrow deposit.

In order to cooperate, a licensee must be reasonably available when requested by a licensee to undertake the above activities only after disclosing the request to their client or customer and receiving written authorization. If the client or customer fails to authorize the licensee to undertake the requested activity, the licensee may not undertake the activity. If the broker's or brokerage organization's business model includes offering all of the services explained in the CIS (instead

of listing separate charges for distinct brokerage services), the statement is sufficient disclosure and written authorization to undertake the activities listed above.

CONFIDENTIALITY OBLIGATIONS

A licensee may not disclose the following without the affected party's informed consent:

- that a buyer or tenant is willing to pay more than the price offered;
- that a seller or landlord is willing to accept less than the asking sale price or lease rate;
- any party's personal motivating factors;
- that a party will agree to terms other than those offered;
- any material confidential information about the parties or property, unless disclosure is required by law or failure to disclose would "constitute fraud or intentional misrepresentation";
- any facts or suspicions regarding circumstances that may psychologically impact or stigmatize any real property, unless required to be disclosed by § 2927; or
- any facts or suspicions that a party or person in the community is a registered sex offender (if asked, the licensee must refer the inquiring person to the Delaware State Police).

For transactions of properties other than one- to four-family residential properties or single lots intended for a one- to four-family residence, designated agents who are not dual agents are exempt from the above confidentiality requirements. Instead, a duty of confidentiality by the agent to the client applies "after a client relationship is formed."

Knowledge is not imputed among or between the customers, clients, brokers, associate brokers, salespersons, brokerage organizations, and other persons within a brokerage organization.

AGREEMENT REQUIREMENTS

An exclusive business relationship or obligation for a customer or client to pay compensation is created only by a written brokerage agreement signed by the customer or client as a separate document. If the brokerage agreement is signed electronically, it must be a conspicuous separate document.

A party is not obligated to pay compensation to a broker or brokerage organization unless the party has entered into a written brokerage agreement specifying the compensation terms. The compensation agreement may specify that the licensee may cooperate with other licensees. A consumer may enter into a written brokerage agreement that contains duties, obligations, or responsibilities in addition to those specified by law.

REAL PARTY CONDITION REPORT

Licensees must obtain a Condition Report from a residential property seller before accepting a written listing agreement and must make that report available to any buyer. The seller must complete the report on the form approved by the Commission. Licensees must provide the seller's most recent Condition Report to a buyer before the buyer enters into a sale agreement and make the Condition Report a part of any sale agreement.

REQUIRED DISCLOSURES

All licensees in a common law agency relationship must disclose in writing the party that they represent. The disclosure must be made to all parties to a transaction that the licensee does not represent, but with whom the licensee has "substantive contact." This disclosure must be made at the first substantive contact between the licensee and the person the licensee does not represent.

A listing broker who is not also the selling broker and who has no substantive contact with a prospective buyer or lessee need not make any agency disclosure to the prospective buyer or lessee.

Licensees may not function in the capacity of a common law agent for transactions concerning one-to-four-family residential property unless

- they have established the relationship in writing; and
- the broker's policy is to represent only the seller or the buyer as a single agent for each transaction, and not as a dual agent.

The Real Estate Commission will establish a CIS, which, at a minimum, must provide a summary of what the licensee is permitted or prohibited from doing, as provided by §§ 2935 and 2936. The CIS must explain the circumstances under which a consumer may hire a licensee as a common law

agent, but warn that this requires "other detailed disclosures of conflicts of interests and could involve significant potential legal liability and financial risk for the consumer." The CIS must be delivered to the consumer no later than the earlier of the first scheduled appointment, the first showing of a property, or the making of an offer, unless another involved licensee has already given it. A listing licensee who knows that the buyer is working with another licensee need not give that buyer a CIS, and a licensee working with a buyer who knows that the seller is working with another licensee is not required to give a CIS to that seller.

In a *common law* agency relationship, the licensee must disclose who he or she represents at the first substantive contact to each party to the negotiation or transaction. In all cases, the licensee must make the disclosure before presenting a purchase offer.

See r. 9.5.3 for mandatory disclosure confirmation language to be included in the transaction contracts under various situations.

The CIS must be available to consumers at open houses, but a licensee not need to present it personally and obtain the consumer's signature unless the consumer asks for more than factual information about the property or expresses an interest in making an offer during the open house.

The broker may deliver the CIS by the Internet, and the consumer may acknowledge receipt of it electronically.

Transactions involving a property other than a one- to four-family residential property or the sale of a lot intended for a one- to four-family residence are exempt from the requirement to provide the CIS to the potential parties. However, the sale or lease agreement must include the following language after confirming the agency relationships: "The parties acknowledge that they have certain rights and responsibilities under Delaware agency law (Title 24 of the Delaware Code, Chapter 29) and may consult with their legal counsel."

Statutory sections amended and renumbered 2011. Regulations amended and renumbered 2012.

[Del. Code tit. 24, §§ 2928, 2929, 2930, 2932, 2933, 2934, 2935, 2936, 2938 \(2019\); 24-2900 Del. Code Regs. §§ 9.5.2, .3; 9.7.1 \(2019\)](#)

Delaware, General Applicability of Provisions

The real estate commission's rules and regulations apply to all persons who are licensed as real estate brokers or salespersons or who apply for a license.

The disclosure requirements of regulation 9.5.3 also apply to leases longer than 120 days, although the required language must be modified by replacing "purchaser" or "buyer" with "lessee," "seller" with "lessor," and "purchase" with "lease."

The common law of agency relative to brokerage relationships in real estate transactions is "expressly abrogated for any licensee functioning as a broker, associate broker, salesperson, licensee owner, or brokerage organization as defined in . . . chapter [29] as a statutory agent."

Chapter 29 is intended to "occupy completely the field of law relative to brokerage relationships for those real estate service transactions" with the licensee or licensees functioning as statutory agents. The law governing independent contractor relationships applies for further guidance to the extent it is not inconsistent with the provisions of chapter 29.

If a consumer hires a broker as a common law agent, and the broker agrees in writing to become the consumer's common law agent, the common law of agency applies to the extent it is not inconsistent with the provisions of chapter 29. Performing the functions of a statutory agent does not automatically or by implication create a common law agency relationship. Statutory sections 2933 through 2938 are rules of conduct "describing how a licensee works for clients, works with customers, or interacts with the general public as a statutory agent in the capacity of an independent contractor and not as a common law agent."

Statutory sections amended and renumbered 2011. Regulation 9.0 amended 2012; r. 1.0 amended 2017.

[Del. Code tit. 24, §§ 2932, 2933 \(2019\); 24-2900 Del. Code Regs. §§ 1.2.1, 9.5.3.3 \(2019\)](#)

Delaware, Other Relevant Provisions

SELF-DEALING

A licensee who is the owner, purchaser, lessor, or lessee, or who has any personal interest in a transaction, must:

- disclose his or her licensee status to all parties with whom he is transacting business, before executing any agreements, and
- include his or her licensee status on the agreement.

MISREPRESENTATIONS

A licensee is not liable for a customer's or a client's "wrongful act, error, omission, or misrepresentation," except to the extent he or she had actual knowledge of the wrongful act, error, omission, or misrepresentation. This provision does not apply if the licensee or brokerage organization is hired as a common law agent.

Statutory section amended and renumbered 2011. Regulation amended and renumbered 2012.

[Del. Code tit. 24, § 2937 \(2019\); 24-2900 Del. Code Regs. § 9.1 \(2019\)](#)

Delaware, Relationship with Buyers

REQUIRED DISCLOSURES

A buyer's agent's written disclosure confirmation must be worded as follows:

This Broker, and any Associate Broker or Salesperson working for this Broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The Broker, and any Associate Broker or Salesperson working for the Broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The Broker, and any Associate Broker or Salesperson working for the Broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination.

Regulation amended and renumbered 2012.

[24-2900 Del. Code Regs. § 9.5.3.2 \(2019\)](#)

Delaware, Relationship with Sellers

AGREEMENT REQUIREMENTS

A listing agreement must be:

- in writing, and
- signed by the seller, owner, broker, or broker's designee.

A licensee who states in advertising that if the licensee cannot sell the property, he or she will buy it, must disclose in the original listing contract, the price the licensee will pay for the property if no sales contract is executed during the listing term. Also, the licensee has no more than 60 days to purchase and settle for the property once the listing agreement expires.

REQUIRED DISCLOSURES

A seller's agent's written disclosure confirmation must be worded as follows:

This Broker, any cooperating Broker, and any Associate Broker or Salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The Broker, any cooperating Broker, and any Associate Broker or Salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The Broker, any cooperating Broker, and any Associate Broker or Salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination.

If property is subject to a sale agreement, but is being left on the market for backup offers, or is subject to a sale agreement that contains a first refusal right, the listing broker must disclose the other agreement to any person who makes an appointment to see the property.

Regulation 9.0 amended and renumbered 2012; r. 8.0 amended 2015.

[24-2900 Del. Code Regs. §§ 8.1.1, 9.2, 9.5.3.1, 9.6 \(2019\)](#)

Delaware, Term of Relationship

A licensee's duties as a common law agent and the client's "corresponding liabilities" begin and end based on the common law of agency.

A statutory agent's duty of confidentiality begins upon the first contact between a licensee and the customer. Unless a CIS is signed indicating there is no agency relationship, the other statutory duties between a licensee and client begin the earlier of the date of:

- the first scheduled appointment;

- the first property showing;
- the making of an offering; or
- the licensee otherwise working for the client.

For transactions exempt from providing a CIS, the agent's duties begin when the parties form an agency relationship.

A brokerage organization, a broker owner, a broker of record, or a licensee owes no further duty or obligation to a customer or client after termination of the brokerage relationship, except:

- to account in a timely manner; and
- to treat as confidential any information the client provides that may reasonably be expected to have a negative impact on the client's real estate activity unless:
 - the client grants written consent,
 - disclosure of the information is required by law,
 - the information is made public by the client or from a source other than the brokerage organization, broker owner, broker of record, or licensee, or

- disclosure is necessary to defend against a wrongful conduct action.

Sections amended and renumbered 2011.

[Del. Code tit. 24, §§ 2932, 2934 \(2019\)](#)

Delaware, Transaction Brokers

No provisions permitting transaction brokers were located.

Note that for any property listed with a broker for sale, lease or exchange, only a licensee may host or staff an open house or show a listed property, but that licensee may be assisted by non-licensed person provided a licensee is on site. For new construction, subdivision, or development listed with a broker, a licensee must always be on site when the site is open to the general public, unless a builder or developer has "hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project."

Regulations amended and renumbered 2012.

[24-2900 Del Code Regs. §§ 10.1, .2 \(2019\)](#)

District of Columbia

District Of Columbia, Definitions

Agency—every relationship in which a licensee "acts for or represents a person by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship."

Brokerage relationship—the contractual relationship between a client and a real estate licensee who has been engaged to procure "a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange, or rent real estate on behalf of a client, or for the purposes of managing real estate on behalf of a client."

Client—a person “who has entered into a brokerage relationship with a licensee.”

Customer—a person “who has not entered into a brokerage relationship with a licensee, but for whom a licensee performs ministerial acts in a real estate transaction.” Unless a licensee enters into a brokerage relationship with a person, it is presumed that the person is the licensee's customer, rather than a client.

Designated agent—a licensee “who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction.”

Dual agent or dual representative—a licensee with a “brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction.”

Licensee—real estate brokers, salespersons, and property managers.

Material fact—information that, “if known, would be likely to induce a reasonable person to enter into or not enter into or consummate a real estate transaction.”

Ministerial acts—routine acts that a licensee may perform that do not involve discretion or exercising the licensee's own judgment.

Person—an “individual, partnership, association, unincorporated business, firm, business trust, or corporation.”

Real estate—“condominiums, leaseholds, time sharing and any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold,” whether located in the District of Columbia or elsewhere, including any share or membership in a cooperative organized to engage in real estate activities.

Real Estate Broker—a person or entity that

- for consideration, lists for sale, or sells, exchanges, purchases, rents, or leases real property; and
- may employ "real estate brokers, associate real estate brokers, real estate salespersons, property managers and resident managers," provided that the broker is accountable for the day-to-day job-related activities of his or her employees.

Real Estate Salesperson—a "person affiliated with or employed by a licensed real estate broker to manage or lease; rent or offer to lease for rent; list for sale, sell, or offer for sale; buy or offer to buy; negotiate the purchase or sale, or exchange of real estate; or to negotiate a loan on real estate."

Written listing contract—a contract between a broker and an owner in which the owner grants the right to find a purchaser for property at a price and terms the owner agrees to accept, and the broker, for consideration, promises to make a reasonable effort to obtain a purchaser for the contract term.

Code section amended 2011. Regulation amended 2010.

[D.C. Code Ann. § 42-1702 \(2019\)](#); [D.C. Mun. Regs. tit. 17, § 2699 \(2019\)](#)

District Of Columbia, Designated Agents

A broker may assign different affiliated licensees as designated representatives to represent different clients in the same transaction to the exclusion of all other licensees in the firm. Use of designated representatives does not constitute dual representation if the designated representative is not representing more than one client in a transaction; however, the principal or broker supervising the transaction is a dual representative.

CONFIDENTIALITY OBLIGATIONS

A designated representative may not disclose, except to the licensee's broker, personal or financial information received from the client during the brokerage relationship and any other information that the client wants to remain confidential, unless otherwise provided by law or the client consents in writing.

REQUIRED DISCLOSURES

The use of designated representatives in a transaction must be disclosed. The disclosure may be made in combination with other disclosures or provided with other information, but it must be conspicuous and printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure that substantially complies with the disclosure set forth in D.C. Code Ann. § 42-1703(i) is deemed to comply with the disclosure requirement.

Code section amended 1998.

[D.C. Code Ann. § 42-1703\(i\) \(2019\)](#)

District Of Columbia, Dual Agents

A licensee may act as a dual agent only with all clients' written consent.

REQUIRED DISCLOSURES

The required written consent and disclosure of the brokerage relationship is presumed to have been given to any client who signs a disclosure as provided in D.C. Code Ann. § 42-1703. The disclosure may be given in combination with other disclosures or provided with other information, but must be conspicuous and printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure that complies substantially with the form set forth at § 42-1703(i) is deemed in compliance with the disclosure requirement.

A licensee may withdraw from representing a client who refuses to consent to a disclosed dual representation, thereby terminating the brokerage relationship with the client. The licensee may continue to represent the other client in the transaction or represent the client who refused the dual representation in other transactions not involving dual representation.

Code section amended 1998.

[D.C. Code Ann. § 42-1703\(i\) \(2019\)](#)

District Of Columbia, General Agency Relationship Requirements

DUTIES

A licensee must

- not discriminate in the sale, rental, leasing, exchange, or transfer of property;
- comply with the Human Rights Act of 1977 and other applicable anti-discrimination laws;

- exercise fidelity and good faith to a client in all matters within the scope of his employment;
- not accept compensation from more than one party to a transaction without the other party's full knowledge and consent; and
- not attempt to provide specialized professional services outside the licensee's experience without obtaining an expert's assistance or disclosing his lack of experience.

INSPECTION DUTY

A licensee must make a reasonable effort to ascertain all material facts concerning property.

REQUIRED DISCLOSURES

Before entering into a brokerage relationship, a licensee must advise the prospective client of

- the type of brokerage relationship proposed;
- the broker's compensation; and
- whether the broker will share his compensation with another broker who may have a brokerage relationship with another party to the transaction.

Upon discussing a specific property with a buyer or seller who is not the licensee's client, a licensee must disclose any broker relationship the licensee has with another party to the transaction. Also, except as otherwise provided by statute, the disclosure must be made in writing at the earliest practical time and in the form substantially similar to that provided by regulation, but no later than the time specific real estate assistance is provided (except for non-substantive discussions during an open house). A broker or salesperson must request that the actual or prospective of residential real estate buyer or seller who is not the licensee's client must sign, date, and return to the licensee a copy of the required notice.

If the party declines to sign the notice, the licensee must note the following on the agency disclosure notice:

- the date he or she presented the notice to the actual or prospective purchaser;
- that the person declined to sign the agency disclosure notice; and
- the reason for the refusal to sign, if any was given.

See D.C. Code Ann. § 42-1703(h)(1) and D.C. Mun. Regs., tit. 17, § 2613.5 for disclosure forms that comply with the disclosure requirement.

A licensee must also disclose to a landlord or tenant who is not the licensee's client, that the licensee has a brokerage relationship with another party to the transaction. These disclosure requirements do not apply to single or multifamily residential units with lease terms shorter than two months.

RESTRICTIONS

A licensee may not

- attempt to contact directly a property owner to induce the owner to break a listing agreement when another licensee has a listing on the property; or
- place signs on property without the owner's written consent.

Code section amended 1998. Regulation 2613 amended 2010; r. 2609 amended 2016.

[D.C. Code Ann. § 42-1703\(f\), \(h\) \(2019\)](#); [D.C. Mun. Regs. tit. 17, §§ 2609.1, .9, .11, .12, .18, .19, .21, .22; 2613 \(2019\)](#)

District Of Columbia, General Applicability of Provisions

The common law of agency is abrogated to the extent it is inconsistent with D.C. Code Ann. § 42-1703(n).

Code section amended 1998.

[D.C. Code Ann. § 42-1703\(n\) \(2019\)](#)

District Of Columbia, Other Relevant Provisions

SELF-DEALING

"A licensee shall disclose in writing to all parties to a real estate transaction any ownership or financial interest in the property that is the subject of the real estate transaction held directly or indirectly by the licensee, an immediate member of the licensee's family, the licensee's firm, or a member of the licensee's firm."

DISCLOSURE UPDATES

If a licensee's relationship changes, the licensee must disclose the fact in writing to all clients and customers involved in the transaction.

MISREPRESENTATIONS

A licensee is not liable for providing a buyer with false information if the seller provided the information to the licensee and the licensee did not know that the information was false or act in reckless disregard of the truth. Similarly, a client is not liable for a licensee's misrepresentation, unless the client knew or should have known of the misrepresentation and failed to correct it in a timely manner. A licensee who engages another licensee to assist in providing brokerage services to a client is not liable for the other licensee's misrepresentations, unless the licensee knew or should have known of the other licensee's misrepresentation and failed to take reasonable steps to correct it in a timely manner.

Clients and licensees are deemed to possess only actual knowledge and information, and knowledge between or among clients and licensees is not imputed.

Code section amended 1998. Regulation amended 2016.

[D.C. Code Ann. § 42-1703\(a\), \(h\), \(l\) \(2019\); D.C. Mun. Regs. tit. 17, § 2609.13 \(2019\)](#)

District Of Columbia, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A licensee engaged by a buyer must

- perform according to the brokerage relationship's term;
- promote the buyer's interests;
- seek property at a price and terms acceptable to the buyer, except that the licensee need not seek other properties if the buyer is party to a contract to purchase property, unless otherwise agreed;
- timely present all written offers or counteroffers, even if the buyer is already a party to a purchase contract;
- subject to D.C. Code Ann. § 42-1755(f), disclose to the buyer known material facts related to the property or the transaction;
- timely account for all money and property received;
- maintain confidentiality of all personal and financial information received from the client during the relationship and any other information that the client requests remain confidential, unless otherwise provided by law or the buyer consents in writing to its release;
- exercise ordinary care; and
- comply with all applicable laws.

Licenses must also treat prospective sellers honestly and not knowingly give them false information. In a residential transaction, a buyer's licensee must disclose to the seller the buyer's intent to occupy the property as a principal residence.

Also, a buyer's licensee does not breach his duty to the buyer by

- unless otherwise prohibited by law or in the brokerage relationship, assisting the seller by performing ministerial acts;
- showing properties in which the buyer is interested to other prospective buyers;
- representing other buyers looking at the same or other properties; or
- representing sellers relative to other properties.

See § 42-1703(d) for similar duties that apply to a licensee engaged by a tenant.

Code section amended 1998.

[D.C. Code Ann. § 42-1703\(b\), \(d\) \(2019\)](#)

District Of Columbia, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's licensee must

- perform according to the brokerage relationship's terms;
- promote the seller's interests;
- seek a sale at the price and terms agreed upon in the brokerage relationship or acceptable to the seller, provided that the licensee generally need not seek additional offers while the property is subject to a sale contract;
- transmit to the owner all written offers received by the licensee, whether made directly or through another licensee, unless the owner has accepted a previous offer;
- disclose to the seller known material facts related to the property or concerning the transaction;
- timely account for all money and property received;
- maintain confidentiality of all personal and financial information received from the client during the relationship and any other information that the client requests be maintained confidential, unless otherwise provided by law or the seller consents to its release;
- exercise ordinary care; and
- comply with all applicable laws.

Licenses must treat prospective buyers honestly and not knowingly give false information. A seller's licensee must disclose to a prospective buyer all known material adverse facts pertaining to the property's physical condition, subject to D.C. Code Ann. § 42-1755(f).

A seller's licensee may, unless prohibited by law or the brokerage relationship, assist a buyer by performing ministerial acts that are not inconsistent § 42-1703.

A seller's licensee does not breach any duty owed to the seller by

- showing alternative properties to prospective buyers; or
- representing other sellers with properties for sale.

See § 42-1703(c) for similar provisions that relate to a licensee engaged by a landlord.

AGREEMENT REQUIREMENTS

A written listing contract is required for the sale of all real property, and a licensee may not receive a commission without a written listing agreement.

Code section 42-1703 amended 1998; § 42-1705 amended 1997. Regulation amended 2016.

[D.C. Code Ann. §§ 42-1703\(a\), \(c\); -1705 \(2019\); D.C. Mun. Regs. tit. 17, § 2609.20 \(2019\)](#)

District Of Columbia, Term of Relationship

A brokerage relationships begins at the time a client engages a licensee and continues until completed performance or the earlier of

- the agreed expiration date contained in the brokerage relationship;
- any mutually agreed upon termination;
- default by a party; or
- termination as set forth by statute.

Brokerage relationships must have a definite termination date, but if a brokerage relationship does not specify a date, the relationship terminates 90 days after it was commenced.

Except as otherwise agreed in writing, a licensee owes no duties to a client after termination, expiration, or completion of the brokerage relationship, except

- to account for money and property; and
- to keep confidential all personal and financial information received during the brokerage relationship and any information the client asks to be maintained confidential, unless otherwise provided by law or the client consents.

Code section amended 1998.

[D.C. Code Ann. § 42-1703\(g\) \(2019\)](#)

District Of Columbia, Transaction Brokers

No provisions were located specifically applicable to transaction brokers.

Florida

Florida, Definitions

Broker—a person who, for another and for consideration or with an intent to receive compensation,

- “appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases”;
- advertises or holds out to the public that he is engaged in the business of “appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights”;
- procures sellers, purchasers, lessors, or lessees;
- directs or assists in procuring prospects or in negotiating or closing a transaction that results in a sale, exchange, or lease; and
- all persons who advertise rental property information or lists.

"Broker" also includes a general partner, officer, or director of a partnership or corporation that acts as a broker and generally includes a person or entity who lists or sells one or more timeshare periods per year.

Customer—a buyer or seller of real property.

Dual agent—a broker who represents both the buyer and the seller in a real estate transaction.

Fiduciary—a broker in a “relationship of trust and confidence” between the broker as agent and the seller or buyer as principal.

Principal—the “party with whom a real estate licensee has entered into a single agent relationship.”

"Real property" or "real estate"—an “interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right,” but not including a cemetery lot, burial right, renting of a mobile home or recreational vehicle lot in a mobile home park or travel park.

Single agent—a broker who “represents, as a fiduciary, either the buyer or seller but not both in the same transaction.”

Transaction broker—a broker who “provides limited representation to a buyer, a seller, or both, in a real estate transaction, but does not represent either in a fiduciary capacity or as a single agent.”

Section 475.01 amended 2004; § 475.278 amended 2009.

[Fla. Stat. §§ 475.01, 278 \(2019\)](#)

Florida, Designated Agents

In a real estate transaction other than a residential sale and if the buyer and seller have assets of \$1 million or more, the broker, at the customer’s request, may designate sales associates to act as single agents for different customers in the same transaction.

DESIGNATED AGENT’S DUTIES

A designated agent has the duties of a single agent as outlined in [§ 475.278\(3\)](#).

REQUIRED DISCLOSURES

A designated agent has the disclosure requirements set forth in § 475.278(3)(b) and (c), and the buyer and seller must both sign disclosures

- stating that their assets meet the required threshold; and
- requesting that the broker use a designated salesperson.

The required disclosure must include the following statement: “FLORIDA LAW PROHIBITS A DESIGNATED SALES ASSOCIATE FROM DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY THE BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALES ASSOCIATE IS REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE INFORMATION ALLOWED TO BE DISCLOSED OR REQUIRED TO BE DISCLOSED BY LAW AND ALSO ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE TO HIS OR HER BROKER, OR PERSONS SPECIFIED BY THE BROKER, CONFIDENTIAL INFORMATION OF A CUSTOMER FOR THE PURPOSE OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE CUSTOMER IN REGARD TO A TRANSACTION. FLORIDA LAW REQUIRES THAT THE BROKER MUST HOLD THIS INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH INFORMATION TO THE DETRIMENT OF THE OTHER PARTY.”

Section 475.255 enacted 1994; § 475.2755 amended 2003.

[Fla. Stat. §§ 475.255, .2755 \(2019\)](#)

Florida, Dual Agents

Disclosed dual agency is not an authorized form of representation in Florida, and a single agent may represent either a buyer or a seller, but not both, in a real estate transaction.

Section 475.272 amended 1999, § 475.278 amended 2009.

[Fla. Stat. §§ 475.272\(1\), \(3\); .278 \(2019\)](#)

Florida, General Agency Relationship Requirements

A licensee may enter into a brokerage relationship with potential buyers and sellers as either a single agent or a transaction broker.

DUTIES

A single agent has the following duties:

- honest and fair dealing;
- loyalty;
- confidentiality;
- obedience;
- full disclosure;
- accounting;
- skill, care, and diligence;
- timely presenting all offers and counteroffers, unless a party has directed the licensee otherwise in writing; and
- disclosing “all known facts that materially affect the value of residential real property and are not readily observable.”

A real estate licensee owes the following duties to a potential seller or buyer with whom the licensee has no brokerage relationship:

- honest and fair dealing;
- disclosing “all known facts that materially affect the value of the residential real property” that are not readily observable; and
- accounting for all funds.

REQUIRED DISCLOSURES

A single agent’s duties must be fully described and disclosed to a party in writing, either in a separate document or as part of another document, such as a listing or representation agreement. The disclosure must be made before or at the earlier of the time of entering into the listing or representation agreement or the showing of property. If incorporated into another document, the notice must be at least the same size font and must be conspicuous so as to advise customers of the single agent’s duties. The first sentence must be printed in uppercase and bold type, as indicated by statute. The single agent disclosure notice must include the information set forth in the form provided in § 475.278. However, effective July 1, 2006, the previously required "Important Notice" language, including the associated required text, has been deleted from § 475.278(3)(c).

Regulations 61J2-10.033, .036, and .037, which addressed agency disclosure and transaction broker notice, have been repealed. See regulation 61J2-23.001 for provisions related to timeshare resale listing agreement disclosures.

The duties of a licensee who has no brokerage relationship with a buyer or seller must be fully described and disclosed in writing to the buyer or seller before a showing. The notice must include the information set forth in the form provided in § 475.278(c).

The above disclosures apply to all residential sales, which include the sale of

- improved residential property of four or fewer units,

- unimproved residential property intended for four or fewer units, or
- the sale of agricultural property of 10 acres or fewer.

However, these disclosure requirements do not apply

- if a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker;
- if an owner is selling new residential units built by the owner and the circumstances should reasonably inform a potential buyer that the owner's employee or single agent is acting on the owner's behalf;
- nonresidential transactions;
- the rental or leasing of property, unless an option to purchase property improved with four or fewer residential units is given;
- an open house or model home showing that does not involve eliciting confidential information;
- the execution of a contractual offer or representation agreement;
- negotiations concerning price, terms, or conditions of a potential sale;
- unanticipated, casual conversations that do not involve eliciting confidential information, executing a contractual offer or representation agreement, or negotiations concerning a potential sale's price, terms, or conditions;

- responding to general factual questions about property advertised for sale;
- situations in which a licensee's communications are limited to providing general factual information about the licensee's qualifications, background, and services;
- auctions;
- appraisals; and
- dispositions of any business interest, except for property with four or fewer residential units.

Statutory section amended 2009. Regulation amended 2010.

[Fla. Stat. § 475.278\(1\), \(3\)\(b\), \(4\), \(5\) \(2019\); Fla. Admin. Code Ann. r. 61J2-23.001 \(2019\)](#)

Florida, General Applicability of Provisions

The authorized brokerage relationships described in [Fla. Stat. §§ 475.2755](#) and [475.278](#) apply in all brokerage activities, but the disclosure requirements of § 475.278 apply only to residential sales.

Section amended 1999.

[Fla. Stat. § 475.274 \(2019\)](#)

Florida, Other Relevant Provisions

DISCLOSURE UPDATES

A licensee may change from one brokerage relationship to another as long as the buyer or the seller, or both, consents to the change and the appropriate disclosure of duties is made.

Section amended 2009.

[Fla. Stat. § 475.278\(1\), \(3\)\(b\)\(2\) \(2019\)](#)

Florida, Relationship with Buyers

No provisions were located specifically applicable to buyer's agents.

Florida, Relationship with Sellers

No provisions were located specifically applicable to seller's agents.

Florida, Term of Relationship

No relevant provisions were located.

Florida, Transaction Brokers

Transaction brokers may provide a limited form of nonfiduciary representation to a buyer, a seller, or both in a transaction.

TRANSACTION BROKER'S DUTIES

A transaction broker, who provides a limited form of representation to a buyer, a seller, or both parties to a real estate transaction, does not represent either party in a fiduciary capacity or as a single agent. The duties of a transaction broker include

- dealing honestly and fairly;
- accounting;
- using skill, care, and diligence;
- disclosing all known facts that materially affect property value and that are not readily observable;
- timely presenting all offers and counteroffers, unless a party has directed otherwise in writing;
- limited confidentiality, unless waived in writing; and

- any mutually agreeable additional duties.

CONFIDENTIALITY OBLIGATIONS

A designated broker's limited confidentiality prevents disclosure

- that the seller will accept a price less than the asking price;
- that the buyer will pay a price greater than the offer price;
- any party's motivation;
- that a seller or buyer will agree to other financing terms; or
- any other information that a party requests to remain confidential.

REQUIRED DISCLOSURES

Fla. Stat. § 475.278(2)(b), which previously required a transaction broker's duties to be fully described and disclosed in writing to a buyer or seller, expired on July 1, 2008.

Section 475.272 amended 1999; § 475.278 amended 2009.

[Fla. Stat. §§ 475.272\(4\), 278\(2\) \(2019\)](#)

Georgia

Georgia, Definitions

Agency—a relationship in which a real estate broker acts for or represents another party in a transaction by the party's express authority.

Brokerage agreement—an express written contract wherein the client promises to pay the broker or agrees that the broker may receive consideration from another in exchange for

- the broker producing a seller, buyer, tenant, or landlord who is “ready, able, and willing to sell, buy, or rent the property”; or
- the broker performing property management services or community association management services.

Brokerage engagement—a written contract wherein the client promises to pay the broker or agrees that the broker may receive consideration from another in exchange for

- the broker producing a seller, buyer, tenant, or landlord who is “ready, able, and willing to sell, buy, or rent the property”; or
- the broker performing property or community association management services.

Brokerage relationship—the agency and nonagency relationship formed “between the broker and the broker's clients and customers as a result of the brokerage engagement.”

Buyer—a purchaser, including a person who acquired, attempts to acquire, or succeeds to a real estate interest.

Client—a person who has entered into a brokerage engagement with a broker.

Customer—a person who has not entered into a brokerage engagement, but for whom a broker may perform ministerial acts.

Designated agent—a licensee assigned by his broker to “represent solely one client to the exclusion of all other clients in the same transaction and to the exclusion of all other licensees affiliated with the broker.”

Dual agent—a broker with a brokerage relationship with the seller and the buyer or the landlord and the tenant in the same transaction.

Material facts—facts that a party “does not know, could not reasonably discover, and would reasonably want to know.”

Ministerial acts—those acts that do not require “discretion or the exercise of the broker or affiliated licensee's own judgment.”

Purchaser—a person who acquired, attempts to acquire, or succeeds to an interest in land.

Real estate—includes all interests in land, including condominiums, leaseholds, and mobile homes affixed to land, whether situated in Georgia or elsewhere.

Transaction broker—a broker who has not entered into a client relationship with any of the parties to a transaction and who performs only ministerial acts, but who is paid consideration by a party to the transaction pursuant to a verbal or written agreement for performing brokerage services.

Statutory section 43-40-1 amended 2003; § 10-6A-3 amended 2002. Regulation amended 2017.

Ga. Code Ann. §§ 43-40-1; 10-6A-3 (LexisNexis 2019); Ga. Comp. R. & Regs. r. 520-1-.02(2) (2019)

Georgia, Designated Agents

A broker may assign different licensees affiliated with the broker as designated agents to represent exclusively different clients in the same transaction. If a broker appoints different designated agents, neither the broker, the broker's licensees, or the firm are deemed to be dual agents.

DESIGNATED AGENT'S DUTIES

A designated agent owes his client the duties set forth in §§ 10-6A-5, -6, -7, or -8, as applicable.

CONFIDENTIALITY OBLIGATIONS

A broker, his clients, and the designated agents are deemed to possess only actual knowledge, and no knowledge is imputed between or among the broker, the designated agents, and the clients. A designated agent may not disclose, except to his broker, information the client requests to be confidential, except as permitted or required to be disclosed by law. Unless required by law, a designated agent's broker may not reveal confidential information. Also, the designation of a designated agent does not permit the disclosure of information a party makes confidential by an express request before creation of the designated agency. The broker and his affiliated licensees must maintain confidentiality unless the party from whom the confidential information was obtained permits disclosure.

Section amended 2000.

Ga. Code Ann. § 10-6A-13 (LexisNexis 2019)

Georgia, Dual Agents

A broker may act as a dual agent only with all clients' written consent.

REQUIRED DISCLOSURES

Written consent to dual agency must contain

- a description of the transaction in which the broker will serve as a dual agent;
- a statement that the broker represents two clients whose interests are or could be different or adverse;
- a statement that a dual agent will disclose all known adverse material facts relevant to the transactions, except for confidential information that may not be disclosed;

- a statement that the broker will timely disclose to each client in a transaction the nature of any material relationship the broker and the broker's affiliated licensees have with the other clients in the transaction;
- a statement that the client need not consent to the dual agency; and
- a statement that the client has voluntarily given his consent and read and understood the engagement.

Disclosures regarding dual agency must be made in a timely manner, no later than the time a party first makes an offer.

If a client signs a written consent meeting the requirements of § 10-6A-12, the client's consent to dual agency is deemed to have been given and to be informed. A broker may withdraw from representing a client who has not consented to a disclosed dual agency, and a broker who has withdrawn may continue to represent the other client in the transaction or represent the client in other transactions not involving a dual agency.

CONFIDENTIALITY OBLIGATIONS

In dual agency, a client and broker and their licensees possess only actual knowledge, and no knowledge is imputed between the clients, brokers, or their affiliated licensees.

Statutory section 10-6A-12 amended 2000; § 43-40-25 amended 2016. Regulation amended 2003.

Ga. Code Ann. §§ 43-40-25(b)(22), 10-6A-12 (LexisNexis 2019); Ga. Comp. R. & Regs. r. 520-1-.06(4)(b) (2019)

Georgia, General Agency Relationship Requirements

The commission may discipline a real estate licensee if the licensee fails to disclose in a timely manner to all parties the licensee's agency relationship with any of the parties.

DUTIES

A licensee must

- promptly tender to a customer or client any signed offer to purchase, sell, lease, or exchange property;
- provide a copy of any document used in a transaction to each individual signing the document; and
- provide a copy of an accepted and signed offer to each person signing the document and to each brokerage firm involved in the transaction.

REQUIRED DISCLOSURES

If a broker with an existing brokerage relationship enters into a new brokerage relationship with the customer or client, the broker must timely disclose the existing and the new brokerage relationship to all parties involved in the transaction.

AGREEMENT REQUIREMENTS

An exclusive brokerage agreement must

- be in writing,
- set forth its terms completely, and
- have a definite expiration date.

The licensee must provide each person signing a brokerage agreement with a copy of the agreement.

A broker, when securing a brokerage engagement, must include the broker's fee and notify the client of the property's gross price, including the fee.

See § 44-7-21 for provisions related to brokerage relationships with landlords and tenants.

All brokerage engagements must advise the prospective client

- of the agency types available through the broker;
- of any brokerage relationships held with other parties which would conflict with the known prospective client's interests, excluding the fact that the broker may be representing other sellers and landlords in selling or leasing property or that the broker may be representing other buyers and tenants in buying or leasing other property;
- as to the broker's compensation and whether the broker will share the compensation with other brokers who may represent other parties to the transaction; and
- of the broker's obligations to keep information confidential.

RESTRICTIONS

Brokers may not accept net brokerage engagements.

A licensee may be sanctioned for obtaining a brokerage agreement from any owner, purchaser, or tenant while knowing or having reason to believe that the other broker has an exclusive brokerage agreement with that person, unless the licensee has that broker's written permission, except that a licensee may present a proposal or bid for community association management if requested to do so in writing.

Statutory section 44-7-21 amended 1999; §§ 10-6A-4 and 10-6A-10 amended 2000; § 43-40-25 amended 2016. Regulation 520-1-.10 amended 2012; r. 520-1-.06 amended 2003.

Ga. Code Ann. §§ 10-6A-4, -10; 43-40-25(b)(26), (30); 44-7-21 (LexisNexis 2019); Ga. Comp. R. & Regs. r. 520-1-.10, -.06 (2019)

Georgia, General Applicability of Provisions

The provisions of chapter 10-6A were “enacted to govern the relationships between sellers, landlords, buyers, tenants, and real estate brokers and their affiliated licensees to the extent not governed by specific written agreements between and among the parties.”

Section amended 2000.

Ga. Code Ann. § 10-6A-2 (LexisNexis 2019)

Georgia, Other Relevant Provisions

SELF-DEALING

The commission may discipline a real estate licensee if the licensee acts in the dual capacity of agent and undisclosed principal in a transaction.

A licensee may not buy or lease an interest in property listed with the licensee or the licensee's firm, unless the licensee clearly discloses his or her position as a buyer to the seller or as a tenant to the landlord and inserts such a clause in the contract. Also, a licensee may not convey property owned by the licensee to any person, unless the licensee clearly discloses his or her position to the buyer or tenant and inserts such a clause in the contract.

MISREPRESENTATIONS

A broker may not knowingly give a prospective buyer or seller false information, except a broker is not liable for providing false information to the party if the broker did not know the information was false and discloses to the party the information's source. Similarly, a transaction broker may not knowingly give any party false information, except that he or she is not liable for providing false information if the transaction broker did not know that the information was false and discloses to the party the source of the information.

Statutory sections 10-6A-5, 10-6A-6, 10-6A-7, 10-6A-8 amended 2000; § 10-6A-14 amended 2017; § 43-40-25 amended 2016. Regulation amended 2003.

Ga. Code Ann. §§ 43-40-25(b)(9); 10-6A-5, -6, -7, -8, -14 (LexisNexis 2019); Ga. Comp. R. & Regs. r. 520-1-.06(4)(a) (2019)

Georgia, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's broker must

- perform the terms of the brokerage engagement with the buyer;
- promote the buyer's interests;
- seek a property at a price and terms acceptable to the buyer, provided that the broker is not obligated to seek other properties for the buyer if the buyer is party to a purchase contract, unless the brokerage engagement so provides;
- timely present all offers to and from the buyer, even if the buyer is party to a purchase contract;
- disclose to the buyer known adverse material facts concerning the transaction;
- advise the buyer to obtain expert advice as to material matters beyond the broker's expertise;
- timely account for all money and property received;
- exercise ordinary skill and care;
- comply with all applicable laws; and
- keep confidential all information received during the course of the engagement that is made confidential by the buyer's request unless the buyer permits disclosure or disclosure is required by law.

A buyer's broker may assist the seller by performing ministerial acts, and performing ministerial acts does not violate the broker's brokerage engagement with the buyer. Also, a buyer's broker does not breach any duty by showing properties in which the buyer is interested to other prospective buyers.

See § 10-6A-8 for provisions specifically applicable to a broker engaged by a tenant.

REQUIRED DISCLOSURES

A buyer's broker must timely disclose to a prospective seller with whom the broker is working as a customer and who is selling property which will be financed either by a loan assumption or by the seller's financing,

- all known material adverse facts concerning the buyer's financial ability to perform the terms of the sale; and,
- in the case of a residential transaction, the buyer's intent to occupy the property as a principal residence.

Sections amended 2000.

Ga. Code Ann. §§ 10-6A-7, -8 (LexisNexis 2019)

Georgia, Relationship with Sellers

SELLER'S AGENT'S DUTIES

The commission may discipline a licensee who

- offers real estate for sale or lease without the knowledge and consent of the owner or the owner's agent or on terms other than those the owner authorized; or
- negotiates a sale, exchange, or lease of real estate directly with an owner, lessor, purchaser or tenant, if the licensee knows that the owner or lessor has a written outstanding contract granting an exclusive agency, an exclusive right to sell to another broker, or that a purchaser or tenant has a brokerage agreement with another broker.

A seller's broker must

- perform the terms of the brokerage engagement;
- promote the seller's interests;
- seek a sale at the price and terms stated in the brokerage engagement or acceptable to the seller, except that the broker is not obligated to seek additional offers to purchase if the property is subject to a sale contract, unless the brokerage engagement so provides;
- timely present all offers to and from the seller, even if the property is subject to a sale contract;
- disclose to the seller known material facts concerning the transaction;
- advise the seller to obtain expert advice as to material matters beyond the broker's expertise;
- timely account for all money and property received;
- exercise reasonable skill and care;

- comply with all applicable laws; and
- keep confidential all information that a seller makes confidential by express request unless the seller permits disclosure or disclosure is required by law, except that disclosures between a broker and any of the broker's affiliated licensees assisting the broker do not breach the broker's confidentiality duty.

A seller's broker may assist the buyer by performing ministerial acts, and performing ministerial acts does not violate the broker's brokerage engagement with the seller. Also, a seller's broker may show alternative properties to prospective buyers.

See § 10-6A-6 for provisions specifically applicable to a broker engaged by a landlord.

INSPECTION DUTY

A broker has no duty to discover adverse material facts pertaining to the property's physical condition or the neighborhood's adverse conditions.

REQUIRED DISCLOSURES

A seller's broker must timely disclose to all parties with whom the broker is working

- all adverse material facts pertaining to the property's physical condition, that the broker knows and that the buyer could not discover in a reasonably diligent inspection; and
- all known material facts pertaining to adverse physical conditions in the immediate neighborhood.

AGREEMENT REQUIREMENTS

If a licensee offers to purchase property as a condition of obtaining a brokerage engagement, the licensee must enter into a written purchase contract that expresses all terms and conditions of the licensee's purchase before entering into the proposed brokerage engagement.

Sections 10-6A-5 and 10-6A-6 amended 2000; § 43-40-25 amended 2016.

Ga. Code Ann. §§ 43-40-25(b)(12), (14); 10-6A-5, -6 (LexisNexis 2019)

Georgia, Term of Relationship

The commission may discipline a licensee if the licensee fails to include a fixed expiration date in any written listing agreement or exclusive brokerage engagement.

The agency relationships set forth in §§ 10-6A-4 through 10-6A-8, 10-6A-12 and 10-6A-13 begin when the client engages the broker and continue until

- the engagement is performed; or
- the earlier of the expiration date agreed upon by the parties in the engagement, the authorized termination of the relationship, or, if no expiration is provided and no termination has occurred, one year after the beginning of the engagement.

Except as otherwise agreed in writing, a broker owes no further duty to the client after termination, withdrawal, expiration, or completion except

- to account for all money and property received; and
- to keep confidential all information received during the course of the engagement that the client made confidential, unless the client permits the disclosure, disclosure is required by law, or a source other than the broker makes the information public.

Section 10-6A-9 amended 2000; § 43-40-25 amended 2016.

Ga. Code Ann. §§ 10-6A-9; 43-40-25(b)(18) (LexisNexis 2019)

Georgia, Transaction Brokers

A transaction broker may provide assistance to buyers, sellers, tenants, and landlords by performing ministerial acts, which include

- identifying property for sale, lease, or exchange;
- providing statistics and information on property;
- providing pre-printed real estate forms;
- acting as a scribe in preparing real estate forms;
- locating “architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys, and other professionals”; and
- identifying “schools, shopping facilities, places of worship, and other similar facilities.”

TRANSACTION AGENT’S DUTIES

A transaction broker must

- timely present all offers to and from the parties;
- timely account for all money and property received;

- timely disclose all known adverse material facts pertaining to the property's or the neighborhood's physical condition.

Section amended 2017.

Ga. Code Ann. § 10-6A-14 (LexisNexis 2019)

Guam

Guam, Definitions

Broker—an individual, other than a salesman who, for compensation and for another,

- sells, exchanges, purchases, rents or leases real estate;
- offers to sell, exchange, purchase, rent or lease real estate;
- negotiates, offers, attempts or agrees to negotiate a real estate sale, exchange, purchase rental or lease;
- lists, offers, attempts or agrees to list real estate;
- auctions real estate;
- deals in real estate options;
- collects rent for the use of real estate;
- advertises or holds himself out as being engaged in the real estate business;

- procures prospects;
- assists or directs real estate negotiations;
- charges an advance fee to promote a real estate sale;
- assists or directs in the procurement of mortgage financing, while not acting as a licensed mortgagee; or
- performs any of the foregoing acts as an employee of a real estate owner for compensation.

Real estate salesman—a person who, for compensation, is employed by a licensed broker

- to sell, offer for sale, list, buy, offer to buy, or negotiate the purchase, sale or exchange of real estate;
- to negotiate the purchase, sale or exchange of real estate;
- to solicit borrowers or lenders or to negotiate a real estate loan;
- to lease or negotiate the sale, purchase or exchange of leases;
- to offer to lease or rent real estate; or
- to assist or offer to assist another in filing an application for the purchase or lease of lands owned by the Territory or the federal government.

Statutory section 104102 amended in 1975; § 104103 enacted 1971.

[Guam Code Ann. tit. 21, §§ 104102, 104103 \(2019\)](#)

Guam, Designated Agents

No relevant provisions were located.

Guam, Dual Agents

A licensee may be disciplined for acting for more than one party in a transaction without all parties' knowledge and consent.

Statutory section enacted 1971.

[Guam Code Ann. tit. 21, § 104302 \(2019\)](#)

Guam, General Agency Relationship Requirements

AGREEMENT REQUIREMENTS

A licensee may be disciplined for claiming, demanding or receiving compensation under any exclusive agreement authorizing or employing a licensee to sell, buy or exchange real estate for compensation if the agreement does not contain "a definite, specified date of final and complete termination."

REQUIRED DISCLOSURES

When a licensee prepares an agreement authorizing the licensee to perform any act for which he is required to hold a license, or when the licensee secures the signature of any person to a contract pertaining to his services or transactions, he must deliver a copy of the agreement to the person signing it at the time of signature.

Statutory sections enacted 1971.

[Guam Code Ann. tit. 21, §§ 104116, 104302 \(2019\)](#)

Guam, General Applicability of Provisions

No relevant provisions were located.

Guam, Other Relevant Provisions

SELF-DEALING

A licensee may be disciplined for using any provision permitting the licensee the option to purchase in an agreement authorizing the licensee to sell, buy or exchange real estate for compensation, unless the licensee before or at the time he exercises the option

- reveals in writing to the employer the full amount of the licensee's profit; and
- obtains the employer's written consent approving the profit amount.

MISREPRESENTATIONS

A licensee may be disciplined for "making any substantial misrepresentation."

Statutory section enacted 1971.

[Guam Code Ann. tit. 21, § 104302 \(2019\)](#)

Guam, Relationship with Buyers

No relevant provisions were located.

Guam, Relationship with Sellers

No relevant provisions were located.

Guam, Term of Relationship

No relevant provisions were located.

Guam, Transaction Brokers

No relevant provisions were located.

Hawaii

Hawaii, Definitions

Buyer—includes a “vendee, lessee, party to an exchange, or grantee of an option.”

Buyer's agent—a real estate broker who acts as the buyer’s agent.

Contract between the buyer and seller—includes a purchase contract, an option, an offer to purchase, a sales contract, an offer to lease, or a lease.

Distressed property—residential real property that:

- is in or at risk of foreclosure because payment of a loan secured by the property is more than 60 days delinquent;
- had "a lien or encumbrance charged against it because of nonpayment of any taxes, lease assessments, association fees, or maintenance fees" or is at risk of having such a lien or encumbrance charged against it because payment of any of those amounts is more than 90 days delinquent;
- secures a loan for which a default notice has been given; or
- secures a loan that has been accelerated; or

- is the subject of any solicitation, representation, offer, agreement, promise, or contract to perform any mortgage assistance relief service.

Listing brokerage firm—the brokerage firm that obtains a real estate listing for “sale, lease, exchange (residential, time share, industrial, or commercial) or for an interest in a residential cooperative housing corporation.”

Real estate—includes land, improvements, leaseholds, and all other real property interests. It is not material that a transaction also involves property other than real estate.

Real estate broker—a person who, for consideration,

- “sells or offers to sell, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate”;
- lists, solicits, or “leases or offers to lease, or rents or offers to rent, or manages or offers to manage” real estate for others; or
- “secures, receives, takes, or accepts, and sells or offers to sell” an option on real estate.

Seller—includes “a vendor, lessor, party to an exchange, or grantor of an option.”

Selling brokerage firm—a real estate brokerage firm that cooperates with a listing broker and finds and obtains a buyer.

Subagent—a “brokerage firm or salesperson to whom an agent delegates agency powers.”

Transaction—a “sale, lease, rent, or exchange of real estate (residential, time share, industrial, or commercial) transaction or a sale or exchange of, or option involving, an interest in a residential cooperative housing corporation”, but excluding leases one year or shorter in duration.

Statutory section 467-1 amended 2017; § 480E-2 amended 2016. Regulation amended 2016.

[Haw. Rev. Stat. Ann. §§ 467-1, 480E-2 \(2019\); Haw. Admin. R. § 16-99-3.1\(a\) \(2019\)](#)

Hawaii, Designated Agents

No provisions specifically applicable to designated agents were located.

Hawaii, Dual Agents

A licensee may not be an agent for both the buyer and the seller in a transaction without obtaining both parties' written consent.

Furthermore, the commission may discipline a licensee who, acting on behalf of a real estate seller or purchaser, acts in a manner that prohibits a prospective purchaser or seller from being able to retain a licensee's services.

REQUIRED DISCLOSURES

The required written consent must

- state that the licensee fully disclosed the type of representation the licensee will provide, and
- briefly describe the type of representation the licensee will provide to the buyer and the seller.

A general statement that the licensee represents both the buyer and seller is not sufficient.

Statutory section 467-14 amended 2017. Regulation amended 2016.

[Haw. Rev. Stat. Ann. § 467-14\(4\), \(22\) \(2018\); Haw. Admin. R. § 16-99-3.1\(g\) \(2019\)](#)

Hawaii, General Agency Relationship Requirements

DUTIES

A licensee must

- protect the public against “fraud, misrepresentation, or unethical practices”;
- not be a party to naming false consideration in a document, unless it is obviously nominal;
- recommend a title examination, survey, or legal counsel if either party’s interests so requires;
- segregate funds held in trust; and
- ensure that financial obligations and commitments are in writing, express the parties’ agreements, and set forth essential terms and conditions, and that all parties receive copies.

REQUIRED DISCLOSURES

A licensee working with a seller in a “For Sale By Owner” situation must disclose who the licensee represents and who will pay his commission. Before preparing a contract between a buyer and seller, a licensee must make the required disclosures to both parties, either in writing or orally. If there is no listing broker, a licensee providing services to the buyer must disclose to the buyer which party the licensee represents, and a licensee providing services to the seller must disclose to the seller which party the licensee represents. The disclosure must be confirmed in writing in a separate paragraph titled "AGENCY DISCLOSURE" in the contract between the buyer and the seller, and must be in no less than ten-point bold print. Language approved by the commission is set forth in the regulations.

AGREEMENT REQUIREMENTS

A licensee must deliver a copy of any representation agreement or real estate contract to the party or parties signing it, at the time the signatures are obtained.

Statutory section 467-13 amended 1985; § 467-14 amended 2017. Regulations amended 2016.

[Haw. Rev. Stat. Ann. §§ 467-13, -14\(12\) \(2018\); Haw. Admin. R. §§ 16-99-3; -3.1\(c\)\(3\), \(d\)\(2\), \(e\), \(f\) \(2019\)](#)

Hawaii, General Applicability of Provisions

No relevant provisions were located.

Hawaii, Other Relevant Provisions

SELF-DEALING

A licensee may not “acquire, rent, lease, or exchange an interest in or buy, rent, lease, or exchange for one's self, any member of the licensee's immediate family or brokerage firm, or any entity in which the licensee has any ownership interest, property listed with the licensee, licensee's brokerage firm, or listed with any other brokerage firm or licensee without making the true position known in writing to the listing owner or property owner.” When offering property that a licensee owns or has an interest in, “the licensee must fully inform the principal broker of the licensee's intention to sell, lease, exchange, or rent, and of the licensee's interest in the property.” The licensee must reveal the interest to the purchaser, lessee, or tenant in writing before accepting any offer.

The commission may discipline a licensee who acquires an ownership interest

- in distressed property that is listed with the licensee; or
- within 365 days after the licensee's listing agreement for distressed property expired or is terminated.

DISCLOSURE UPDATES

If a change makes a prior disclosure incomplete, misleading, or inaccurate, the licensee must promptly make a revised written disclosure if the prior disclosure was in writing, or a revised oral disclosure if the prior

disclosure was made orally. A revised written disclosure must include the date and be acknowledged by the client.

Statutory section amended 2017. Regulations amended 2016.

[Haw. Rev. Stat. § 467-14 \(2018\); Haw. Admin. R. §§ 16-99-3\(g\), -3.1\(i\) \(2019\)](#)

Hawaii, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A licensee must immediately transmit all written offers to the listing broker with a written, unexpired exclusive listing contract on the property. The listing broker must immediately transmit the offer to the seller. If more than one offer is made before the owner has accepted an offer, any other offer presented to the broker must be immediately transmitted to the owner.

REQUIRED DISCLOSURES

Before preparing a contract between a buyer and seller, a licensee must disclose to the buyer which party the licensee represents in the transaction. A buyer's licensee must disclose, orally or in writing, his agency relationship to the seller or any listing brokerage firm before initiating negotiations. The licensee must also disclose whether the licensee is, or intends to be, the buyer, before initiating negotiations.

Regulations amended 2016.

[Haw. Admin. R. §§ 16-99-3\(j\), -3.1\(c\)\(1\), \(h\) \(2019\)](#)

Hawaii, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A brokerage firm may not submit or advertise property without written authorization or at any offering the price other than that agreed upon with the owner.

REQUIRED DISCLOSURES

At the time a listing firm obtains a listing, it must disclose whether the seller authorizes

- the listing firm to appoint seller's subagents; or
- the listing firm to share commissions with seller's subagents or buyer's agents.

The disclosure must

- be in writing,
- dated, and
- signed by the seller and the listing brokerage firm.

Before preparing a contract between a buyer and seller, the licensee must make the required disclosures to the buyer, in writing or orally. If the licensee, cooperating with a listing brokerage firm, has located the buyer in the transaction, the licensee must disclose which party the licensee represents. Also, before presenting a contract between the buyer and the seller to the seller, the licensee must disclose to the seller, in writing, which party the selling brokerage firm represents.

Regulations amended 2016.

[Haw. Admin. R. §§ 16-99-3\(i\); -3.1\(b\), \(c\)\(2\), \(d\)\(1\) \(2019\)](#)

Hawaii, Term of Relationship

An exclusive listing must state a definite termination date.

Regulation amended 2016.

[Haw. Admin. R. § 16-99-3\(t\) \(2019\)](#)

Hawaii, Transaction Brokers

No provisions specifically applicable to transaction brokers were located.

Idaho

Idaho, Definitions

Adverse material fact—a fact that would reasonably and significantly affect a property's desirability or value or that establishes a reasonable belief that a party is not able or does not intend to complete his obligations under a real estate contract.

Agency representation—the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties set forth in § 54-2087 apply.

Assigned agent—in the case of a brokerage representing more than one party to a transaction as a limited dual agent, the sales associate assigned by the brokerage to act on behalf of one client and to represent solely that client.

Broker price opinion—a written opinion of the "estimated price for identified real property prepared or rendered by an actively licensed broker or associate broker, for a purpose other than a prospective listing or sale."

Brokerage—a "licensed designated broker, the licensed real estate business represented by that broker and its associated licensees."

Brokerage representation agreement—"a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction."

Client—a buyer or seller, or a prospective buyer or seller, who has entered into an express written contract with a brokerage "for agency representation in a regulated real estate transaction."

Confidential client information—information from or about a client that

- is not a public record;
- the client has not disclosed or authorized to be disclosed to third parties;
- if disclosed, would be detrimental to the client; and
- that the client would not be personally obligated to disclose to another party.

Information generally disseminated in the marketplace and the "sold" price of real property are not confidential client information.

Customer—a buyer or seller, or prospective buyer or seller, who is not represented in a regulated real estate transaction.

Customer services agreement or **compensation agreement**—an "agreement between a real estate brokerage and a customer for the provision of any real estate services for which the brokerage has the right to be compensated by the customer."

Designated broker—a broker designated by the brokerage company to be responsible for supervising the brokerage company and the activities of any associated licensees.

Licensee—a person who is licensed to engage in the business or act as a real estate broker, associate broker or salesperson.

Limited broker—a broker who is individually qualified to do business in Idaho, "but who may not have associate brokers or salespersons licensed" with him.

Limited dual agent—a brokerage that is representing both a buyer and a seller in a transaction.

Ministerial acts—“reasonably necessary and customary acts typically performed by real estate licensees in assisting a transaction to its closing or conclusion.”

Nonagent—a brokerage and its licensees working with or assisting a party as a customer, so that the duties provided in § 54-2086 apply.

Person—includes “an individual, or any legal business entity.”

Real estate broker—includes

- a person other than a salesperson, who, while acting for another for compensation, “sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein”;
- an actively licensed broker acting on the broker's own behalf;
- a person who represents to the public that he is engaged in the above activities;
- a person who engages in or directs the procuring of prospects or the negotiating or closing of a transaction that results in any of the above acts; or
- a dealer in options.

Regulated real estate transaction—those real estate transactions for which a license is required.

Responsible broker—a designated broker in a transaction who is responsible for the accounting and transaction files.

Representation agreement or contract for representation—a "written agreement between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction," which can only be made in writing, not orally or by assumption or implication.

Section 54-2083 amended 2008; § 54-2004 amended 2017.

[Idaho Code §§ 54-2004, -2083 \(2019\)](#)

Idaho, Designated Agents

No provisions specifically address designated agents. However, a brokerage acting as a limited dual agent may, at its option and with the other clients' express written consent, assign a separate sales associate to each client to represent solely that client. Whenever a brokerage acting as a limited dual agent assigns separate sales associates to act on behalf of separate clients, the designated broker remains a limited dual agent of each client with the following duties:

- to supervise the assigned agents;
- to refrain from advocating on behalf of one client over another; and
- to refrain from disclosing or using any client's confidential information without permission.

Section amended 2004.

[Idaho Code § 54-2088 \(2019\)](#)

Idaho, Dual Agents

A brokerage may represent both the buyer and the seller in a single transaction only as a limited dual agent and only with the express written consent of all clients involved in the transaction. A brokerage acting as a limited dual agent may, at its option and with the other clients' express written consent, assign a separate sales associate to each client to represent solely that client. The designated broker may not act as an assigned agent of the brokerage.

DUAL AGENT'S DUTIES

All duties and obligations owed to a client under § 54-2087 apply to limited dual agency relationships “to the extent they do not unreasonably conflict with duties and obligations owed to the other client,” except that the agent may not disclose certain confidential information.

A limited dual agent does not have a duty of undivided loyalty to either party.

CONFIDENTIALITY OBLIGATIONS

A dual agent may not disclose the following without the client's express written consent:

- that a buyer is willing to pay more than the listing price;
- that a seller is willing to accept less than the listing price;
- the parties' motivating factors; and
- that a party will agree to a price or financing terms other than those offered.

REQUIRED DISCLOSURES

A licensee may not charge or accept compensation from more than one party to a transaction, without first disclosing the broker's intent to all parties in writing.

AGREEMENT REQUIREMENTS

The written consent to limited dual agency must contain

- the signatures of all clients involved in the transaction; and
- the language set forth in § 54-2088.

Receipt of the agency disclosure brochure required by § 54-2085 and the signed consent to dual representation agreeing to limited dual agency representation are sufficient informed legal consent to dual representation. A consent to possible dual representation in the future is also effective and informed legal consent to dual representation.

Section 54-2088 amended 2004; § 54-2054 amended 2015.

[Idaho Code §§ 54-2054\(7\), -2088 \(2019\)](#)

Idaho, General Agency Relationship Requirements

A designated broker must adopt and maintain in each office a written policy that identifies and describes the representation types available to that brokerage and its associated licensees. Idaho recognizes the following types of brokerage relationships:

- nonagency;
- agency representation;
- limited dual agency representation; and
- limited dual agency with assigned agents.

DUTIES

A licensee owes the following duties to a client:

- to perform the terms of the written agreement;
- to exercise reasonable skill and care;
- to be available "to receive and timely present all written offers and counteroffers";
- to promote the client's best interests in good faith, honesty and fair dealing;
- to disclose to the client all adverse material facts that the licensee knows or reasonably should have known;
- to seek a buyer or property at a price and under terms and conditions acceptable to the party;
- to assist in negotiations;
- to account for money or property received; and
- to maintain the confidentiality of specific client information.

If a buyer or seller is not represented by a brokerage, the party remains a customer, and the brokerage and its licensees are nonagents that owe the following legal duties:

- to perform ministerial acts to assist the buyer or seller in the sale or purchase;
- to perform with honesty, good faith, and reasonable skill and care;

- to account for money or property received; and
- to disclose to the buyer and seller all adverse material facts that the licensee knows or reasonably should have known.

If a customer has entered into a compensation agreement or a customer services agreement with a brokerage, the brokerage must be available to receive and timely present all written offers and counteroffers.

The duties set forth above for both customers and clients are mandatory and may not be waived. However, nothing prohibits a brokerage from charging a separate fee or commission for each service provided to the customer in the transaction.

As of July 1, 2009,

- the above duties do *not* result in "imputed knowledge between multiple licensees of the brokerage when neither has reason to have such knowledge"; and
- a brokerage and its licensees may represent multiple buyers who wish to purchase the same real property, if the brokerage or its licensee has so advised all buyers in writing.

INSPECTION DUTY

Unless otherwise agreed in writing, a brokerage and its licensees owe no duty to a client

- to conduct an independent inspection of the property;
- to verify the accuracy or completeness of any statement or representation regarding a property; or

- to conduct an independent investigation of either party's financial ability.

A nonagent brokerage and its licensees owe no duty to a buyer customer

- to conduct an independent inspection of the property; or
- to verify the accuracy or completeness of any statement or representation made by the seller or any reliable source.

A nonagent broker and its licensees owe no duty to a seller customer

- to conduct an independent investigation of the buyer's financial condition; or
- to verify the accuracy or completeness of statements made by the buyer or any reliable source.

CONFIDENTIALITY OBLIGATIONS

A licensee who has confidential client information about a buyer or seller while associated with one broker and who later affiliates with a different broker, must maintain client confidentiality. If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage must inform the client of the broker's prior representation and that the brokerage may not disclose confidential client information obtained during the first representation.

REQUIRED DISCLOSURES

A licensee must give a prospective buyer or seller, at their first substantial business contact, the agency disclosure brochure adopted by the Idaho real estate commission. The brokerage must keep a signed and dated record of the buyer or seller's receipt of the brochure.

The agency disclosure brochure must

- list the representation types available;
- list the legal duties and obligations owed to the buyer or seller in each type of representation; and
- contain a conspicuous notice that no representation exists without a written agreement between the buyer or seller and the brokerage.

A brokerage's relationship as an agent, nonagent, limited dual agent, or limited dual agent with assigned agents must be determined and all necessary agreements executed no later than the time the parties prepare the purchase agreement. A brokerage must disclose its relationship to both parties to a transaction no later than the preparation or presentation of a purchase and sale agreement.

AGREEMENT REQUIREMENTS

A purchase and sale agreement or other document drafted in connection with a real estate transaction must contain the relationship confirmation set forth in § 54-2085.

A real estate brokerage representation agreement must be in writing, and no agency representation is assumed or created orally or by implication.

RESTRICTIONS

A representation agreement may not provide that the party signing the agreement must notify the broker of the party's intention to cancel the agreement after its expiration date, unless the agreement states that it is completely nonexclusive and contains no financial obligation due from the party signing the agreement.

A licensee may not discourage a party from seeking an attorney's advice.

A person may not interfere with the contractual relationship between a broker and a client.

Statutory sections 54-2050 and 54-2087 amended 2009; § 54-2086 amended 2007; §§ 54-2084 and 54-2085 amended 2004; § 54-2054 amended 2015. Regulation promulgated 2002; reauthorized 2019.

[Idaho Code §§ 54-2050\(3\)—\(5\), -2054, -2084, -2085, -2086, -2087 \(2019\); Idaho Admin. Code r. 33.01.01.303 \(2019\)](#)

Idaho, General Applicability of Provisions

Sections 54-2082 through 54-2097 of the Idaho Code abrogate the common law of agency, and a brokerage may enter into a written agreement with a buyer or seller that creates an agency relationship in which his duties are greater than those provided by statute. Sections 54-2082 through 54-2097 control over any conflict with any other Idaho law.

Sections amended 2000.

[Idaho Code §§ 54-2094, -2095 \(2019\)](#)

Idaho, Other Relevant Provisions

SELF-DEALING

A licensee must comply with chapter 54 when buying, selling, or otherwise acquiring or disposing of his or her own interest in real property. The licensee must:

- disclose in writing to any buyer or seller no later than the time the purchase and sale agreement is presented, that the licensee holds an active Idaho real estate license, if the licensee sells or purchases a real property interest or option; and
- conduct the transaction through the broker with whom he is licensed, whether or not the property is listed.

MISREPRESENTATIONS

A client is not liable for his broker's or his broker's licensee's wrongful act, error, omission or misrepresentation unless the client knew or reasonably should have known of the wrongful act, error, omission or misrepresentation. Similarly, a licensee or brokerage may rely upon a client's representations and is not liable for his client's wrongful act, error, omission, or misrepresentation unless the licensee or brokerage knew or should have known of the wrongful act, error, omission, or misrepresentation.

Section 54-2055 amended 2010; § 54-2093 amended 2012.

[Idaho Code §§ 54-2093, -2055 \(2019\)](#)

Idaho, Relationship with Buyers

BUYER'S AGENT'S DUTIES

When appropriate, a licensee must advise the client as follows:

- to obtain professional inspections of the property, or
- to seek appropriate professional advice.

A licensee must promptly tender to the seller every written purchase offer obtained on the real estate involved, up until closing. A licensee must also ensure that all purchase offers are in writing and contain all of the following specific terms, provisions, and statements:

- all terms and conditions of the real estate transaction, as the buyer or seller directs;
- the actual form and amount of the consideration received as earnest money;

- the responsible broker's name;
- the required "representation confirmation" statement and, if applicable, a "consent to limited dual representation";
- a provision for dividing earnest money to be retained as forfeited payment if the transaction does not close;
- all appropriate signatures and their dates; and
- the property's legal description.

AGREEMENT REQUIREMENTS

A buyer representation agreement must contain the following:

- conspicuous and definite beginning and expiration dates;
- the buyer's financial obligations;
- the manner in which the broker will be paid; and
- the appropriate signatures and their dates.

Sections 54-2050 and 54-2087 amended 2009; § 54-2051 amended 2015.

[Idaho Code §§ 54-2050\(2\); -2051 \(1\), \(4\); -2087 \(2019\)](#)

Idaho, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee, for the benefit of a seller client and upon written request, must obtain reasonable proof of a buyer's financial ability to purchase by any appropriate method suitable to the transaction or, when necessary, by advising the client to consult with an accountant, lawyer, or other professional.

Immediately upon receiving a signed and dated purchase offer and any consideration, a licensee must provide a copy of the purchase offer to purchase to the buyer as a receipt.

Upon obtaining a properly signed and dated acceptance of a purchase offer, the licensee must promptly deliver "true and legible copies" of the accepted offer to both the buyer and the seller.

A licensee must ensure that all purchase offers are in writing and contain all of the following specific terms, provisions, and statements:

- all terms and conditions of the real estate transaction, as the buyer or seller directs;
- the actual form and amount of the consideration received as earnest money;
- the responsible broker's name;
- the required "representation confirmation" statement and, if applicable, a "consent to limited dual representation";
- a provision for dividing earnest money to be retained as forfeited payment if the transaction does not close;

- all appropriate signatures and their dates; and
- the property's legal description.

AGREEMENT REQUIREMENTS

A seller representation agreement must contain

- conspicuous and definite beginning and expiration dates;
- the property's legal description, which must "sufficiently" identify the property so as to "evidence an understanding of the parties" regarding the property's location, but which need not include a legal or a metes and bounds description (a representation agreement is not invalid for lack of a legal or metes and bounds description);
- the price and terms;
- fees or commissions;
- the owner's signature; and
- the signature date.

RESTRICTIONS

A licensee may, in the ordinary course of business, give an opinion of the price of real estate for a prospective listing or sale. However, only an actively licensed broker or associate broker may

prepare and render a broker price opinion. An associate broker who prepares and renders a broker price opinion must notify the designated broker, and the associate broker may not accept a fee except through the designated broker.

Sections 54-2050 and 54-2087 amended 2009; § 54-2038 amended 2011; § 54-2051 amended 2015.

[Idaho Code §§ 54-2038\(3\), -2050\(1\), -2051\(2\)-\(4\), -2087 \(2019\)](#)

Idaho, Term of Relationship

A "brokerage's agency relationship and corresponding representation duties" pursuant to §§ 54-2082 through -2097 begin on the date indicated on the written agreement between the brokerage and the buyer/client or seller/client and ends at the earliest of

- performance or completion of the representation;
- agreement by the parties; or
- expiration of the agency agreement.

Except as otherwise agreed in writing, a brokerage owes no further duty to a client after termination of the representation except

- to account for all money and property received; and
- to maintain the confidentiality of all confidential information.

Section 54-2092 amended 2000; § 54-2091 amended 2007.

[Idaho Code §§ 54-2091, -2092 \(2019\)](#)

Idaho, Transaction Brokers

No provisions were located specifically applicable to transaction brokers.

Illinois

Illinois, Definitions

Agency—a relationship in which a broker or licensee represents a consumer, with the consumer's consent, in a real property transaction.

Broker—an individual or business entity, other than a residential leasing agent, who for another and for compensation (whether in person or through media or technology):

- “[s]ells, exchanges, purchases, rents, or leases real estate”;
- offers to “sell, exchange, purchase, rent, or lease real estate”;
- negotiates or agrees to negotiate the sale, exchange, purchase, rental, or leasing of real estate;
- lists, offers, attempts, or agrees to list real estate;
- "engages in a pattern of business of buying, selling, offering to buy or sell, marketing for sale, exchanging, or otherwise dealing in contracts, including assignable contracts for the purchase or sale of, or options on real estate or improvements thereon;"
- supervises the collection or offers, attempts, or agrees to collect rent;
- advertises as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate;
- assists or directs in procuring or referring leads or prospects;

- assists or directs in the negotiation of any transaction intended to result in the sale, exchange, lease, or rental of real estate;
- “[o]pens real estate to the public for marketing purposes”;
- sells, rents, leases, or offers for sale or lease real estate at auction; or
- prepares or provides a broker price opinion or comparative market analysis.

Brokerage agreement—a “written or oral agreement between a sponsoring broker and a consumer for licensed activities to be provided to a consumer in return for compensation or the right to receive compensation from another.”

Client—a person who is represented by a licensee.

Confidential information—information from a client that

- the client made confidential;
- deals with the client’s negotiating position;
- could materially harm the client’s negotiating position, unless the client permits the disclosure, disclosure is required by law, or the information becomes public from a source other than the licensee.

Consumer—a “person or entity seeking or receiving licensed activities.”

Customer—a “consumer who is not being represented by the licensee.”

Designated agency—a contractual relationship “between a sponsoring broker and a client pursuant to which one or more licensees associated with the broker are designated as agent of the client.”

Dual agency—an agency relationship in which a licensee represents both the buyer and seller or both the landlord and tenant in the same transaction.

Exclusive brokerage agreement—a written brokerage agreement that provides that the sponsoring broker has the sole right to act through sponsored licensees as the client's exclusive agent or representative.

Licensee—a person who holds a valid, unexpired license as a managing broker, broker, or leasing agent.

Person—includes “individuals, entities, corporations, limited liability companies, registered limited liability partnerships, and partnerships, foreign or domestic, except that when the context otherwise requires, the term may refer to a single individual or other described entity.” Effective January 1, 2019, “person” includes “individuals, entities, corporations, limited liability companies, registered limited liability partnerships, foreign and domestic partnerships, and other business entities, except that when the context otherwise requires, the term may refer to a single individual or other described entity.”

Real estate—includes leaseholds and other land interests or estates, and whether the real estate is located in Illinois. “Real estate” no longer includes timeshares or similar vacation interests.

Statutory section amended 2019.

[225 Ill. Comp. Stat. 454/1-10](#) (as amended by [2019 Ill. Pub. Law 101-0357](#))

Illinois, Designated Agents

A sponsoring broker must specifically designate an affiliated licensee to act as that person’s agent to the exclusion of all other licensees employed by or affiliated with the sponsoring broker. A sponsoring broker entering into an agreement under the provisions of 225 Ill. Comp. Stat. Ann. 454/15-50 is not deemed to be acting for more than one party in a transaction if the designated agents are not representing more than one party in a transaction.

CONFIDENTIALITY OBLIGATIONS

A sponsoring broker designating affiliated licensees to act as clients' agents must "take ordinary and necessary care to protect confidential information disclosed by a client to his or her designated agent." A designated agent may disclose to his sponsoring broker confidential information for the purpose of seeking advice or assistance for the client's benefit in a possible transaction. A sponsoring broker may not disclose confidential information unless otherwise required by law or permitted by the client.

Section amended 2019.

[225 Ill. Comp. Stat. 454/15-50](#) (as amended by [2019 Ill. Pub. Law 101-0357](#))

Illinois, Dual Agents

"An individual licensee may act as a dual agent or a sponsoring broker may permit one or more of its sponsored licensees to act as dual agents in the same transaction only with the informed written consent of all clients," but "[a] licensee shall not serve as a dual agent in any transaction when the licensee, or an entity in which the licensee has or will have any ownership interest, is a party to the transaction."

DUAL AGENT'S DUTIES

The required disclosure and consent form provides the following duties:

- to treat all clients honestly;
- to provide information about the property to the buyer or tenant;
- to disclose known latent material defects;
- to disclose a buyer's or tenant's financial qualifications to a seller or landlord;

- to explain real estate terms;
- to help the buyer or tenant arrange for inspections;
- to explain closing costs and procedures;
- to help a buyer compare financing alternatives; and
- to provide information about comparable properties that have sold.

A licensee may withdraw from representing a client who has not consented to a disclosed dual agency, and the withdrawal does not limit the licensee's ability to continue to represent the other client in the transaction or to represent the client in other transactions. When a withdrawal occurs, the licensee may not receive a fee for referring a client to another licensee unless the fee is disclosed in writing to both the withdrawing client and the client that the licensee continues to represent.

CONFIDENTIALITY OBLIGATIONS

The required disclosure form provides that a licensee may not disclose

- confidential information that a licensee may know about a client, without that client's permission;
- the price or terms the seller or landlord will take other than the listing price, without seller's or landlord's permission;
- the price or terms the buyer or tenant is willing to pay, without the buyer's or tenant's permission; or
- a recommended or suggested price or terms.

Each client and the licensee possess only actual knowledge in a dual agency situation, and no knowledge is imputed among or between clients, brokers, or their affiliated licensees.

REQUIRED DISCLOSURES

The licensee must present the dual agency disclosure form to the client at the time the brokerage agreement is entered into, and the client may sign the agreement at that time or at any time before the licensee acts as a dual agent.

AGREEMENT REQUIREMENTS

A licensee acting as a dual agent must obtain a written confirmation or their clients' prior consent to dual agency when the clients are executing any offer or purchase contract. The confirmation may be included in another document, in which case the client must both sign the document and initial the confirmation.

The confirmation must state, at a minimum, the following: "The undersigned confirm that they have previously consented to (insert name(s)), ("Licensee"), acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Licensee acting as a Dual Agent in regard to the transaction referred to in this document."

Statutory section amended 2019. Regulation amended 2016.

[225 Ill. Comp. Stat. 454/15-45](#) (as amended by [2019 Ill. Pub. Law 101-0357](#)); [Ill. Admin. Code tit. 68, § 1450.820 \(2019\)](#)

Illinois, General Agency Relationship Requirements

Licensees are considered to be "representing the consumer with whom they are working as a designated agent unless there is a written agreement between the sponsoring broker and the consumer providing there is a different relationship."

DUTIES

A licensee representing a client must:

- perform the brokerage agreement's terms;
- promote the client's best interests;
- seek a transaction at the price and terms that are stated in the brokerage agreement or are otherwise acceptable to the client;
- timely present all offers to and from the client, unless waived;
- disclose to the client known material facts, unless confidential;
- timely account for all money and property received;
- obey the client's specific directions that are not contrary to applicable laws;
- promote the client's best interests;
- exercise reasonable skill and care in performing brokerage services;
- keep confidential the client's confidential information; and
- comply with all applicable laws.

A licensee does not breach his duty to the client by showing alternative properties to prospective buyers or tenants, by showing properties in which the client is interested to other prospective buyers or tenants, or

making or preparing contemporaneous offers or contracts to purchase or lease the same property. However, a licensee must:

- provide written disclosure to all clients for whom the licensee is preparing or making contemporaneous offers or contracts to purchase or lease the same property; and
- refer to another designated agent any client that requests such referral.

A licensee must treat all customers honestly and may not negligently or knowingly give a customer false information.

CONFIDENTIALITY OBLIGATIONS

Licensees receiving confidential information must safeguard the information from unauthorized disclosure.

REQUIRED DISCLOSURES

A licensee must advise a consumer in writing of the following "no later than beginning to work as a designated agent on behalf of the consumer":

- that a designated agency relationship exists, unless a written agreement provides for a different agency relationship; and
- the designated agent's name, in writing.

This written disclosure may be included in a brokerage agreement or be a separate document.

A consumer's licensee must discuss with the consumer the sponsoring broker's compensation and policy regarding cooperating with brokers who represent other parties in a transaction.

A licensee must disclose to a customer in writing that the licensee is not acting as the customer's agent "at a time intended to prevent disclosure of confidential information," but in no event later than preparing an offer.

AGREEMENT REQUIREMENTS

An exclusive brokerage agreement must

- be in writing;
- indicate the minimum services that must be provided, as set forth in 454/15-75 of the Real Estate License Act of 2000;
- provide that no amendment or alteration is valid unless in writing and signed by the parties;
- state that it is illegal for the owner or broker to refuse to display or sell to any person because of that person's membership in a protected class; and
- for residential property of four units or less and if the agreement provides for a protection period after termination date, provide that no commission is owing if a written brokerage agreement is entered into with another licensed broker during the protection period.

Failure to include either language regarding minimum services or language waiving those minimum services will "result in the brokerage being considered to be non-exclusive."

All exclusive brokerage agreements must specify that the sponsoring broker, through one or more sponsored licensees, must provide a minimum of the following services:

- accept delivery of and present offer and counteroffers to the client;

- assist the client in "developing, communicating, negotiating, and presenting offers, counteroffers and notices that relate to the offers and counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived"; and
- answer the client's questions regarding any offers, counteroffers, notices and contingencies.

RESTRICTIONS

A written brokerage agreement may not contain a clause automatically extending the contract's term. A brokerage agreement that contains an automatic extension is void.

A broker may discuss a possible future brokerage agreement with a consumer with an exclusive listing contract with another broker only if the consumer initiates the contact, or the following occurs:

- "the licensee makes a request, in writing and mailed return receipt requested, of the broker or sponsoring broker who has the listing agreement for the type and expiration date of the brokerage agreement between the consumer and the broker or sponsoring broker who has the listing agreement;"
- the licensee who has the listing agreement does not provide a written response, mailed return receipt requested, within 10 calendar days;
- the information from the broker or sponsoring broker who has the listing agreement is not received within 14 calendar days; and
- the requested information cannot be obtained by the licensee from another source of shared broker information.

A licensee may not use real estate contract forms to change previously agreed commission payment terms.

Statutory sections all amended 2019. Regulation 1450.770 amended 2016; history of regulation 1450.800 unknown.

[225 Ill. Comp. Stat. 454/15-10; -15\(a\), \(b\); -25\(a\), \(b\); -35; -75](#) (all sections as amended by [2019 Ill. Pub. Law 101-0357](#)); [Ill. Admin. Code tit. 68, §§ 1450.770\(a\), \(d\), \(e\), \(f\), \(h\), \(i\), \(j\); .800 \(2019\)](#)

Illinois, General Applicability of Provisions

Article 454/15 of the Real Estate License Act of 2000:

- governs the relationships between consumers and licensees "to the extent not governed by an individual written agreement between a sponsoring broker and a consumer, providing that there is a relationship other than designated agency"; and
- applies "to the exclusion of the common law concepts of principal and agent and to the fiduciary duties, which have been applied to managing brokers, brokers, and real estate brokerage services."

Statutory section amended 2019.

[225 Ill. Comp. Stat. 454/15-5\(a\)](#) (as amended by [2019 Ill. Pub. Law 101-0357](#))

Illinois, Other Relevant Provisions

SELF-DEALING

A licensee must disclose his licensee status if he:

- is "selling, leasing or seeking to purchase property as sole owner";
- is "selling or seeking to purchase property as a joint tenant or tenant by the entirety";

- holds a beneficial interest in a land trust or is a general partner in a partnership selling, leasing or buying the property;
- is an officer, director, or controlling shareholder of a corporation selling, leasing or purchasing the property;
- is a manager or controlling member of a limited liability company selling, leasing or buying the property; or
- has any direct or indirect interest in the subject real estate.

MISREPRESENTATIONS

A licensee is not liable for providing false information to a client if a customer provided the information unless the licensee knew or should have known the information was false. Similarly, a licensee is not be liable for providing false information to a customer if the information was provided by the licensee's client and the licensee did not know that the information was false.

SUBAGENCY

A broker is not a subagent of a client of another broker solely because he is a member or affiliated in a multiple listing service or other similar information source. A subagency offer may not be made through a multiple listing service or other similar information source.

Statutory sections 10-27 and 15-55 enacted 1999; §§ 15-15 and 15-25 amended 2019. Regulation amended 2016.

[225 Ill. Comp. Stat. 454/10-27; /15-15\(d\)](#) (as amended by [2019 Ill. Pub. Law 101-0357](#)), [-25\(a\)](#) (as amended by [2019 Ill. Pub. Law 101-0357](#)), [-55 \(2019\)](#); [Ill. Admin. Code tit. 68, § 1450.765 \(2019\)](#)

Illinois, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's licensee does not breach a duty to his client by "working on the basis that the licensee will receive a higher fee or compensation based on higher selling price or lease cost."

AGREEMENT REQUIREMENTS

A written buyer brokerage agreement must contain:

- the agreed compensation and time of payment;
- the duration of the agreement or the client's right to terminate the agreement annually by giving no more than 30 days prior written notice;
- the sponsoring broker's and the buyer's names;
- the parties' signatures; and
- the buyer's broker's duties.

Statutory section amended 2019. Regulation renumbered and amended 2016.

[225 Ill. Comp. Stat. 454/15-15\(c\)](#) (as amended by [2019 Ill. Pub. Law 101-0357](#)); [Ill. Admin. Code tit. 68, § 1450.770\(b\) \(2019\)](#)

Illinois, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's licensee must timely disclose to prospective buyers all latent material adverse facts pertaining to the property's physical condition that the licensee knows and that the customer could not discover by a reasonably diligent inspection.

AGREEMENT REQUIREMENTS

A written listing agreements must contain

- the list price;
- the agreed commission and time of payment;
- the duration of the agreement or the client's right to terminate the agreement annually by giving no more than 30 days prior written notice;
- the broker's and the seller's names;
- the property's address or legal description;
- the parties' signatures; and
- the listing broker's duties.

If a listing agreement provides that if the buyer defaults, the broker's full compensation will be paid out of an earnest money deposit, with the remaining earnest money paid to the seller, the provision must be in the listing agreement in text larger than that generally used in the agreement.

RESTRICTIONS

A listing agreement may not permit discrimination in the sale or rental of real estate.

Statutory section enacted 2019. Regulations amended 2016.

[225 Ill. Comp. Stat. 454/15-25](#) (as amended by [2019 Ill. Pub. Law 101-0357](#)); [Ill. Admin. Code tit. 68, §§ 1450.710, .770\(c\), \(g\) \(2019\)](#)

Illinois, Term of Relationship

Except as provided in writing, a sponsoring broker or his affiliated licensees owes no further duties to the client after termination, expiration, or completion of the brokerage agreement, except

- to account for all money and property; and
- to keep confidential information confidential.

Statutory section enacted 1999.

[225 Ill. Comp. Stat. 454/15-30 \(2019\)](#)

Illinois, Transaction Brokers

No provisions specifically applicable to transaction brokers were located.

Indiana

Indiana, Definitions

Agency relationship—a relationship in which a licensee represents a client in a real estate transaction.

Client—a person who has entered into an agency relationship with a licensee.

Customer—a person to whom a licensee provides services in the ordinary course of business, but who is not a client.

In-house agency relationship—an agency relationship involving two or more clients represented by different licensees within the same broker company.

Limited agent—a licensee who, with all parties' written and informed consent, represents both the seller and buyer or both the landlord and tenant and “whose duties and responsibilities to a client are only those set forth in” chapter 25-34.1-10.

Managing broker—“a broker whom the commission holds responsible for the actions of licensees who are affiliated with the managing broker.”

Real estate transaction—the sale or lease of a real estate interest.

Subagent—a broker engaged to perform brokerage services for a client on behalf of another broker.

Sections 25-34.1-10-5, 25-34.1-10-6, 25-34.1-10-7, and 25-34.1-10-9 amended 1999; § 25-34.1-10-0.5 enacted 1999; § 25-34.1-10-8 enacted 1994; § 25-34.1-10-6.5 amended 2015.

[Ind. Code §§ 25-34.1-10-0.5, -5, -6, -6.5, -7, -8, -9 \(2019\)](#)

Indiana, Designated Agents

No provisions were located specifically applicable to designated agents.

Indiana law includes provisions regarding in-house agency relationships, which generally provide that an individual licensee affiliated with a broker company represents only the client with which the licensee is working in an in-house agency relationship. A client represented by an affiliated individual licensee is represented only by that licensee. A managing broker does not represent any party in such transactions unless he or she has an agency relationship to represent a client personally. A licensee who personally represents both the seller and buyer or both the landlord and tenant in a transaction is a limited agent and must comply with the statutory provisions governing limited agents.

DUTIES

A licensee representing a client in an in-house agency relationship

- owes the client the duties and obligations set forth in chapter 25-34.1-10; and
- may not disclose material or confidential information to other licensees, except to the managing broker in seeking advice or assistance for the client.

CONFIDENTIALITY OBLIGATIONS

A broker company, a managing broker, and any affiliated licensee must take reasonable care to protect any material or confidential information disclosed by a client to the client's in-house agent. No knowledge is imputed among or between clients, the broker company, the managing broker, and licensees in an in-house agent situation.

Section amended 2015.

[Ind. Code § 25-34.1-10-12.5 \(2019\)](#)

Indiana, Dual Agents

Indiana identifies a licensee who represents both the seller and buyer or both the landlord and tenant as a “limited agent.” A licensee may act as a limited agent only with all parties’ written consent.

AGREEMENT REQUIREMENTS

A party is presumed to have given informed written consent if the party signs a written document at the time he entered into the relationship, which document must:

- describe the real estate transaction in which the licensee will serve as a limited agent;
- state that the licensee represents parties whose interests are different or even adverse;

- state that, without informed written consent, a limited agent may not disclose (a) any material or confidential information, except known adverse material facts concerning the property's physical condition and facts required to be disclosed by law that the parties could not reasonably discover by inspecting the property; (b) that a buyer or tenant will pay more than the offered price; (c) that a seller or landlord will accept less than the listed price; (d) a parties' motivation; or (e) other terms that would create a contractual advantage for one party;
- state that knowledge or information will not be imputed between any party and the limited agent or among licensees;
- state that a party need not consent to limited agency; and
- state that each party's consent has been given voluntarily and that the parties read and understand the disclosure.

A limited agent may disclose and provide to both parties property information, including listed and sold properties available through a multiple listing service.

Section amended 1999.

[Ind. Code § 25-34.1-10-12 \(2019\)](#)

Indiana, General Agency Relationship Requirements

A licensee has an agency relationship with and represents an individual with whom the licensee is working unless:

- a written agreement to the contrary exists; or
- the licensee is "merely assisting the individual as a customer" without compensation.

DUTIES

If a licensee does not have an agency relationship with the individual with whom the licensee is working because of a written agreement to the contrary, the licensee must perform at least the following duties under the written agreement:

- be available to receive and timely present offers and counteroffers for the purchase or lease of the individual's property (if the individual is a seller or landlord) or the property the individual seeks to purchase or lease (if the individual is a buyer or tenant);
- assist in "negotiating, completing real estate forms, communicating, and timely presenting offers, counteroffers, notices, and various addenda relating to the offers and counteroffers" until a purchase agreement or lease is signed and all contingencies are satisfied or waived; and
- timely respond to questions relating to offers, counteroffers, notices, addenda, and contingencies pertaining to the property.

If a licensee with no agency relationship because of a written agreement fails to perform the above duties and another licensee performs those duties on behalf of or at the request of a seller, landlord, buyer, or tenant, the other licensee's performance does not constitute an agency relationship.

The listed requirements do not prohibit a licensee from performing additional duties.

REQUIRED DISCLOSURES

A managing broker must have and enforce a broker company written office policy that identifies and describes the agency relationships a licensee may have with a seller, landlord, buyer, or tenant. The policy must specifically permit or reject disclosed limited agency. At the beginning of an agency relationship, the licensee must disclose in writing the broker company's written office policy before the other party discloses confidential information. The broker must advise the other party

whether he will share compensation with other broker companies that may represent other parties to the transaction whose interests are different or adverse.

Section 25-34.1-10-9.5 amended 2006; § 25-34.1-10-13 amended 2015.

[Ind. Code §§ 25-34.1-10-9.5, -13 \(2019\)](#)

Indiana, General Applicability of Provisions

The licensee's duties and obligations set forth in chapter 25-34.1-10 supersede any fiduciary duties based on common law agency principles to the extent that the common law duties are inconsistent.

Section amended 1999.

[Ind. Code § 25-34.1-10-15 \(2019\)](#)

Indiana, Other Relevant Provisions

SELF-DEALING

A broker may not buy, offer to buy, sell, or offer to sell, for the broker property that is listed with either the broker or another broker with whom the broker is associated. A broker may not acquire an interest in the property without first making the broker's true position clearly known to the owner.

A broker may not buy, offer to buy, sell, offer to sell, or receive compensation for property in which the broker has an interest, unless the broker discloses in writing:

- to all parties to the transaction, his or her interest in the real estate; and
- the fact that the broker holds a valid real estate license.

MISREPRESENTATIONS

A client is not liable for a licensee's misrepresentations, unless the client knew or should have known of the misrepresentation. A licensee is not liable for another licensee's misrepresentation, unless the licensee knew or should have known of the misrepresentation.

SUBAGENCY

A licensee may not offer subagency through a multiple listing service or agree to associate with a subagent in a transaction. Eliminating subagency is "not intended to limit the rights of a licensee to cooperate with, compensate, or otherwise associate with another licensee who is not acting on behalf of a client." However, a principal broker may participate in a referral service, provided the broker has a written agreement with his client and the cooperating broker regarding fees.

Statutory section 25-34.1-10-16 amended 1999; § 25-34.1-10-17 enacted 1999. Previously applicable regulations 1-1-37 and 1-1-39 repealed 2014; r. 8-2-5 and r. 8-2-6 adopted 2014.

[Ind. Code §§ 25-34.1-10-16, -17 \(2019\); Ind. Admin. Code tit. 876, rr. 8-2-5, -6 \(2019\)](#)

Indiana, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's licensee must

- fulfill the terms of the agency relationship;
- disclose the nature of the relationship, and redefine and disclose any changes;
- seek property with a price and terms satisfactory to the buyer or tenant, except that the licensee need not locate additional property if the buyer or tenant is under contract to buy or lease property, unless the parties agree otherwise;

- immediately present all purchase and lease offers to and from the buyer or tenant, whether or not the client is already under contract to buy or lease the property, unless the client directs otherwise;
- disclose to the buyer or tenant known adverse material facts or risks;
- advise the buyer or tenant to obtain expert advice on matters beyond the licensee's expertise;
- timely account for all money and property received;
- exercise reasonable care and skill;
- comply with all applicable laws;
- without the buyer's or tenant's written consent, not disclose that the buyer or tenant will pay more than the offered price, the buyer's or tenant's motivations, or any material or confidential information about the buyer or tenant unless disclosure is required by law or failure to disclose would constitute fraud or "dishonest dealing."

A buyer's or tenant's licensee owes no duties to the seller or landlord, except that a licensee must

- treat all prospective sellers or landlords honestly, and
- not knowingly give sellers or landlords false information.

The licensee may, without breaching any duty or obligation to the buyer or tenant,

- show properties in which the buyer or tenant is interested to other parties,

- show competing buyers or tenants the same property, or
- assist other buyers or tenants in purchasing or leasing a particular property.

A buyer's licensee may also provide a seller or landlord with "services in the ordinary course of a real estate transaction and any similar services that do not violate the terms of the agency relationship made with the buyer or tenant."

INSPECTION DUTY

A buyer's or tenant's licensee need not

- conduct an independent investigation of a buyer's or tenant's financial ability to perform, or
- verify the accuracy of any written or oral statement made by the buyer, the tenant, or a third party.

Section amended 1999.

[Ind. Code § 25-34.1-10-11 \(2019\)](#)

Indiana, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's or landlord's licensee must

- fulfill the terms of the agency relationship;

- disclose the nature of the relationship with the seller or landlord, and redefine and disclose any changes;
- seek a price and terms satisfactory to the seller or landlord, except that the licensee need not seek additional offers after the client has accepted an offer, unless the parties agree otherwise;
- immediately present all offers to and from the seller or landlord, whether or not an offer has been accepted, unless the client directs otherwise;
- disclose to the seller or landlord known adverse material facts or risks;
- advise the seller or landlord to obtain expert advice on matters beyond the licensee's expertise;
- timely account for all money and property received;
- exercise reasonable care and skill;
- comply with all applicable laws;
- without the seller's or landlord's written consent, not disclose that a seller or landlord will accept less than the listed price or make contract concessions, the seller's or landlord's motivations, or any material or confidential information about the seller or landlord unless disclosure is required by law or failure to disclose would constitute fraud or "dishonest dealing."

A seller's or landlord's licensee owes no duties to the buyer or tenant, except that the licensee must

- treat all prospective buyers or tenants honestly,
- not knowingly give buyers or tenants false information, and

- disclose to a prospective buyer or tenant known adverse material facts concerning the property's physical condition and facts that the law requires to be disclosed and that the buyer or tenant could not discover inspecting the property.

A seller's or landlord's licensee may

- show alternative properties to a prospective buyer or tenant or list competing properties without breaching any duty to the seller or landlord; and
- provide a buyer or tenant with "services in the ordinary course of a real estate transaction and any similar services that do not violate the terms of the agency relationship made with the seller or landlord."

INSPECTION DUTY

A seller's or landlord's licensee need not conduct an independent inspection of the property or verify the accuracy of any written or oral statement by the seller, the landlord, or an independent inspector.

Section amended 1999.

[Ind. Code § 25-34.1-10-10\(a\) \(2019\)](#)

Indiana, Term of Relationship

The statutory duties and obligations begin when the licensee enters into an agency relationship with a party and continues until the agency relationship terminates. If the agency relationship is not fulfilled or completed, the agency relationship ends the earlier of

- the agreed expiration date; or
- termination of the relationship by the parties.

Except as otherwise agreed, a licensee owes no duties or obligations after termination, expiration, or completion of the relationship, except

- accounting for all money and property received during the agency relationship; and
- keeping confidential all information received during the relationship that the client made confidential, unless disclosure is required by law, the client consents in writing to the disclosure, or the information becomes public from a source other than the licensee.

Section amended 1999.

[Ind. Code § 25-34.1-10-14 \(2019\)](#)

Indiana, Transaction Brokers

No relevant provisions were located.

Iowa

Iowa, Definitions

Affiliated licensee—a broker associate or salesperson who is under a broker’s supervision.

Agency—a relationship in which a real estate broker acts for or represents another by the other person's express authority in a transaction.

Appointed agent—the “affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.”

Brokerage agreement—a contract between a broker and a client that establishes the parties' relationship and contains the provisions required by § 543B.56A.

Client—a party who has “an agency agreement with a broker for brokerage services.”

Consumer—a person seeking or receiving brokerage services.

Customer—a consumer of real estate services who is not being represented by the licensee, but for whom the licensee may perform ministerial acts.

Designated broker—a licensee designated by an agency to act for the agency in conducting brokerage services.

Dual agent—a licensee who has entered into a brokerage agreement with and represents both the seller and buyer or both the landlord and tenant in the same transaction.

Listing—an agreement between a property owner and a person in which that person “holds or advertises the property to the public as being available for sale or lease.”

Listing broker—the real estate broker who obtains a listing of real estate or of an interest in a residential cooperative housing corporation.

Negotiate—to act as an intermediary between the parties to a transaction.

Seller—generally includes an owner, landlord, vendor, lessor, party to an exchange, or grantor of an option.

Selling broker—a broker who finds and obtains a buyer.

Single agent—a licensee who represents only one party in a real estate transaction.

Specific assistance—eliciting or accepting confidential information about a party's “real estate needs, motivation, or financial qualifications,” or information involving a proposed or preliminary offer, but not

including open house showings, preliminary conversations concerning price range, location, and property styles, or responding to general factual questions concerning advertised properties.

Statutory section 543B.5 amended 2013; § 543B.57 amended 2017. Regulation amended 2009.

[Iowa Code §§ 543B.5, .57\(2\) \(2019\); Iowa Admin. Code r. 193E-2.1 \(2019\)](#)

Iowa, Designated Agents

DUTIES

A designated broker may appoint an affiliated licensee to act on behalf of a client. An affiliated licensee must keep the designated broker fully informed of all activities conducted on behalf of the brokerage and must notify the designated broker of any other activities that might impact the designated broker's responsibility.

CONFIDENTIALITY OBLIGATIONS

A designated broker appointing an affiliated licensee to act as a client's agent must take "ordinary and necessary care" to protect a client's confidential information. A licensee may not disclose, except to the licensee's designated broker, information made confidential by the client's request or instructions or otherwise confidential by statute or rule, unless otherwise permitted or required to be disclosed by law.

REQUIRED DISCLOSURES

Before entering into a listing or broker agreement, a broker must notify a client in writing of the broker's appointed agent policy and those affiliated licensees that will be acting as the client's appointed agents to the exclusion of all other affiliated licensees within the brokerage. The appointed agent disclosure must state

- the appointed agent's name;

- that the appointed agent will be representing the client as the client's agent and will owe the client duties as set forth § 543B.56(1) and (2);
- that the brokerage may be representing both the seller and the buyer;
- that other affiliated licensees may be appointed if the appointed agent is not able to fulfill the agreement terms or as provided by agreement between the designated broker and the client; and
- whether the client consents to the appointment.

Without the client's written consent, the broker may not appoint an affiliated licensee to act as an appointed agent in any transaction involving a written exclusive single agent or dual agent brokerage agreement that was in effect before the appointed agent relationship. If the client does not consent to the appointed agency relationship, the broker must refer the appointed agent's client to another broker for representation.

Regulations effective 2002.

[Iowa Admin. Code r. 193E-12.6, .7 \(2019\)](#)

Iowa, Dual Agents

DUAL AGENT'S DUTIES

A dual agent generally has the duties and obligations required for a single agent representing a seller and for a single agent representing a buyer, including the following:

- to disclose to the client all known material adverse facts concerning the property;
- not to disclose to one client confidential information about the other client; and

- to preserve a seller's or a buyer's confidential information, unless disclosure is required by law or the failure to disclose such information would constitute fraud or dishonest dealing, or disclosure is authorized by express instruction.

AGREEMENT REQUIREMENTS

A licensee may not be the agent for both the buyer and the seller in the same transaction without obtaining both parties' written consent. A brokerage with a company policy that permits disclosed dual agency for in-house transactions must provide a consent agreement to the client before acting as a dual agent. If any party rejects or refuses to consent to dual agency, the licensee may not act as a dual agent. The consent agreement must be in writing and must inform prospective clients that they are not required to consent to the dual agency.

A licensee may withdraw from representing a client who has not consented to a disclosed dual agency at any time before the dual agency exists. All withdrawals must be in writing, and the licensee may continue to represent the other client in the transaction or to represent the client in transactions not involving a dual agency.

A dual agency consent agreement must

- describe the type of representation the licensee will provide each client;
- contain a statement of the licensee's duties as provided by § 543B.56(1) and (2);
- inform the clients that representing more than one party to a transaction may present a conflict of interest and that they are not required to consent to the dual agency;
- provide additional information necessary to clarify the licensee's relationship with each client;

- describe the confidential information a dual agent will not disclose to one client about the other; and
- state that the clients understand the licensee's duties and consent to the licensee's dual agency.

See Iowa Admin. Code r. 193E-12.5(3) for recommended language satisfying the required disclosure regarding conflict of interest, and rule 193E-12.5(4) for provisions relating to *potential* dual agency agreements.

Regulations effective 2002.

[Iowa Admin. Code r. 193E-12.2\(9\), .5 \(2019\)](#)

Iowa, General Agency Relationship Requirements

DUTIES

In providing services to all parties, a licensee must

- act honestly and in good faith;
- diligently exercise reasonable skill and care;
- unless excepted by statute, generally disclose to each party all known material adverse facts;
- account for all property that belongs to a party and is in the licensee's possession;
- place the client's interests ahead of any other party's interests, unless loyalty to the client violates the licensee's other duties;

- disclose to the client all material information;
- fulfill any obligation within the agency agreement's scope, unless the obligation is inconsistent with other duties; and
- disclose any financial interests the licensee or the brokerage has in any business entity to which he refers a client.

Every broker must have a written policy identifying and describing

- the types of relationships in which the broker and affiliated licensees may engage with a seller, landlord, buyer, or tenant;
- the appointed agent's policy and brokerage procedures intended to prevent any mishandling of information; and
- the office space arrangement and personal relationships of affiliated licensees who are representing clients with adverse interests.

RESTRICTIONS

A licensee providing brokerage services may not

- accept compensation from a person other than the licensee's client without written notice to all parties;
- act on the licensee's own behalf, on behalf of his immediate family or brokerage, or on behalf of an organization or business entity in which he has an interest without written disclosure to all parties; or

- make or enter into a brokerage agreement that specifies a net price to be received by an owner, with the excess to be received by the licensee as a commission.

REQUIRED DISCLOSURES

A licensee must

- make an agency disclosure to the party or parties represented by the licensee at the time he first provides specific assistance to a client,
- immediately disclose any later change in representation, and
- disclose the relationship to the client verbally before providing specific assistance and in writing before an offer is made or accepted.

The written disclosure must contain

- a statement of which party is the licensee's client;
- a statement of the licensee's duties to his client; and
- any additional information that the licensee determines to be necessary to clarify the relationship.

AGREEMENT REQUIREMENTS

All brokerage agreements must be in writing and cannot be assigned or otherwise transferred to another broker without all parties' express written consent, unless the agreement's terms state otherwise. A written brokerage agreement must also disclose the brokerage policy on cooperating with and compensating other brokerages.

Iowa statutes emphasize that the purpose of § 543B.56A (regarding brokerage agreement contents) is:

- to "promote the protection of the public by establishing minimum standards reasonably expected by the public in reliance upon the professional work product of real estate licensees"; and
- to ensure that licensees' obligations are met, including "exercising sound independent business judgment, striving to continuously improve professional business skills and knowledge in the industry, promoting sound and informative real estate reporting, and exercising the highest fiduciary duties to clients and the public."

A brokerage agreement must state that the broker will, at a minimum:

- accept delivery of and present to the client offers and counteroffers related to the client's property or the property that the client wants to purchase or lease;
- assist the client in developing, communicating, negotiating and presenting offers or counteroffers until an agreement is signed, all contingencies are satisfied or waived, and the transaction is complete;
- answer the client's questions relating to the brokerage and listing agreements, offers, counteroffers, notices and contingencies; and
- provide access to listed properties to prospective buyers.

CONFIDENTIALITY

Upon termination, expiration, completion, or performance of the brokerage agreement, the licensee must keep confidential all information that was made confidential by the engaging party's request or instructions or is otherwise confidential by law.

Statutory section 543B.55 amended 1993; § 543B.56 amended 1996; § 345B.56A amended 2011; § 543B.57 amended 2017. Regulations effective 2002 (2011 changes not applicable to cited sections).

[Iowa Code §§ 543B.55, .56, .56A, .57 \(2019\); Iowa Admin. Code r. 193E-11.3\(5\), -12.1, -12.2 \(2019\)](#)

Iowa, General Applicability of Provisions

An agency relationship disclosure is not required if

- the licensee is acting solely as a principal, or
- the licensee's written communication is a business solicitation.

Regulation effective 2002.

[Iowa Admin. Code r. 193E-12.2\(11\) \(2019\)](#)

Iowa, Other Relevant Provisions

SELF-DEALING

A licensee may not act on his own behalf, on behalf of his immediate family, on behalf of the brokerage, or on behalf of an entity in which the licensee has an interest, unless the licensee provides written disclosure of that interest to all parties. See Iowa Admin. Code r. 193E—7.8 and –7.9 for details regarding the required disclosure. A licensee may not act as both agent and undisclosed principal in the same transaction.

If a licensee is acting in the capacity of a real estate licensee and is also a principal in the sale, lease, rental, or exchange of property he or she owns, all payments, rent, or security deposits must be deposited into the broker's trust account, unless

- the sale, rental, or exchange is "strictly, clearly and completely a 'by owner' transaction" and there is no listing or brokerage agreement;
- the licensee receives no commission or other compensation; and
- the licensee "does not function throughout the transaction in any capacity requiring a real estate license."

Regulation 193E-7 amended 2017; R. 193E-13 amended 2018.

[Iowa Admin. Code r. 193E-7.8, -13.6 \(2019\)](#)

Iowa, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A licensee representing a buyer or tenant as an exclusive agent must

- perform the terms of any written agreement with the client;
- exercise reasonable skill and care;
- seek acceptable prices and terms;
- present all written offers to and from the client in a timely manner;
- disclose material adverse facts;

- advise the buyer or tenant to obtain expert advice on material matters that are beyond the licensee's expertise;
- preserve the buyer's or tenant's confidential information as set forth by regulation;
- account for all money and property received;
- provide services to all parties honestly and in good faith; and
- comply with all relevant laws.

A buyer's broker may provide assistance to an unrepresented seller by preparing offers, conveying those offers to the buyer, and providing information and assistance concerning professional services that are not related to real estate brokerage services. A licensee may show properties in which the buyer is interested to other prospective buyers, assist other competing buyers, and enter into brokerage service agreements with other competing buyers without breaching any duty to the buyer.

INSPECTION DUTY

A licensee does not have a duty to conduct an independent investigation of the buyer's financial condition for the seller's benefit or to verify the accuracy of buyer's statements unless the licensee knows or has reason to believe the information is not accurate.

REQUIRED DISCLOSURES

A buyer's agent must inform the listing licensee, either verbally or in writing, of the agency relationship before initiating negotiations. The licensee must also inform the listing broker, seller or landlord, either verbally or in writing, of the agency relationship before any previewing, showing or negotiating occurs. If the property is unlisted, the licensee must make the required disclosure to the seller or landlord.

Statutory section amended 2017. Regulations effective 2002.

[Iowa Code § 543B.57\(5\) \(2019\)](#); [Iowa Admin. Code r. 193E-12.2\(4\), .4 \(2019\)](#)

Iowa, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee representing a seller or landlord as an exclusive agent must

- perform the seller's written agreement's terms;
- exercise reasonable skill and care;
- promote the seller's interests with utmost care, integrity, honesty, and loyalty;
- seek an acceptable price and terms;
- present promptly all written offers;
- disclose to the seller all known material adverse facts as required by statute;
- advise the client to obtain expert advice for matters beyond the licensee's expertise;
- preserve the seller's confidential information, unless disclosure is required by law or a failure to disclose would constitute fraud or dishonest dealing, as set forth in more detail in Iowa regulations;
- account for all money and property received;

- provide services to all parties honestly and in good faith; and
- comply with all relevant laws.

A seller's broker may provide assistance to an unrepresented buyer by preparing offers, conveying the offers to the seller, and providing information and assistance concerning professional services not related to real estate brokerage services. Also, a licensee may show alternative properties to prospective buyers and list competing properties for sale without breaching any duty or obligation to the seller.

INSPECTION DUTY

A licensee need not conduct an independent inspection of the property for the buyer's benefit or independently verify the accuracy of seller's statements, unless the licensee knows or has reason to believe the information is not accurate.

REQUIRED DISCLOSURES

A licensee acting as an exclusive seller's agent must disclose to any customer all material adverse facts known by the licensee pursuant to § 543B.56.

AGREEMENT REQUIREMENTS

A seller's listing agreement may authorize a licensee to disburse part of his compensation to other licensees, including a buyer's licensee. Also, the seller may authorize the seller's broker to disburse part of his compensation to other brokers. An exclusive agency or exclusive right-to-sell must clearly indicate that it is such an agreement.

All listing agreements must

- be in writing;

- properly identify the property; and
- contain all of the terms and conditions under which the property is to be sold, including price and commission;
- include the signatures of all parties concerned; and
- contain a definite expiration date.

For a broker to enforce a protective clause beyond an exclusive listing contract's expiration date, "there must be a provision for the protective clause in the listing contract which establishes a definite protection period." Before the listing expires, the broker must furnish to the listing party a written list of the names and available contact information of "persons to whom the property was presented during the active term of the listing and for whom protection is sought." The broker must deliver the list to the listing party either:

- by personal service with written acknowledgment of receipt; or
- by both regular mail and certified mail, return-receipt requested.

RESTRICTIONS

A listing agreement may not contain a provision requiring a party to notify the broker of the listing party's intention to cancel the listing after the expiration date.

A licensee may not solicit or enter into a listing or brokerage agreement with an owner if the licensee knows or should know that the owner has a written unexpired exclusive agency or listing agreement with another broker for that property, unless

- the owner initiates the discussion, and

- the licensee has not directly or indirectly solicited the listing or brokerage agreement.

If the owner initiates the discussion, the licensee may

- negotiate and enter into a listing or brokerage agreement that will take effect after the current listing expires; and
- inform the owner that he or she must allow the current listing to expire or obtain a mutually acceptable cancellation from the listing broker before further discussions can occur.

Statutory section amended 2017. Regulations 12.3 and 11.1 effective 2002; r. 11.2 amended 2011; r. 7.15 amended 2017.

[Iowa Code § 543B.57\(5\) \(2019\)](#); [Iowa Admin. Code r. 193E-11.1, -11.2, -12.3 \(2019\)](#); *see also* [Iowa Admin. Code r. 193E-7.15 \(2019\)](#)

Iowa, Term of Relationship

A relationship begins at the time of the brokerage agreement and continues until

- closing of the transaction; or
- performance or completion of the agreement.

If the transaction does not close or the agreement is not performed or completed, the relationship ends at the earlier of

- any expiration date agreed upon by the parties; or

- any termination by written agreement of the parties.

Regulation effective 2002 (2011 changes not applicable to cited section).

[Iowa Admin. Code r. 193E-11.3\(4\) \(2019\)](#)

Iowa, Transaction Brokers

Iowa law does not specifically address transaction brokers. However, the regulations list activities that may be performed by unlicensed support personal, which include assembling documents for closings and typing contract forms, among other activities.

Regulation amended 2017.

[Iowa Admin. Code r. 193E-7.13 \(2019\)](#)

Kansas

Kansas, Definitions

Affiliated licensee—a licensed individual who is employed by a broker or affiliated with a broker as an independent contractor.

Agency—a relationship “in which a broker acts for or represents another, by the latter's express written authority, in a real estate transaction.”

Agency agreement—a written agreement setting forth the terms and conditions of the relationship between a broker and his client.

Broker—an individual who is licensed as a broker in Kansas and who “has an agency with a seller, buyer, landlord or tenant or acts as a transaction broker;” or an entity of which the officers and members, or persons employed by or associated with the entity, are licensed and which has an agency with a seller, buyer, landlord or tenant or acts as a transaction broker. "Broker" generally includes the broker's affiliated licensees.

Brokerage firm—a broker's business entity.

Buyer's agent—a broker, including the broker's affiliated licensees, who have an agency with a buyer.

Client—a “seller, landlord, buyer or tenant who has an agency with a broker.”

Confidential information—information

- made confidential by law or by client’s instructions; or
- personal information that might place the other party at an advantage over the client, unless the information is made public or becomes public by the client or a source other than the licensee.

Customer—a “seller, landlord, buyer or tenant in a real estate transaction in which a broker is involved but who has not entered into an agency with the broker.”

Designated agent—a “licensee affiliated with a broker who has been designated by the broker, or the broker's duly authorized representative, to act as the agent of a broker's buyer or seller client to the exclusion of all other affiliated licensees.”

Licensee—a person licensed to act as a broker or salesperson.

Ministerial acts—acts “that a licensee may perform for a person that are informative in nature and do not rise to the level of active representation on behalf of a person,” including

- responding to telephone inquiries regarding brokerage services;
- responding to telephone inquiries concerning a property’s price or location;
- attending an open house and responding to questions;

- setting an appointment to view property;
- responding to walk-in consumer's questions concerning brokerage services offered on particular properties;
- accompanying an "appraiser, inspector, contractor or similar third party" on a property visit;
- describing a property in response to a person's inquiry; or
- referral to another broker or service provider.

Seller's agent—a broker, including the broker's affiliated licensees and subagents, who has an agency with a seller.

Statutory agent—a "seller's agent, a buyer's agent, a landlord's agent, a tenant's agent or a designated agent in a real estate transaction."

Transaction broker—a broker, including affiliated licensee, "who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party."

Section amended 2010.

[Kan. Stat. § 58-30,102 \(2018\)](#)

Kansas, Designated Agents

If a buyer who is a client of a designated agent wants to see property that was personally listed by the broker, the broker, with the seller's written consent, may specifically designate an affiliated licensee to act as the seller's agent "to the exclusion of all other affiliated licensees."

If a supervising or branch broker provides in a written agency agreement that a designated agent represents a client's interests, any other salespersons or associate brokers who are employed by or associated with that broker, but who are not specifically so designated, are not deemed to have a brokerage relationship with the client.

DESIGNATED AGENT'S DUTIES

A seller's designated agent has the duties set forth in Kan. Stat. § 58-30,106 (see "Relationship with Sellers" below), and a buyer's designated agent has the duties set forth in § 58-30,107 (see "Relationship with Buyers" below). Also, see § 58-30,109 for provisions applicable to the relationship between designated agents and transaction brokers in a transaction.

CONFIDENTIALITY OBLIGATIONS

A designated agent may disclose to his supervising broker and to appointed affiliated licensees, a client's confidential information in order to seek advice or assistance for the client's benefit.

REQUIRED DISCLOSURES

A seller's written consent must

- contain the prospective buyer's name; and
- acknowledge that the broker will act as a transaction broker regarding any transaction with the buyer.

The seller's written consent must be signed before presenting any offer.

AGREEMENT REQUIREMENTS

If a broker has appointed a designated agent, the brokerage relationship disclosure in the contract must specify that a designated agent was appointed to represent the client's interests.

Section 58-30,109 amended 1997; § 58-30,113 amended 2006; § 58-30,103 amended 2015.
Regulation amended 2016.

[Kan. Stat. §§ 58-30,103\(c\), -30,109, -30,113 \(2018\); Kan. Admin. Regs. § 86-3-26a \(2019\)](#)

Kansas, Dual Agents

A licensee may not act as a dual agent or as an agent and undisclosed principal in a transaction.

Section amended 2015.

[Kan. Stat. § 58-30,103\(a\) \(2018\)](#)

Kansas, General Agency Relationship Requirements

“Except when acting as a transaction broker or solely as a seller, buyer, landlord or tenant,” a broker may act only as a statutory agent in a real estate transaction. A licensee may not act as a dual agent or as an agent and undisclosed principal in any transaction.

DUTIES

A broker must recommend to a client or customer that he or she retain an attorney to answer legal questions involved in a real estate transaction.

REQUIRED DISCLOSURES

A licensee must give a prospective buyer or seller at the first practical opportunity a brochure entitled "Real Estate Brokerage Relationships." A brokerage firm may use the commission's document or design a brochure that contains at least the same information contained in the commission's document. Each brochure must also provide the name of:

- the licensee;
- the supervising or branch broker, if applicable; and
- the brokerage firm.

A licensee need not provide a prospective party with a copy of the brochure if

- the licensee is acting solely as a principal;
- the licensee's communication is a business solicitation;
- the transaction involves the sale of commercial property or residential property of more than four units;
- the transaction is a property sale by public auction;
- the licensee is performing only ministerial acts; or
- the customer or client has already received the brochure from the licensee's firm.

A contract for sale must acknowledge the seller's and buyer's receipt of the brochure and a disclosure of the brokerage relationship between the licensees involved and the seller and buyer. Unless a licensee is providing information through an advertisement or public notice of the licensee's representation, a licensee must disclose, orally or in writing, which party he represents at the time of the initial contact with another licensee representing the other party. A licensee who is contacted by another licensee requesting permission to show property to a prospective buyer must ask whether the licensee represents the buyer.

AGREEMENT REQUIREMENTS

An agency agreement or written transaction brokerage agreement must set forth the terms and conditions of the relationship and include

- a fixed expiration date;
- any limitations on the agent's confidentiality duty;
- the compensation terms;
- a reference to the duties and obligations set forth in §§ 58-30,106, 58-30,107, or 58-30,113; and
- the parties' signatures.

Generally, the licensee must provide the client or customer with a copy of the agreement at the time that the client or customer signs the agreement.

RESTRICTIONS

An agency agreement or written transaction brokerage agreement may not

- authorize a broker to sign or initial any document on behalf of the broker's customer or client; or
- authorize the broker to act as the client's attorney-in-fact.

A licensee may not induce a party to break its agency agreement or written transaction brokerage agreement.

Statutory section 58-30,110 amended 1997; § 58-30,103 amended 2015. Regulation 86-3-9 amended 2007; r. 86-3-26 amended 2018.

[Kan. Stat. §§ 58-30,103\(a\), \(b\), \(f\), \(i\), \(n\); -30,110 \(2018\); Kan. Admin. Regs. 86-3-9, -26 \(2019\)](#)

Kansas, General Applicability of Provisions

No relevant provisions were located.

Kansas, Other Relevant Provisions

SELF-DEALING

A licensee must disclose in a real estate contract any interest that the licensee or the licensee's immediate family member has or will have in the following:

- the real estate being sold or leased by a seller or lessor; and
- the real estate being purchased or leased by a buyer or lessee.

In this context, "immediate family member" includes spouse, parent, child, or sibling.

ASSIGNMENT

The broker may not assign, sell or transfer a written agency agreement or written transaction brokerage agreement to another broker without all parties' express written consent.

MISREPRESENTATIONS

A client or customer is not be liable for a "misrepresentation or omission by the client's statutory agent or the transaction broker arising out of the agency or transaction broker agreement unless the client or customer knew of the misrepresentation or omission." A statutory agent or transaction broker is not liable for the

client's or the customer's misrepresentation or omission arising out of the agency or transaction broker agreement unless the licensee knew of the misrepresentation or omission. Also, a statutory agent or transaction broker is not liable for "an innocent or negligent misrepresentation in information provided to the seller or landlord or to the buyer or tenant if the licensee does not have personal knowledge of the error, inaccuracy or omission that is the basis for the claim of misrepresentation."

Statutory section 58-30,111 amended 1997; § 58-30,103 amended 2015. Regulation amended 2016.

[Kan. Stat. §§ 58-30,103\(k\), -30,111 \(2018\); Kan. Admin. Regs. 86-3-19 \(2019\)](#)

Kansas, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's agent represents only the buyer, and the seller may be either unrepresented or represented by another agent. The buyer's agent must

- promote the buyer's interests with good faith, loyalty, and fidelity;
- protect the buyer's confidences, unless disclosure is required;
- timely present all offers;
- advise the buyer to obtain expert advice for matters beyond the licensee's expertise;
- timely account for all money and property received;
- disclose to the buyer all known adverse material facts;

- disclose to the seller all known adverse material facts, including the buyer's financial ability to perform;
- perform the terms of the client's written agreement with the client; and
- comply with all applicable laws.

A buyer's or tenant's agent owes no duty to a customer, except that the licensee must disclose to a customer all known adverse material facts, including the client's financial ability to perform.

Generally, a buyer's or tenant's agent is not required to disclose information regarding the property's physical condition if qualified third party has prepared a written report and provided it to the client or customer.

A buyer's or tenant's agent may assist a seller or landlord by performing ministerial acts without violating the firm's agency with the buyer or tenant. Also, a buyer's or tenant's agent may show property in which the client is interested to other prospective buyers or tenants without breaching any duty to the client.

DISCLOSURE REQUIREMENTS

A licensee must give any prospective buyer or seller a brochure entitled "real estate brokerage relationships," as approved by the commission on October 10, 2017.

INSPECTION DUTY

A buyer's agent need not

- conduct an independent investigation of the buyer's financial condition; or
- independently verify the accuracy or completeness of a buyer's or qualified third party's statements.

CONFIDENTIALITY OBLIGATIONS

A buyer's or tenant's agent may not disclose confidential information about the client unless

- disclosure is required by law; or
- failure to disclose would constitute fraudulent misrepresentation.

AGREEMENT REQUIREMENTS

An agency agreement with a buyer or tenant must include any potential for

- the buyer's or tenant's agent to act as a transaction broker; or
- an affiliated licensee to act as a designated agent for the seller and the designated agent's supervising broker to act as a transaction broker.

A buyer or tenant may agree in writing that the agent may receive compensation from a seller's or landlord's agent or a transaction broker.

To establish an agency relationship with a buyer or a tenant, a broker must enter into a written agency agreement with that party no later than the signing of an offer to purchase or lease.

RESTRICTIONS

A licensee may not solicit an agency agreement or written transaction brokerage agreement from a buyer or tenant if the licensee knows that the party has an exclusive written agency agreement or an exclusive written

transaction brokerage agreement with another broker. If a licensee knows that a buyer or tenant has an exclusive agency agreement or an exclusive brokerage relationship with another broker, the licensee

- may not contact the buyer or tenant, and
- may not initiate negotiations for the sale, exchange or lease of real estate with the buyer or tenant.

Any consent agreement must acknowledge the buyer's or tenant's agency agreement or written transaction brokerage agreement and state that the buyer or tenant may be liable for compensation pursuant to the agency agreement or written transaction brokerage agreement.

Statutory section 58-30,107 amended 1997; § 58-30,103 amended 2015. Regulation amended 2018.

[Kan. Stat. §§ 58-30,103\(e\), \(h\), \(m\), \(o\); -30,107 \(2018\); Kan. Admin. Regs. 86-3-26 \(2019\)](#)

Kansas, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's agent must

- promote the seller's interests with good faith, loyalty and fidelity;
- protect the seller's confidences, unless disclosure is required;
- timely present all offers;
- advise the seller to obtain expert advice for matters beyond the agent's expertise;

- timely account for all money and property received;
- disclose to the seller all known adverse material facts about the buyer;
- disclose to the buyer all known adverse material facts;
- perform the terms of the client's written agreement; and
- comply with all applicable laws.

A listing agreement may provide that the broker need not continue to market the property after the seller has accepted an offer.

A seller's agent or transaction broker must ensure that a buyer or tenant signs the commission's "buyer's or tenant's consent to direct negotiation" form, as approved on April 18, 2017, before engaging in direct negotiations with that buyer or tenant.

A seller's or landlord's agent owes no duty to a customer, except that the licensee must disclose to a customer all known adverse material facts actually known by the licensee, except that generally, a seller's or landlord's agent is not required to disclose to a client or customer information regarding the property's physical condition if a qualified third party prepared a written report regarding the property's physical condition and provided the report to the client or customer.

A seller's or landlord's agent may assist a customer by performing ministerial acts without violating the brokerage firm's agency with the seller or landlord. Also, a seller's or landlord's agent may show alternative properties to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty to the client.

DISCLOSURE REQUIREMENTS

A licensee must give any prospective buyer or seller a brochure entitled "real estate brokerage relationships," as approved by the commission on October 10, 2017.

INSPECTION DUTY

A seller's or landlord's agent has no duty

- to conduct an independent inspection of the property, or
- to verify independently the accuracy or completeness of a client's or qualified third party's statements.

CONFIDENTIALITY OBLIGATIONS

A seller's or landlord's agent may not disclose confidential information about the client unless

- disclosure is required by law; or
- failure to disclose would constitute fraudulent misrepresentation.

AGREEMENT REQUIREMENTS

Generally, a broker intending to establish an agency relationship must enter into a written agency agreement with the party to be represented before the licensee engages in real estate related activities on behalf of a seller or landlord. An agency agreement with a seller or landlord must include any potential for

- the agent to act as a transaction broker;

- an affiliated licensee to act as a designated agent for the buyer and the designated agent's supervising broker to act as a transaction broker; or
- the broker to designate an affiliated licensee to act as the seller's designated agent on the broker's personal listing.

A seller or landlord may agree in writing that the broker may

- offer subagency and pay compensation to other brokers;
- cooperate with and pay compensation to a buyer's or tenant's agent; and
- cooperate with and pay compensation to a transaction broker.

RESTRICTIONS

A licensee may not enter in a written brokerage agreement that automatically extends the agreement's term beyond its expiration date. Also, a seller's agency agreement or written transaction brokerage agreement may not provide that the broker's commission may be based on the difference between the gross sales price and the net proceeds to the owner.

A licensee may not solicit an agency agreement or a written transaction brokerage agreement from a seller or landlord if the licensee knows that the party has an exclusive agency agreement or an exclusive transaction brokerage agreement with another broker. Also, a licensee may not contact the seller or landlord or negotiate a sale, exchange or lease of real estate directly with a seller or landlord if the licensee knows that the seller or landlord has an exclusive agency agreement or an exclusive right to sell agreement with another broker. However, a buyer's or tenant's agent may present an offer to the seller or landlord if the seller's or landlord's agent or transaction broker is present.

Statutory sections 58-30,106 and 58-30,103 amended 2015. Regulation 86-3-8 amended 2007; r. 86-3-23 effective 1993; rr. 86-3-26 and 86-3-28 amended 2018.

[Kan. Stat. §§ 58-30,103\(d\), \(g\), \(j\), \(l\), \(p\); -30,106 \(2018\); Kan. Admin. Regs. 86-3-8, -23, -26\(a\), -28\(a\) \(2019\)](#)

Kansas, Term of Relationship

An agency agreement or written transaction brokerage agreement must include a fixed expiration date. An agency relationship begins when the client engages the broker and continues until

- the transaction is closed; or
- if a transaction is not closed, the earlier of any expiration date agreed upon by the parties or any authorized termination of the relationship.

Generally, a broker owes no further duties to his client after termination, expiration, or closing except

- to account for all related money and property; and
- to keep confidential all confidential information, unless the client permits the disclosure, disclosure is required by law, or the information becomes public from a source other than the broker.

The relationship between a transaction broker and a party terminates when

- a transaction is closed; or
- if a transaction is not closed, the earlier of the expiration date or any authorized termination of the relationship.

Generally, a transaction broker owes no further duties to any party to the transaction after termination, expiration or closing except

- to account for all related money and property; and

- to keep confidential all information that was made confidential by a party's request, unless the party permits disclosure, disclosure is required by law, or the information becomes public from a source other than the transaction broker.

A licensee may not enter in a written brokerage agreement that automatically extends the agreement's term beyond its expiration date.

Statutory section 58-30,104 amended 1997; § 58-30,103 amended 2015. Regulation amended 2007.

[Kan. Stat. §§ 58-30,103\(f\); -30,104 \(2018\); Kan. Admin. Regs. 86-3-8 \(2019\)](#)

Kansas, Transaction Brokers

A broker may be engaged as a transaction broker by oral or written agreement with the seller, landlord, buyer or tenant. A broker is a transaction broker unless

- an agency relationship between the broker and the party to be represented is established; or
- a broker works with a buyer or tenant as a subagent of the seller or landlord by accepting a subagency offer.

A transaction broker may not act as an agent for either party, and in the absence of designated agents, a brokerage firm may act as a transaction broker on an in-house transaction with the seller's and buyer's informed consent. See Kan. Stat. § 58-30,109 for additional provisions that apply to the relationship between designated agents and transaction brokers in a transaction.

TRANSACTION BROKER'S DUTIES

A seller's agent or transaction broker must ensure that a buyer or tenant signs the commission's "buyer's or tenant's consent to direct negotiation" form, as approved on April 18, 2017, before engaging in direct negotiations with that buyer or tenant.

Except as otherwise provided, a transaction broker need not disclose to any party information regarding the property's physical condition if a qualified third party has prepared a written report regarding the property's physical condition and provided it to the party.

A transaction broker may, without breaching any obligation,

- show alternative properties to a prospective buyer or tenant;
- list competing properties for sale or lease;
- show properties in which the buyer or tenant is interested to other parties; and
- serve as a single agent or subagent for the same or different parties in other real estate transactions.

A transaction broker may cooperate with other brokers or cooperate and pay compensation to other brokers, but may not engage subagents.

CONFIDENTIALITY OBLIGATIONS

In any transaction involving real estate other than commercial property or residential property of more than four units, a transaction broker may not disclose the following information without all parties' consent:

- that a buyer or tenant is willing to pay more than the offered price;
- that a seller or landlord is willing to accept less than the asking price;
- the parties' motivating factors;

- that a seller, buyer, landlord or tenant will agree to different financing terms; or
- any information or personal confidences that “might place the other party at an advantage over the party” unless disclosure is required by law or failure to disclose would constitute fraudulent misrepresentation.

Generally, in a transaction involving commercial property or residential property of more than four units, a transaction broker may disclose the following unless prohibited by the parties:

- that a buyer or tenant is willing to pay more than the offered price;
- that a seller or landlord is willing to accept less than the asking price;
- any party’s motivating factors; or
- that a seller, buyer, landlord or tenant will agree to other financing terms.

However, in commercial transactions, the broker may not disclose any information or personal confidences that might place the other party at an advantage unless disclosure is required by law or failure to disclose would constitute fraudulent misrepresentation.

Information known to a transaction broker is not imputed to any party to the transaction or to any licensee within the brokerage firm.

REQUIRED DISCLOSURES

A transaction broker must disclose any facts actually known by the broker that were omitted from or contradict any information included in the required written report.

AGREEMENT REQUIREMENTS

A written transaction brokerage agreement must set forth the terms and conditions of the relationship and include:

- a fixed expiration date;
- any limitations on the agent's confidentiality duty;
- the compensation terms;
- a reference to the duties and obligations set forth in §§ 58-30,106; 58-30,107; or, effective July 1, 2010, 58-30,113; and
- the parties' signatures.

Generally, a licensee must provide the customer with a copy of the agreement at the time the customer signs the agreement.

Kansas regulations provide that each licensee must ensure that the commission's form entitled "transaction broker addendum," as approved on October 10, 2017, is completed to obtain the informed consent of a seller client and a buyer client, as required by § 58-30.109.

The informed consent transaction broker addendum must be signed

- by the buyer before writing the offer, and
- by the seller before signing the sale contract.

RESTRICTIONS

A written transaction brokerage agreement may not:

- authorize a broker to sign or initial any document on behalf of the broker's customer or client; or
- authorize the broker to act as the client's attorney-in-fact.

A licensee may not induce a party to break its agency agreement or written transaction brokerage agreement.

RESTRICTIONS

A licensee may not solicit a written transaction brokerage agreement from a buyer or tenant if the licensee knows that the party has an exclusive written agency agreement or an exclusive written transaction brokerage agreement with another broker. If a licensee knows that a buyer or tenant has an exclusive agency agreement or an exclusive brokerage relationship with another broker, the licensee may not:

- contact the buyer or tenant; and
- initiate negotiations for the sale, exchange or lease of real estate with the buyer or tenant.

Any consent agreement must acknowledge the buyer or tenant agency agreement or written transaction brokerage agreement and state that the buyer or tenant may be liable for compensation pursuant to the agency agreement or written transaction brokerage agreement.

RESTRICTIONS

A licensee may not enter in a written brokerage agreement that automatically extends the agreement's term beyond its expiration date. Also, a seller's written transaction brokerage agreement may not provide that the broker's commission may be based on the difference between

the gross sales price and the net proceeds to the owner.

A licensee may not solicit a written transaction brokerage agreement from a seller or landlord if the licensee knows that the party has an exclusive agency agreement or an exclusive transaction brokerage agreement with another broker. Also, a licensee may not contact the seller or landlord or negotiate a sale, exchange, or lease of real estate directly with a seller or landlord if the licensee knows that the seller or landlord has an exclusive agency agreement or an exclusive right to sell agreement with another broker. However, a buyer's or tenant's agent may present an offer to the seller or landlord if the seller's or landlord's agent or transaction broker is present.

Statutory section 58-30,109 amended 1997; § 58-30,113 amended 2006; § 58-30,103 amended 2015. Regulations amended 2018.

[Kan. Stat. §§ 58-30,103\(c\), \(f\), \(i\), \(j\), \(l\)–\(p\); -30,109; -30,113 \(2018\); Kan. Admin. Regs. 86-3-27, -28 \(2019\)](#)

Kentucky

Kentucky, Definitions

Broker—a licensed person who performs real estate brokerage acts.

Commercial transaction—a “transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, single-family residential lot, or agricultural property.”

Confidential information—information that would “materially compromise the negotiating position of a party or prospective party to a real estate transaction if disclosed to the other party”; includes information that

- is provided to a designated agent;
- describes or affects the provider's negotiation, bargaining or motivation;
- is not required by law; and

- if not disclosed, will not constitute fraud or dishonest dealing.

Designated agency—an agency relationship that exists when a principal broker, “identifies different licensees in the same real estate brokerage firm to separately represent more than one party in the same real estate transaction.”

Designated manager—a "licensed sales associate or broker who manages a main or branch office for the principal broker, at the principal broker's direction, and has managing authority over the activities of the sales associates at that office."

Net listing—a listing agreement that provides for a stipulated net price to the owner, with the licensee to receive any excess as consideration.

Principal broker—a licensed broker who is the single broker responsible for the operation of the company with which he is associated.

Real estate—“means real estate in its ordinary meaning,” including timeshares, options, leaseholds, and other interests.

Real estate brokerage—a “single, multiple, or continuing act of dealing in timeshares or options, selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, engaging in property management, leasing or offering to lease, renting or offering for rent, or referring or offering to refer for the purpose of securing prospects, any real estate or the improvements thereon for others” for consideration.

Statutory section amended 2015. Regulation 11:400 amended 2006; r. 11:410 amended 2005.

[Ky. Rev. Stat. § 324.010 \(2019\); 201 Ky. Admin. Regs. 11:400\(1\); :410\(1\) \(2019\)](#)

Kentucky, Designated Agents

A principal broker may designate an affiliated licensee to act as seller’s or lessor’s agent or as a buyer’s or lessee’s agent, to the exclusion of all other affiliated licensees.

CONFIDENTIALITY OBLIGATIONS

A principal broker who appoints a designated agent must

- require that all documents containing confidential information relating to a client are kept in an individual file maintained by the designated agent or the principal broker, and not accessible to another licensee except as required by § 324.160(3);
- implement a system to maintain confidential information that prohibits an employee from assisting more than one designated agent in the same transaction, that prohibits discussions concerning confidential information between a designated agent and client within the office unless the conversation occurs in an environment that provides privacy, that prohibits disclosure of confidential information by office personnel and clerical staff, and that requires notification to each client if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information;
- require a licensee to disqualify himself from being appointed as a designated agent if the agent has received confidential information concerning the other party to the transaction; and
- not designate himself as designated agent.

REQUIRED DISCLOSURES

The designation must be in writing and communicated to all licensees affiliated with the principal broker. The designated agent must obtain the buyer's or lessee's consent to the designation and may not designate himself or herself as a designated agent.

Statutory section amended 2009. Regulation amended 2005.

[Ky. Rev. Stat. § 324.121\(1\) \(2019\); 201 Ky. Admin. Regs. 11:410\(2\) \(2019\)](#)

Kentucky, Dual Agents

If a principal broker designates one licensee to represent the seller and another licensee to represent the buyer in the same transaction, only the principal broker or a designated manager working under the broker's discretion, is deemed to be a dual agent representing the seller and buyer in a limited fiduciary capacity.

CONFIDENTIALITY OBLIGATIONS

As a dual agent, the principal broker or the designated manager

- must keep confidential information relating to either party in an individual file that only the principal broker or the designated manager may access; and
- may not disclose to either party confidential information he or she has learned about the other party.

No exchange of information or knowledge between or among consumers is imputed as a matter of law in any real estate transaction.

REQUIRED DISCLOSURES

The commission imposes sanctions against a licensee for acting for more than one party to a transaction without all parties' knowledge.

Sections amended 2009.

[Ky. Rev. Stat. §§ 324.121\(2\), .160\(4\)\(e\) \(2019\)](#)

Kentucky, General Agency Relationship Requirements

DUTIES

A licensee owes the following fiduciary duties to his client:

- loyalty;
- “obedience to lawful instructions”;
- disclosure;
- confidentiality;
- reasonable care and diligence; and
- accounting.

REQUIRED DISCLOSURES

A licensee must complete either the "Consumer Guide To Agency Relationships (For Companies That Allow Only Dual Agency {No Designated Agency} - Model Policy)" or the "Consumer Guide To Agency Relationships (For Companies That Allow Designated Agency & Dual Agency - Model Policy)", whichever is applicable, and deliver it to the appropriate prospective party before

- receiving confidential information related to a contemplated real estate transaction;
- entering a representation agreement;
- submitting an offer; and
- the “conclusion of the second contact between the licensee and a prospective party.”

The "Consumer Guide to Agency Relationships Model Policies" and the "Agency Disclosure Statements" must provide:

- the relationships available in Kentucky;
- the specific relationship proposed between the licensee and the prospective party;
- the licensee's, principal broker's, real estate company's, and prospective party's names; and
- the prospective party's signature and the date.

The licensee must give the agency disclosure statements to the consumer and obtain the required signature at the time a buyer is making an offer and at the time a seller is reviewing the offer.

A licensee must complete Section I of the Agency Disclosure Statement if the real estate transaction involves agents from two different companies. In that case, the licensee must

- provide the names of the licensee, the real estate brokerage company and the company's principal broker; and
- present the appropriate Agency Disclosure Statement to the buyer or seller, whichever applies, for his or her signed consent.

A licensee must complete Section II of the Agency Disclosure Statement if the real estate transaction involves two agents in the same real estate brokerage company. In that case, the licensee must designate whether the transaction involves a designated agency or a dual agency. If the transaction involves a designated agency, the licensee must

- provide the names of the agent representing the buyer, the agent representing the seller, and the real estate brokerage company whose principal broker and manager will be the dual agents in the designated-agency transaction; and

- present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures.

If the transaction involves a dual agency, the licensee must

- provide the names of both agents involved in the transaction;
- if an agent has any relationship with the other party, explain the nature of the relationship; and
- present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures.

If the transaction involves only one agent, the licensee must complete Section III, providing the licensee's name and the name of the real estate brokerage company. If the agent will be representing both parties to the transaction, the licensee must state that he or she will be a dual agent. If the agent has any relationship with either the buyer or seller, he or she must explain the nature of the relationship. The licensee must present the appropriate Agency Disclosure Statement to the buyer and seller for their signatures. If the agent will be representing only one or none of the parties to the transaction, then he or she must acknowledge that fact, and identify which party, if any, the agent will be representing. The second box in Section III must be checked if the transaction involves a "for sale by owner" seller, an unrepresented buyer, or a transaction brokerage situation. The licensee must present the Agency Disclosure Statement to the buyer and seller for their signatures.

RESTRICTIONS

A real estate broker may not induce any party to a contract to break the contract in order to substitute a new contract with another principal.

Regulation 11:110 amended 1982; r. 11:400 amended 2006; r. 11:121 amended 2014.

[201 Ky. Admin. Regs. 11:110, :121\(2\)\(c\), :400 \(2019\)](#)

Kentucky, General Applicability of Provisions

Regulation 11:400, regarding disclosures, does not apply to

- auctions;
- property management; or
- commercial transactions.

Regulation amended 2006.

[201 Ky. Admin. Regs. 11:400\(2\) \(2019\)](#)

Kentucky, Other Relevant Provisions

SELF-DEALING

A licensee may not buy property listed with him or with the broker with whom the licensee is affiliated, without first indicating in writing on the offer his status as a licensee. Also, before a licensee becomes a party to a purchase contract, the licensee must disclose his status as a licensee to all parties to the transaction on the sales contract or purchase offer. Before a licensee sells property in which the licensee owns an interest, the licensee must disclose his interest, in writing, to all parties.

Section amended 2009.

[Ky. Rev. Stat. § 324.160\(4\) \(2019\)](#)

Kentucky, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's agent must, "without delay, submit all written offers to lease or purchase real estate" to the property owner or to the licensee who has entered into a written agreement with the owner-client to provide brokerage services for a fee.

AGREEMENT REQUIREMENTS

An agreement for compensation from a licensee to his or her client or customer must be in writing.

Regulation 11:045 amended 2005; r. 11:250 amended 2010.

[201 Ky. Admin. Regs. 11:045\(2\), :250 \(2019\)](#)

[Kentucky, Relationship with Sellers](#)

SELLER'S AGENT'S DUTIES

A seller's agent must, without delay, submit all written offers to his principal or owner-client.

REQUIRED DISCLOSURES

See 201 Ky. Admin. Regs. 11:121(2)(d) and 11:011 for disclosures related to guaranteed sales plans.

A seller's agent has no affirmative duty to disclose to any person who acquires an interest in real property information not required to be disclosed by law.

AGREEMENT REQUIREMENTS

A real estate broker may not offer real estate for sale or lease without the owner's consent. A broker who is promoting or advertising real estate to the general public must have a written listing agreement signed by the owner. A listing contract must include

- the property's listing price, unless the sale is by auction;
- the date and time the listing contract is signed;
- the expiration date and time;
- the agreed fee or compensation;
- the real estate's street address or location;
- all owners' signatures;
- the owner's special instructions concerning showing limitations and subagency restrictions; and
- the date and time for initialing all changes to the contract.

An agreement for compensation from a licensee to his or her client or customer must be in writing.

RESTRICTIONS

An exclusive listing contract may not contain an automatic continuation of the listing period beyond the fixed termination date. Also, "net listings" are considered to constitute improper dealing.

Statutory section 324.160 amended 2009; § 324.162 enacted 2003. Regulation 11:100 amended 1975; r. 11:045 amended 2005; r. 11:250 amended 2010; rr. 11:105 and 11:121 amended 2014.

[Ky. Rev. Stat. §§ 324.160\(7\), .162 \(2019\); 201 Ky. Admin. Regs. 11:100, :121\(2\)\(d\), :105, :250\(1\); :045\(1\) \(2019\)](#)

Kentucky, Term of Relationship

No relevant provisions were located.

Kentucky, Transaction Brokers

Kentucky's regulations state that an agent may act in a "transaction brokerage situation." Accordingly, Kentucky's Buyer and Seller Agency Disclosure Statements contain a box to be checked if an agent represents only one or neither party as a client. Both forms note that the "other party(ies) is not represented and agrees to represent his/her own best interest. Any information provided the agent may be disclosed to the agent's client."

Regulation amended 2006.

[201 Ky. Admin. Regs. 11:400\(3\) \(2019\)](#)

Louisiana

Louisiana, Definitions

Agency—a relationship in which a broker or licensee represents a client by the client's consent in an "immovable property transaction."

Broker—a person "licensed by the Louisiana Real Estate Commission as a real estate broker."

Brokerage agreement—an agreement for brokerage services provided in exchange for compensation or the right to receive compensation from another.

Client—a person who engages a licensee as his agent.

Confidential information—information, other than information about the property's physical condition, that a licensee obtains from a client during the term of a brokerage agreement and that was made confidential by the client's written request, or is information the disclosure of which could materially harm the client's position, unless

- the client permits disclosure;
- disclosure is required by law or would reveal a serious defect;
- the information becomes public from a source other than the licensee; or
- a designated agent is disclosing the information to his broker to obtain advice or assistance for the client's benefit.

Customer—a person who is not represented by a licensee, but for whom the licensee performs ministerial acts.

Designated agency—the agency relationship generally presumed to exist when a licensee engaged in any real estate transaction is working with a client, unless there is a written agreement providing for a different relationship.

Designated agent—a licensee who is the agent's client.

Dual agency—a relationship in which a licensee is working with both the buyer and seller or both the landlord and tenant in the same transaction, provided that a dual agency does not exist if the licensee is

- selling property he owns,
- selling property owned by a real estate business of which the licensee is the sole proprietor and agent, or
- working with both landlord and tenant on a lease with a term that does not exceed three years and the licensee is the landlord.

Licensee—a person who has been issued a license by the commission as a real estate salesperson or broker.

Ministerial acts—the acts that a licensee may perform for a person that are informative in nature, including

- responding to phone inquiries regarding the availability and pricing of brokerage services;
- responding to phone inquiries concerning a property's price or location;
- conducting an open house and responding to questions about the property;
- scheduling an appointment to view property;
- responding to a walk-in person's questions concerning brokerage services or particular properties;
- accompanying an appraiser, inspector, contractor, or other third party on a property visit;
- describing a property or the property's condition in response to an inquiry;
- completing business or factual information for a person represented by another licensee on an offer or purchase contract;
- showing a property being sold by an owner on his own behalf; or
- referring a party to another broker.

Person—includes individuals and business entities.

Substantive contact—"that point in any conversation where confidential information is solicited or received."

Section amended 2010.

[La. Rev. Stat. § 9:3891 \(2018\)](#)

Louisiana, Designated Agents

No provisions were located explicitly applicable to designated agents, but a licensee is considered to be representing the person with whom he is working unless a written agreement provides that there is a different relationship or that the licensee is performing only ministerial acts on the person's behalf.

Section enacted 1997.

See [La. Rev. Stat. § 9:3892 \(2018\)](#)

Louisiana, Dual Agents

A licensee may act as a dual agent only with the informed written consent of all clients. A licensee is not a dual agent if:

- he is working with both the buyer and seller, provided the licensee is selling property he owns or the property is owned by a real estate business of which the licensee is the sole proprietor and agent, or
- he is working with both landlord and tenant regarding a lease with a term that does not exceed three years and the licensee is the landlord.

DUAL AGENT'S DUTIES

A licensee may withdraw from representing a client who has not consented to a disclosed dual agency. In that case, the licensee may continue to represent the other client in the transaction or represent the client in other transactions. When a withdrawal occurs, the licensee may not receive a referral fee for referring a

client to another licensee unless the fee is disclosed to both the withdrawing client and the client that the licensee continues to represent.

CONFIDENTIALITY REQUIREMENTS

In a dual agency, each client and licensee possesses “only actual knowledge and information,” and no knowledge is imputed among or between the clients, brokers, or their affiliated licensees.

When acting as a dual agent, a licensee may not disclose without the party’s permission

- confidential information about either of the clients;

- the price the seller or landlord will take other than the listing price; or

- the price the buyer or tenant is willing to pay.

REQUIRED DISCLOSURES

A licensee must provide the parties to a dual agency situation, the dual agency disclosure form provided by the commission. Any client who signs a dual agency disclosure form prepared by the commission is presumed to have given informed consent. A licensee must ensure that the dual agency disclosure form is signed by all clients at the time the parties enter into the brokerage agreement or at any time before the licensee acts as a dual agent. The licensee must retain a copy of this documentation for five years.

The form must include the following language:

"What a licensee shall do for clients when acting as a dual agent:

1. Treat all clients honestly.
2. Provide information about the property to the buyer or tenant.

3. Disclose all latent material defects in the property that are known to the licensee.
4. Disclose financial qualification of the buyer or tenant to the seller or landlord.
5. Explain real estate terms.
6. Help the buyer or tenant to arrange for property inspections.
7. Explain closing costs and procedures.
8. Help the buyer compare financing alternatives.
9. Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer."

A licensee must obtain the required written consent "at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent."

Section 9:3897 amended 1999; § 37:1467 amended 1997. Regulation amended 2011.

[La. Rev. Stat. §§ 9:3897, 37:1467 \(2018\); La. Admin. Code tit. 46, § 3705 \(2019\)](#)

Louisiana, General Agency Relationship Requirements

DUTIES

A licensee representing a client must

- perform the brokerage agreement terms;
- seek a transaction at the price and terms stated in the agreement or acceptable to the client;
- timely present all offers to and from the client;
- timely account for all money and property received;
- exercise reasonable skill and care in performing the brokerage services; and

- immediately present all written offers and counteroffers to buyers and sellers. (See La. Admin. Code tit. 46, § 3901 for additional provisions related to the timely presentation of offers and counteroffers).

A licensee does not breach a duty to the client by showing alternative properties to other buyers or tenants or by showing properties in which the client is interested to other buyers or tenants. Also, a licensee must treat all customers honestly and fairly and may perform ministerial acts for a customer without violating his brokerage agreement with a client.

For the sale of residential real property on or after January 1, 2008, a licensee representing either the buyer or the seller in making an offer to purchase or sell residential real property must complete the Purchase Agreement Form prescribed by the Louisiana Real Estate Commission. No person may alter the form, but an addendum or amendment may be used.

REQUIRED DISCLOSURES

A licensee must provide all parties with an agency disclosure informational pamphlet or the agency disclosure form, provided by the commission pursuant to La. Admin. Code tit. 46, § 3703. A licensee must provide the pamphlet or the form to prospective sellers, lessors, buyers, and lessees at the time substantive contact is made between the licensee and the customer. The prospective parties must sign and date the form or the pamphlet, and the licensee must sign as a witness and retain the signed pamphlet or form for five years. If the prospective party refuses to sign, the licensee must document the refusal in writing, including

- the nature of the proposed transaction,
- the time and date the pamphlet or form was provided to the prospective party, and
- the reasons the party gave for not signing.

Regulation 3301, which previously provided that a licensee may not accept compensation from more than one party without all parties' written acknowledgment, was repealed in 2006.

RESTRICTIONS

A person may not interfere with the contractual relationship between a licensee and a client by counseling the client or another licensee on how to terminate or amend an existing contractual relationship.

Statutory section 9:3894 enacted 1997; § 37:1447 enacted 2001; § 37:1467 amended 1997; § 37:1449.1 enacted 2006; § 9:3893 amended 2015. Regulations 3701 and 3901 repromulgated 2011; r. 3703 amended 2011.

[La. Rev. Stat. §§ 9:3893\(A\), \(B\), :3894\(A\); 37:1447\(C\), :1467, :1449.1 \(2018\); La. Admin. Code tit. 46, §§ 3701, 3703, 3901 \(2019\)](#)

Louisiana, General Applicability of Provisions

Agency disclosure is not required for a lease that does not exceed a term of three years and under which no property sale is contemplated.

Section amended 2015.

[La. Rev. Stat. § 9:3893\(F\) \(2018\)](#)

Louisiana, Other Relevant Provisions

SELF-DEALING

A principal in a real estate transaction, either individually or through any entity in which he or she holds an interest, must disclose in writing his or her license status in writing to all other principals in the transaction before entering into negotiations concerning the execution of a real estate contract.

MISREPRESENTATIONS

A licensee is not liable

- to a *client* for providing false information if a customer provided the information to the licensee, unless the licensee knew or should have known the information was false (although a licensee may be liable for negligent or fraudulent misrepresentation of material information); or

- to a *customer* for providing false information if the licensee's client or client's agent provided the false information and the licensee did not have actual knowledge that the information was false.

A client is not liable for a licensee's acts or omissions in providing brokerage services for or on behalf of the client.

SUBAGENCY

Subagency may be created only by a written agreement, and a licensee is not considered to be a subagent of a client or another broker because he is a member of or affiliated with a multiple listing service.

Statutory sections 9:3894, 9:3898, and 9:3899 enacted 1997; § 9:3893 amended 2015. Regulation amended 2011.

[La. Rev. Stat. §§ 9:3893\(D\), \(E\); :3894\(B\); :3898; :3899 \(2018\); La. Admin. Code tit. 46, § 3501 \(2019\)](#)

Louisiana, Relationship with Buyers

BUYER'S AGENT'S DUTIES

Negotiations concerning property listed exclusively with a broker must be conducted with the listing broker or an agent designated by the listing broker, not the owner, except with the listing broker's consent.

A buyer's licensee does not breach a duty by working on the basis that he will receive a higher fee for a higher selling price.

A real estate licensee representing a buyer of residential real property must inform the buyer of the disclosure duties and rights under § 9:3196 et seq.

Statutory section 9:3199 enacted 2003; § 9:3893 amended 2015. Regulation repromulgated 2011.

[La. Rev. Stat. §§ 9:3893\(C\), :3199 \(2018\); La. Admin. Code tit. 46, § 3903 \(2019\)](#)

Louisiana, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee may not offer real estate for sale or lease on terms other than those authorized by the owner or his agent.

Negotiations with a buyer who has entered into an exclusive buyer agent contract must be conducted with the licensed broker or an agent designated by the licensed broker, not the buyer, except with the licensed broker's consent.

A licensee representing a seller of residential property must inform the seller of the duties and rights under § 9:3196 et seq.

AGREEMENT REQUIREMENTS

A licensee may not offer real estate for sale or lease without all owners' written consent.

A buyer broker's compensation may not be included in a seller's closing costs, unless the compensation is disclosed in a written offer the seller accepts. The offer must specifically state the compensation amount being paid to the licensee.

RESTRICTIONS

Effective August 1, 2015, it is unlawful for a real estate broker to advise or encourage a seller to enter into a net listing agreement for the sale of residential real estate property or any land.

Statutory section 9:3199 enacted 2003; § 37:1455 amended 2014; § 1448.3 enacted 2015.
Regulation 3903 repromulgated 2011; r. 3503 adopted 2013.

[La. Rev. Stat. §§ 37:1448.3, :1455\(A\)\(11\), \(12\); 9:3199 \(2018\); La. Admin. Code tit. 46, §§ 3503, 3903\(B\) \(2019\)](#)

Louisiana, Term of Relationship

Except as otherwise provided by written agreement, a licensee owes no duties to the client after termination, expiration, or completion of the brokerage agreement, except

- to account for all relevant monies and property; and
- to keep confidential all confidential information received during the agreement's term.

Section enacted 1997.

[La. Rev. Stat. § 9:3895 \(2018\)](#)

Louisiana, Transaction Brokers

No provisions were located explicitly applicable to transaction brokers.

Maine

Maine, Definitions

Affiliated licensee—a licensee “who is authorized to engage in brokerage activity by and on behalf of a real estate brokerage agency.”

Agency—a person or entity engaged in real estate brokerage services through its designated broker, associates or employees and licensed as a real estate brokerage agency.

Appointed agent—an affiliated licensee appointed by his agency's designated broker to act solely for a client of that real estate brokerage agency to the exclusion of the agency's other affiliated licensees.

Brokerage agreement—a “contract that establishes the relationships between the parties and the brokerage services to be performed.”

Buyer agent—a “real estate brokerage agency that has entered into a written brokerage agreement with the buyer in a real estate transaction to represent the buyer as its client.”

Client—a person who has entered into a written brokerage agreement with a real estate brokerage agency that has agreed to represent that person and to be bound by the duties set forth in § 13272.

Designated broker—a broker “designated by a real estate brokerage agency to act for the real estate brokerage agency in the conduct of real estate brokerage.”

Disclosed dual agent—a real estate brokerage agency representing, with the client’s knowledge and informed consent, two or more clients “whose interests are adverse in the same transaction.”

Material fact—a fact that is related to the transaction and “so substantial and important as to influence the client to whom it is imparted.”

Ministerial acts—acts that a real estate brokerage agency "performs for a person who is not a client and that are informative or clerical in nature and do not rise to the level of active representation on behalf of the person."

Real estate—all estates and lesser interests in land and an existing business with real estate as “a part of the business.”

Real estate brokerage—a "person or entity providing real estate brokerage services through that person's designated broker, affiliated licensees, associates or employees and licensed by the commission as a real estate brokerage agency."

Seller agent—a "real estate brokerage agency that has entered into a written brokerage agreement with the seller in a real estate transaction to represent the seller as the real estate brokerage agency's client."

Subagent—an agency engaged by another real estate brokerage agency to perform brokerage tasks for a client.

Transaction broker—a "real estate brokerage agency that provides real estate brokerage services to one or more parties in a real estate transaction without a fiduciary relationship as a buyer agent, a seller agent, a subagent or a disclosed dual agent."

Undisclosed dual agent—a real estate brokerage agency representing more than one client "whose interests are adverse in the same transaction without the knowledge and informed consent of the clients."

Section 13001 amended 2007; §§ 13171 and 13271 amended 2005.

[Me. Rev. Stat. tit. 32, §§ 13001, 13171, 13271 \(2018\)](#)

Maine, Designated Agents

A real estate brokerage agency may, through a designated broker, appoint in writing the affiliated licensees within the agency who will be acting as the client's appointed agents to the exclusion of all other affiliated licensees. A brokerage agency and the designated broker are not deemed to be dual agents solely because of a designated agency appointment, except that an affiliated licensee who personally represents both the seller and buyer as clients in a single transaction is a dual agent and must comply with the provisions that apply to disclosed dual agents.

CONFIDENTIALITY OBLIGATIONS

Each client, the brokerage agency and its appointed licensees possess only actual knowledge, and no knowledge is imputed by operation of law among or between the clients, the agency and the appointed agents. A designated broker appointing an affiliated licensee must take "ordinary and necessary care" to protect the client's confidential information. However, an appointed agent may disclose to the agency's designated broker a client's confidential information in order to seek advice for the client's benefit. A designated broker must not disclose confidential information unless disclosure is required by law or requested or permitted by the client.

A designated broker who is appointed to act as a client's agent must select a designee to fulfill his or her responsibilities.

REQUIRED DISCLOSURES

An appointed agent must disclose the following before entering into a written brokerage agreement:

- the agent's name and type of license;
- a statement that the appointed agent will be the client's agent and will owe the client fiduciary duties, including an obligation not to reveal client's confidential information to other licensees, except to the designated broker in order to seek advice or assistance;
- a statement that the agency may be representing both the seller and the buyer;
- a statement that other agents may be appointed if the appointed agent is not able to fulfill the contract or if provided by agreement between the designated broker and the client, provided that the designated broker must comply with the applicable regulatory provisions, including but not limited to, obtaining the client's signature consenting or not consenting to the appointment, and provided that appointing another agent does not relieve the first appointed agent of the fiduciary duties he owes the client; and
- the client's consent or failure to consent, in writing, to the appointment.

Statutory section amended 2005. Regulatory chapter amended 2013 (cited regulation amended 2009).

[Me. Rev. Stat. tit. 32, § 13278 \(2018\); 02-39-410 Me. Code R. § 8 \(2019\)](#)

Maine, Dual Agents

A brokerage agency may act as a disclosed dual agent only with all parties' written consent.

DUAL AGENT'S DUTIES

A disclosed dual agent's duty to a client who is selling is the same as set forth in § 13273.

A disclosed dual agent's duty to a client who is buying is the same as set forth in § 13274, except the agent may not promote one party's interests to the detriment of another party unless required by § 13275.

CONFIDENTIALITY OBLIGATIONS

A disclosed dual agent may disclose any relevant information to one party that the agent gains from the other party, except:

- the seller's willingness or ability to accept less than the asking price;
- the buyer's willingness or ability to pay more than offered;
- confidential negotiating strategy not disclosed in the sales offer; and
- the buyer's or the seller's motivation for buying or selling.

In a disclosed dual agent situation, each client, the agency and its affiliated licensees are deemed to possess only actual knowledge. Knowledge is not imputed by operation of law.

REQUIRED DISCLOSURES

A brokerage agency that has a written company policy that permits disclosed dual agency must obtain the informed written consent, as set forth in § 13275, of the seller or buyer to the disclosed dual agency relationship at the time the parties enter into a written brokerage agreement that creates an agent-client relationship.

Consent is presumed to be informed if the party signs an agreement that contains

- the transaction's description;

- a statement that the agency represents two clients whose interests are adverse;
- a statement that the agent's duties are limited;
- a statement that the agent may disclose relevant information to one party that the disclosed dual agent gains from the other party, except the seller's willingness or ability to accept less than the asking price, the buyer's willingness or ability to pay more than the offered price, undisclosed confidential negotiating strategy; and the parties' motivation;
- a statement that the client may consent or not consent to the disclosed dual agency; and
- a statement that the client's consent has been given voluntarily and that the client has read and understood the agreement.

Statutory section amended 2005. Regulatory chapter amended 2013 (cited regulation amended 2009).

[Me. Rev. Stat. tit. 32, § 13275 \(2018\); 02-39-410 Me. Code R. § 7 \(2019\)](#)

Maine, General Agency Relationship Requirements

An agent may be a seller agent, a buyer agent, a subagent or a disclosed dual agent.

DUTIES

A real estate brokerage agency has the duty of

- loyalty,

- obedience,
- disclosure,
- confidentiality,
- reasonable care,
- diligence, and
- accounting.

A licensee must furnish copies of brokerage agreements, offers, counteroffers, and all types of contracts to all parties at the time of signature. Upon obtaining a written acceptance to purchase real estate, a licensee must, within a reasonable time, deliver copies of the signed purchase and sale contract to both the seller and the buyer.

CONFIDENTIALITY OBLIGATIONS

Generally, a licensee or agency may not disclose an offer's, counteroffer's or sales contract's terms to anyone other than the buyer and seller without the parties' prior written consent, except the agency may make the documents available to the Commission's director upon request

REQUIRED DISCLOSURES

An agent must timely provide to buyers and sellers of residential real property a [real estate brokerage relationship disclosure form](#) mandated by the commission. In this context, "residential real property" means real estate containing one to four residential dwelling units. Every agency must adopt a written company policy identifying and describing the types of brokerage relationships in which the designated broker and affiliated licensees may engage. The licensee must provide the disclosure form when there is "substantive communication" regarding a real estate transaction, either by face-to-face meeting or a written or electronic communication with a prospective buyer or seller. The licensee need not provide a copy of the form if

- the real estate is land without a residential dwelling unit;
- the real estate is land with more than four residential dwelling units;
- the licensee is acting solely as a principal;
- the written communication is a business solicitation; or
- the licensee knows, or may reasonably assume, that another licensee has given a copy of the form to a prospective buyer or seller for that transaction.

AGREEMENT REQUIREMENTS

A written brokerage agreement must disclose the brokerage agency's policy on cooperating with and compensating other real estate brokerage agencies. If the agency's policy is not to compensate all other real estate brokerage agencies in the same manner, the statement must include

- that policy; and
- a notice that the policy "may limit the participation of other real estate brokerage agencies in the marketplace."

If a brokerage agency's policy on paying commissions to its affiliated licensees provides for "an incentive to an affiliated licensee for a greater commission for an in-house sale versus transactions involving a cooperating real estate brokerage agency," the written brokerage agreement must disclose that policy.

A brokerage agreement between a real estate brokerage agency and a client must be in writing and include at least the following:

- the client's signature;
- the "terms and conditions of the brokerage services to be provided";
- the compensation method or amount;
- the agreement's expiration date; and
- a statement that the agreement creates an agency-client relationship.

RESTRICTIONS

A brokerage agreement provision extending a real estate brokerage agency's right to a fee after the brokerage agreement expires may not extend that right beyond six months.

A net listing, in which an agency receives all amounts over a minimum sale price, is prohibited.

A licensee may not solicit a written brokerage agreement from a seller or buyer if the licensee knows or should have known that the buyer or seller has an exclusive contract with another agency for the same brokerage services. However, an agency may enter into a written brokerage agreement with a seller or buyer if

- the seller or buyer initiates the initial contact; and
- the written brokerage agreement does not become effective until the previous agreement expires.

Statutory section 13177 repealed 2005; §§ 13279, 13272, and 13277 amended 2005; § 13177-A amended 2011. Regulatory chapter amended 2013 (cited regulations amended 2009).

[Me. Rev. Stat. tit. 32, §§ 13279, 13272, 13277, 13177-A \(2018\); 02-39-410 Me. Code R. §§ 4, 5, 6, 9, 10, 12 \(2019\)](#)

Maine, General Applicability of Provisions

The statutory real estate agency provisions supersede the parties' duties and responsibilities under common law, including an agent's fiduciary responsibilities, except those regarding vicarious liability. Section 13276 does not preclude the use of common law, to the extent not inconsistent with the statutory provisions, to define and interpret the duties listed in § 13272.

Section enacted 1993.

[Me. Rev. Stat. tit. 32, § 13276 \(2018\)](#)

Maine, Other Relevant Provisions

SELF-DEALING

A licensee holding an active license must disclose, in the purchase offer, that the licensee is a real estate licensee when:

- buying real estate not listed with a real estate brokerage agency;
- buying real estate listed with the licensee's agency; or
- buying real estate and sharing in the brokerage fee resulting from that sale.

MISREPRESENTATIONS

The real estate commission may impose disciplinary sanctions on a licensee who makes "any substantial misrepresentation by omission or commission, but not including innocent misrepresentation."

A seller agent is not liable to a buyer for providing false information if the seller agent's client provided the information and the seller agent did not know or reasonably should not have known that the information was false. Similarly, a buyer agent is not liable to a seller for providing false information if the buyer agent's client provided the information and the buyer agent did not know or reasonably should not have known that the information was false.

Statutory section 13067 repealed 2007; § 13067-A amended 2017; §§ 13273 and 13274 amended 2005. Regulatory chapter amended 2013 (cited regulation amended 2009).

[Me. Rev. Stat. tit. 32, §§ 13067-A, 13273, 13274 \(2018\); 02-39-410 Me. Code R. § 2 \(2019\)](#)

Maine, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer agent, in his relationship with the buyer, must

- perform the agreement's terms;
- promote the buyer's interests;
- seek property at a price and terms specified by the buyer, except that the buyer agent need not seek other properties if the buyer is party to a purchase contract, unless otherwise provided by agreement;
- present all offers in a timely manner;
- disclose to the buyer material facts the buyer agent knows or should have known, except as required by § 13280;
- advise the buyer to obtain expert advice on material matters beyond the buyer agent's expertise;

- account in a timely manner for all money and property received;
- exercise reasonable skill and care, except that a buyer agent need not discover latent defects;
- comply with applicable laws;
- preserve buyer's confidential information that might have a negative impact on the buyer's real estate activity unless the buyer grants consent to disclose the information, disclosure is required by law, the information becomes public by a source other than the buyer agent, or disclosure is necessary to defend the buyer agent against a wrongful conduct action; and
- be able to promote properties in which the buyer is interested to other buyers, who might also be clients, without breaching any duty.

A buyer's agent, in its relationship with the seller, must

- treat all prospective sellers honestly; and
- not knowingly give false information, including material facts about the buyer's financial ability to perform.

Section amended 2005.

[Me. Rev. Stat. tit. 32, § 13274 \(2018\)](#)

Maine, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller agent has the following duties to a seller:

- to perform the brokerage agreement's terms;
- to promote the seller's interests;
- to seek a sale at the price and terms stated in the agreement or acceptable to the seller, except that the seller agent need not seek additional offers if the property is subject to a sale contract, unless the brokerage agreement so provides;
- to present in a timely manner all offers;
- to disclose to the seller material facts that the seller agent knew or should have known, except as otherwise provided in § 13280;
- to advise the seller to obtain expert advice on matters beyond the seller agent's expertise;
- to account in a timely manner for all money and property received;
- to exercise reasonable skill and care;
- to comply with applicable laws;
- to preserve seller's confidential information that might have a negative impact on the seller's real estate activity unless the seller grants consent to disclose the information, disclosure is required by law, the information becomes public by a source other than the seller agent, or disclosure is necessary to defend the seller agent against a wrongful conduct action; and
- to be able to promote properties the seller does not own to prospective buyers and to list competing property for sale without breaching any duty.

A seller agent, in its relationship with the buyer, must

- treat all prospective buyers honestly;
- not knowingly give false information; and
- disclose in a timely manner to a prospective buyer all material defects pertaining to the property's physical condition of which the real estate brokerage agency knew or reasonably should have known.

Section amended 2005.

[Me. Rev. Stat. tit. 32, § 13273 \(2018\)](#)

Maine, Term of Relationship

Agency relationships begin on the brokerage agreement's effective date and continue until the brokerage agreement is performed, completed, terminated or expired. A brokerage agency and an affiliated licensee owe no duty after termination, expiration, completion or performance of an agreement, except

- to account for all money and property received;
- "for seller agents, buyer agents, subagents and disclosed dual agents", to treat as confidential client's information that could have a negative impact on the client's real estate activity, unless the client consents in writing, disclosure is required by law, the information becomes public by the client's actions or from a source other than the brokerage agency or the affiliated licensee, or disclosure is necessary to defend the agency or an affiliated licensee against a wrongful conduct action.

Section amended 2005.

[Me. Rev. Stat. tit. 32, § 13281 \(2018\)](#)

Maine, Transaction Brokers

Unless otherwise provided in subchapter 3, a real estate brokerage agency providing brokerage services is presumed to be acting as a transaction broker unless the agency has agreed in writing to represent one or more parties as the agency's clients.

DUTIES

A transaction broker does not represent a party as a client and is not bound by the duties set forth in § 13272.

A transaction broker must:

- timely account for all money and property received;
- timely disclose to a buyer all known material defects pertaining to the property's physical condition;
- comply with all relevant laws, rules and regulations governing real estate commission brokerage licenses;
- treat all parties honestly and not knowingly give false information; and
- perform those ministerial acts agreed upon between the transaction broker and one or more parties.

A buyer agent may assist the seller by performing ministerial acts, such as preparing and conveying offers and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the seller does not

- violate the buyer agent's agreement with a buyer;

- form a brokerage agreement with the seller; or
- make the buyer agent the seller's transaction broker.

Similarly, a seller agent may assist the buyer by performing ministerial acts, such as preparing and conveying offers and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the buyer does not

- violate the seller agent's agreement with the seller;
- form a brokerage agreement with the buyer; or
- make the seller agent the buyer's transaction broker.

A transaction broker is not liable for providing false information if it was provided to the broker and the broker did not know the information was false.

A transaction broker need not discover latent defects in property.

CONFIDENTIALITY OBLIGATIONS

If one affiliated licensee who is acting as an appointed agent of a real estate brokerage agency represents one party as the agency's client and another affiliated licensee of the same agency is acting as a transaction broker for another party to the same transaction, the real estate brokerage agency and its affiliated licensees are considered to possess only actual knowledge and information. No knowledge or information is imputed by operation of law.

RESTRICTIONS

A transaction broker may not

- inspect, investigate or prepare an analysis of property for any party's benefit;
- "verify the accuracy or completeness of oral or written statements" by the seller, the buyer or a third party; or
- promote either party's interests, except as required by § 13283.

Sections 13273 and 13274 amended 2005; §§ 13282 and 13283 enacted 2005.

See [Me. Rev. Stat. tit. 32, §§ 13273, 13274, 13282, 13283 \(2018\)](#)

Maryland

Maryland, Definitions

Broker—a licensed real estate broker, including an entity, through which a licensed real estate broker provides real estate brokerage services under § 17-321.

Brokerage agreement—a “written agreement between a broker and a client to provide real estate brokerage services under a brokerage relationship.”

Brokerage relationship—an “agency relationship under a brokerage agreement between a client and a broker who has been authorized by the client to provide real estate brokerage services in a residential real estate transaction.”

Buyer’s agent—a licensed real estate broker, associate real estate broker or real estate salesperson who represents a prospective buyer or lessee pursuant to a written brokerage agreement in acquiring or leasing real estate.

Client—a person who has entered into a brokerage agreement with a broker. As used in § 17-532, "client" includes a presumed buyer's or lessee's agency relationship.

Confidential information—information that

- the seller or lessor will accept a price lower than the listing price;
- the buyer or lessee will pay a price higher than the offer price;
- discloses a party's motivation;
- discloses facts that led a party to sell or buy; or
- relates to the client's negotiating strategy.

Cooperating agent—a licensed real estate broker, associate real estate broker or real estate salesperson who is not affiliated with or acting as the listing real estate broker for the property and who assists a prospective buyer or lessee as a subagent of the listing broker, in acquiring real estate for sale.

Dual agent—a licensed real estate broker who acts as, or a branch office manager who has been designated by the broker to act as, an agent for both the seller and buyer or both the lessor and lessee in the same transaction.

Intra-company agent—a licensed associate real estate broker or salesperson who has been designated by a dual agent to act on behalf of a party in the purchase, sale or lease of real estate.

Licensee—a “licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson.”

Ministerial act—an act that

- a licensee “performs on behalf of a client before and after the execution” of a sale or lease contract;
- assists another person to complete or fulfill a contract with the licensee’s client; and
- does not “involve discretion or the exercise of the licensee's own judgment.”

Real estate—an interest in real property located in Maryland or elsewhere, including condominiums and timeshares.

Seller’s agent—a licensed real estate broker who, pursuant to a written brokerage agreement, acts as the listing broker, or a licensed associate real estate broker or salesperson who is affiliated with the broker.

Subagent—a licensed real estate broker, associate broker or salesperson who:

- is not affiliated with or acting as the listing broker for a property;
- is not a buyer's agent;
- has a brokerage relationship with the seller or lessor; and
- assists a prospective buyer or lessee in the acquisition of real estate for sale or lease in a nonagency capacity.

Team—in this context, two or more licensed associate real estate brokers or salespersons who:

- work together on a regular basis to provide real estate brokerage services;

- represent themselves as "being part of one entity"; and
- "designate themselves by a collective name such as team or group."

Section 17-101 amended 2008 and reenacted without amendment 2018; § 17-530 amended 2017; § 17-532 amended 2019; § 17-528 amended 2019; § 17-543 enacted 2010.

[Md. Code Ann., Bus. Occ. & Prof. §§ 17-101, -528, -530, -532, -543 \(2019\)](#)

Maryland, Designated Agents

Maryland statutes require a broker to assign one intra-company agent to act on behalf of the seller or lessor and another to act on behalf of the buyer or lessee if the broker is acting as a dual agent.

An intra-company agent may not also act as a dual agent in the same real estate transaction.

DESIGNATED AGENT'S DUTIES

An intra-company agent representing the seller or buyer must provide the same services to the client as an agent for the seller or buyer would provide in a transaction that does not involve dual agency, which includes advising the client as to price and negotiation strategy, if the intra-company agent has made the appropriate client disclosures and the client has consented to the dual agency representation.

An intra-company agent may not disclose confidential information except to the broker or dual agent for whom the intra-company agent works. The broker or dual agent may not disclose that information to the other party or the intra-company agent for the other party.

REQUIRED DISCLOSURES

A licensee may act as an intra-company agent provided the licensee:

- has executed a written consent for dual agency agreement; and

- has made the necessary disclosures and obtained consent as required by § 17-530.

Sections 17-530 amended 2017; § 17-532 amended 2019; § 17-533 repealed 2016.

See [Md. Code Ann., Bus. Occ. & Prof. §§ 17-530, -532 \(2019\)](#)

Maryland, Dual Agents

Unless a real estate broker obtains all parties' written consent, a broker, or a branch office manager who has been designated by the broker, may not act as a dual agent in Maryland. The consent must include an affirmation that identifies the property and buyer when the broker or branch office manager is serving as a dual agent and the buyer and seller or lessee and lessor enter into a written contract for sale or lease.

When acting as a dual agent, a broker must assign an affiliated associate broker or salesperson to act as the intra-company agent on behalf of the seller or lessor and another affiliated associate broker or salesperson to act as the intra-company agent on behalf of the buyer or lessee.

A broker or his or her designee may designate two members of a team as intra-company agents for the seller and the buyer in the same transaction if the parties have been advised in writing that:

- the licensees are part of the same team; and
- the team could have a financial interest in the transaction's outcome.

If a broker's designee designates intra-company agents, the broker's designee "may not be a member of the real estate team."

"A dual agent may not also act as an intra-company agent in the same transaction."

CONFIDENTIALITY OBLIGATIONS

Generally, neither an intra-company agent nor a broker acting as a dual agent may disclose confidential information to the buyer or seller or the buyer's or seller's intra-company agent in the same transaction.

REQUIRED DISCLOSURES

If a broker offers a financial bonus to affiliated licensees for the sale or lease of real property, the broker must provide to each party a statement disclosing that fact.

An intra-company agent representing either party may provide the same services to the client as an exclusive agent for the seller or buyer, provided that the intra-company agent has made the appropriate disclosures to the client and the client has consented to the dual agency. The written consent must state

- each property for which the broker will serve as a dual agent;

- that the broker receives compensation on the sale of a property listed only by the broker;

- that the broker represents both the seller and the buyer and a conflict of interest may result;

- that the broker, as a dual agent, does not owe undivided loyalty to either party;

- that a dual agent generally may not disclose confidential information to the seller or buyer in the same real estate transaction l;

- unless authorized by the seller or buyer, as applicable, that neither an intra-company agent nor a dual agent may not tell a buyer that the seller will accept a lower price or that the buyer is willing to pay a higher price or that the buyer or seller will accept terms other than those in the buyer's offer or those in the listing agreement;

- that a dual agent may not disclose a party's motivation;

- that, except as otherwise required, if the information is confidential, a dual agent may not disclose any facts that lead the seller to sell;
- that the parties are not required to consent to the dual agency;
- that the parties have voluntarily consented to the dual agency; and
- that the parties understand the terms of the dual agency.

In a residential real estate transaction, a broker may withdraw from representing a client who refuses to consent to a dual agency. Such withdrawal does not limit the licensee from representing the client in other transactions that do not involve dual agency.

Section 17-530.1 amended 2016; § 17-530 amended 2017; § 17-532 amended 2019; § 17-546 amended 2011. Regulation 09.11.01.02 effective 1967; r. 09.11.08.01 amended 2017.

[Md. Code Ann., Bus. Occ. & Prof. §§ 17-530, -530.1, -532, -546 \(2019\); Md. Regs. Code §§ 09.11.01.02, .08.01 \(2019\)](#)

Maryland, General Agency Relationship Requirements

DUTIES

A licensee must protect and promote his or her clients' interests and must

- act according to the brokerage agreement terms;
- seek a sale or lease at a price and on terms acceptable to the client;

- present in a timely manner all written offers or counteroffers to and from the client, even if the property is subject to an existing sale or lease contract;
- disclose all material facts, as required by statute;
- treat all parties honestly and fairly;
- answer all questions truthfully;
- timely account for all trust money received;
- exercise reasonable care and diligence;
- comply with all applicable laws and regulations; and
- not disclose confidential information unless the client consents in writing.

A licensee does not breach any duties to his client by

- showing other properties to prospective buyers or lessees;
- representing other clients who have or are looking for similar properties;
- representing other sellers or lessors with similar properties;
- showing a buyer or lessee other available properties; and

- during an open house, discussing other properties with prospective buyers or lessees, if the seller or lessor has consented in writing.

Unless otherwise specified in the brokerage agreement, a licensee need not seek additional offers to purchase or lease real estate if the property is subject to a sale or lease contract.

A licensee may not waive or modify the duties listed above.

Maryland regulations also generally provide that "[f]or the protection of all parties with whom the licensee deals," a licensee must "see to it" that:

- financial obligations and commitments are in writing and express the parties' exact agreement; and
- copies of the agreements are "placed in the hands of all parties involved within a reasonable time after the agreements are executed."

A licensee must present all written offers or counteroffers to his or her client, as required by statute. Effective June 1, 2015, unless otherwise specified in the brokerage agreement, the licensee must present all written offers or counteroffers in full and in hard copy or electronic format.

CONFIDENTIALITY OBLIGATIONS

Unless the client consents to disclosure in writing, a licensee may not disclose confidential information about a client to

- any other party;
- any of the licensee's or the licensee's broker's other clients;
- a licensee acting as another party's agent; or

- another party's representative.

"An intra-company agent may disclose confidential information to the broker or dual agent for whom the intra-company agent works, but the broker or dual agent may not disclose that confidential information to the other party or the intra-company agent for the other party, as provided in § 17.530.1(b)."

REQUIRED DISCLOSURES

A licensee participating in a residential real estate transaction must disclose in writing the party he represents no later than the first scheduled face-to-face contact. If a subagent is involved, that agent must make the required written disclosure to the buyer or lessee that the subagent represents the seller or lessor. If no subagent or buyer's agent is involved, the seller's agent must make the required disclosure to the buyer or lessee that the seller's agent represents the seller or lessor. In a residential transaction that does not involve a seller's agent, the buyer's agent must make the required disclosure to the seller or lessor that the buyer's agent represents the buyer or lessee.

The disclosure requirement does not apply to a seller, lessor, buyer or lessee with whom a broker has a written brokerage agreement.

A licensee participating in a residential transaction must use a standard disclosure form. The written disclosure must explain

- the differences between a seller's agent, buyer's agent, subagent, dual agent, and intra-company agent;
- the licensee's duties to exercise reasonable care and diligence and maintain confidentiality;
- that a licensee who assists a buyer or lessee in locating residential real estate and who is not affiliated with the listing real estate broker for any real estate shown, is presumed to be acting as a buyer's agent, unless the licensee or buyer declines to have the licensee act as the buyer's agent;

- that the licensee has a duty to treat each party fairly and honestly, promptly present each written offer, respond truthfully to questions, disclose all material facts relating to a property that he or she knows or should know, and offer each property without discrimination;
- that a licensee is qualified to advise only on real estate matters;
- the need for an agency agreement to be in writing;
- the duty of a buyer's agent to assist in evaluating the property and preparing an offer, negotiating in the buyer's best interests;
- the possibility that a dual agency may arise in a transaction and the options that would become available; and
- that any complaints may be filed with the Maryland Real Estate Commission.

A licensee may not disclose confidential information obtained from a prospective client unless that prospective client consents in writing to the disclosure.

The required standard disclosure forms are available on the [Commission's website](#).

Also, a licensee may not accept compensation from more than one party to a transaction without all parties' full knowledge.

AGREEMENT REQUIREMENTS

A brokerage agreement must

- have an automatically effective, definite termination date;

- state the compensation to be paid to the broker and whether the broker may receive compensation from a person other than the client;
- state whether the broker may cooperate and share compensation with other brokers;
- explain the events or conditions that entitle the broker to compensation; and
- provide for the cancellation of the brokerage relationship by either party.

Statutory sections 17-530 and 17-532 amended 2017; § 17-534 enacted 1998. Regulation 09.11.02.01 amended 2017; r. 09.11.02.02 amended 2015.

[Md. Code Ann., Bus. Occ. & Prof. §§ 17-530, -532, -534 \(2019\); Md. Regs. Code §§ 09.11.02.01, .02 \(2019\)](#)

Maryland, General Applicability of Provisions

Part III of Subtitle 5 of Title 17 of the Maryland Business Occupations and Professions Code, which deals with real estate agency relationships, applies only to

- the sale or lease of real property improved by one to four single-family units, unless the lease is for 125 days or less; and
- unimproved real property zoned for residential use.

Section enacted 1998.

[Md. Code Ann., Bus. Occ. & Prof. § 17-529 \(2019\)](#)

Maryland, Other Relevant Provisions

SELF-DEALING

A licensee seeking to acquire a real property interest must disclose his or her licensing status in writing to the seller or lessor no later than the time an offer is submitted. Also, a licensee seeking to sell or lease real property he or she owns must disclose that ownership interest in writing when he or she offers the property for sale or lease. An employee of a real estate brokerage or of a licensee must disclose his or her employment.

The above disclosure requirements also apply when the licensee is acting on behalf of or representing:

- a member of the licensee's immediate family;
- an entity in which the licensee has an ownership interest; or
- an employee of the brokerage with which the licensee is affiliated or of "a team or group of which the licensee is a member."

A licensee seeking to sell or lease property may give the required written notice "through the multiple list service and through any other written means effective in bringing the information to the attention of prospective buyers or lessees."

Statutory section 17-531 amended 1999; § 17-533 repealed 2016; § 17-535 amended 2019.
Regulation amended 2015.

[Md. Code Ann., Bus. Occ. & Prof. §§ 17-531, -535 \(2019\); Md. Regs. Code § 09.11.02.02 \(2019\)](#)

Maryland, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's agent duties include assisting in the:

- evaluation of a property, including provision of a market analysis of the property; and

- preparation of an offer on a property and to negotiate in the best interests of the buyer;

REQUIRED DISCLOSURES

A buyer's agent must disclose in writing that he represents the buyer or lessee, no later than the first scheduled face-to-face meeting and orally at their first contact. In a residential transaction that does not involve a seller's agent, the buyer's agent must make the written disclosure to the seller or lessor that the buyer's agent represents the buyer or lessee.

In addition to the required written disclosure, "[i]f the first contact between a buyer's agent and a prospective seller or lessor is not a face-to-face contact, the buyer's agent shall disclose, through the medium in which the contact occurs, that the buyer's agent represents the buyer or lessee."

If a licensee is holding an open house, the licensee complies with the disclosure requirements if the licensee "displays, in a conspicuous manner, a notice to prospective buyers or lessees that the licensee present on the property represents the seller or lessor."

The unexcused failure to ensure that a prospective purchaser has the real property disclosure statement or disclaimer statement before submitting a purchase offer may be considered a violation of the licensee's obligations and "could result in a contract becoming void or voidable."

Statutory section 17-530 amended 2017; § 17-533 repealed 2016. Regulation amended 2015.

[Md. Code Ann., Bus. Occ. & Prof. §§ 17-530 \(2019\); Md. Regs. Code § 09.11.02.02 \(2019\)](#)

Maryland, Relationship with Sellers

SELLER'S AGENT'S DUTIES

Unless otherwise specified by contract, a licensee need not seek additional offers to purchase or lease real estate if the property is subject to an existing sale or lease contract.

REQUIRED DISCLOSURES

In a residential real estate transaction that does not involve a buyer's agent or subagent, the seller's agent must make a written disclosure to the buyer or lessee that the seller's agent represents the seller or lessor.

In addition to the required written disclosure, "if the first contact between a seller's agent and a prospective buyer or lessee is not a face-to-face contact, the seller's agent shall disclose, through the medium in which the contact occurs, that the seller's agent represents the seller or lessor."

AGREEMENT REQUIREMENTS

A listing or sales contract must state the brokerage amount. Also, a residential listing contract

- must be in writing,
- must be signed, and
- a copy of the contract must be given to the seller or owner before the licensee advertises, shows, or offers the property.

RESTRICTIONS

A listing or sales contract may not provide for a net return to the seller.

Statutory sections 17-530 amended 2017; § 17-632 amended 2019. Regulation 09.11.01.01 effective 1967; r. 09.11.01.12 amended 2019.

[Md. Code Ann., Bus. Occ. & Prof. §§ 17-530, -532 \(2019\); Md. Regs. Code §§ 09.11.01.01, .12 \(2019\)](#)

Maryland, Term of Relationship

A brokerage relationship begins at the time a client enters into a brokerage agreement. The relationship continues until

- performance is completed according to the brokerage agreement; or
- the earlier of the stated expiration date, a mutually agreed on termination date, a default by a party, or a termination under § 17-530 (regarding dual agency).

Upon termination, a licensee has no further duties except

- to account for all trust money in the licensee's possession, and
- to keep confidential all personal and financial information received from the client.

Section amended 2019.

[Md. Code Ann., Bus. Occ. & Prof. § 17-534 \(2019\)](#)

Maryland, Transaction Brokers

No provisions specifically applicable to transaction brokers were located, but a licensee who performs ministerial acts for a person does not

- violate his duties to his client, provided the client has consented in the brokerage agreement to the licensee providing ministerial acts, or
- form an agency relationship between the licensee and the person for whom the ministerial acts are performed.

Section amended 2019.

See [Md. Code Ann., Bus. Occ. & Prof. § 17-532\(g\) \(2019\)](#)

Massachusetts

Massachusetts, Definitions

Broker—a person who for another and for consideration, or with the expectation or promise of receiving consideration,

- “sells, exchanges, purchases, rents or leases, or negotiates, or offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of any real estate”;
- lists or offers to list real estate;
- buys or offers to buy, sells or offers to sell or otherwise deals in real estate options;
- advertises or holds himself out as engaging in the real estate business; or
- assists or directs in procuring prospects or in negotiating or completing any agreement or transaction for the sale, exchange, purchase, leasing or renting of any real estate.

Real estate—an estate or interest in land and its improvements, whether or not located in Massachusetts.

Statutory section amended 1991.

[Mass. Gen. Laws Ann. ch. 112, § 87PP \(2019\)](#)

Massachusetts, Designated Agents

REQUIRED DISCLOSURES

Licenses engaged in the purchase or sale of land with a building intended for use as a one- to four-unit residential dwelling, or land on which a building for use as a one- or two-unit residential dwelling is intended to be constructed, may appoint one or more affiliated licenses to represent the seller, provided the seller gives written consent after being advised that:

- the designated seller's agent will represent the seller and will "owe the seller the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care and obedience to lawful instruction";
- all other affiliated licenses will not represent the seller nor have the other specified duties, and may potentially represent the purchaser; and
- if designated agents affiliated with the same broker represent both the seller and purchaser in a transaction, the appointing broker is a dual agent and neutral as to any conflicting interests of the parties, but will continue to owe the seller and purchaser the duties of confidentiality of material information and to account for funds.

A license may appoint one or more affiliated licenses to act as a designated agent on behalf of a prospective purchaser, provided the purchaser gives written consent after being advised that:

- the designated buyer's agent will represent the purchaser and will "owe the purchaser the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care and obedience to lawful instruction";
- all other affiliated licenses will not represent the purchaser nor have the other specified duties, and potentially may represent the seller; and
- if designated agents affiliated with the same broker represent both the seller and purchaser in a transaction, the appointing broker is a dual agent and neutral as to any parties' conflicting interests, but continues to owe the seller and purchaser the duties of confidentiality of material information and to account for funds.

DUTIES

Licenses acting as a designated agent owe the duties of:

- loyalty,
- full disclosure,
- confidentiality,
- accounting for funds,
- reasonable care, and
- obedience to lawful instructions.

A designated broker or salesperson

- exclusively represents the seller or purchaser;
- is responsible for performing any duties owed to the seller or purchaser;
- may not share known or acquired information that would harm the seller's or purchaser's interests in the transaction, except for known material defects in the real property; and
- has an affirmative obligation to disclose known material defects in real property.

REQUIRED DOCUMENTATION

There is a conclusive presumption that a seller or purchaser has consented to a designated agency relationship if he or she has signed a consent form that substantially contains the description of designated agency set forth in 254 Mass. Code Regs. 3.00(13)(c). If the designated seller's agent and designated buyer's agent are affiliated with the same broker and the seller and purchaser have each consented to designated agency, a separate consent to dual agency is not required.

With informed written consent in the prescribed form, a licensee may appoint, for a potential transaction:

- one or more licensees to act as a designated agent on behalf of the purchaser or seller; and
- one or more other licensees to act as a designated agent on behalf of the other party.

A licensee may not appoint a designated agent unless the party has consented, at the beginning of the party's agency relationship with the real estate broker, that the party's designated agency relationship may not extend to any other licensee affiliated with a broker. The designated agency relationship is limited to the licensees appointed to act as designated agent.

A seller may consent to designated agency in a listing agreement; a purchaser may consent to a designated agency in a buyer representation agreement. Either the seller or purchaser may consent in a form that substantially contains the designated agency description set forth in 254 Mass. Code Regs. 3.00(13)(c), which may be signed either before or when a potential transaction between a seller and purchaser is identified, but in no event later than the execution of a written agreement for the purchase or sale of residential property. If the seller has consented to designated agency before a potential transaction is identified, the broker or salesperson must also provide written notice to the seller and prospective purchaser before the seller or purchaser enters into a written agreement for the purchase or sale of a residential property.

Statutory section amended 2005. Regulation dated 2005.

[Mass. Gen. Laws Ann. ch. 112, § 87AAA3/4 \(2019\); 254 Mass. Code Regs. 3.00\(13\)\(c\) \(2019\)](#)

Massachusetts, Dual Agents

The board may discipline a licensee who acts for more than one party to a transaction without all parties' knowledge and consent.

REQUIRED DISCLOSURES

Massachusetts law sets forth specific required disclosures in the case of a licensee engaged in the purchase or sale of

- land with a building intended for use as a one- to four-unit residential dwelling; or
- land on which a building is intended to be constructed for use as a one- or two-unit residential dwelling.

Pursuant to that requirement, a licensee may act as an agent for both a seller and a prospective buyer if the broker or salesperson obtains an informed written consent from both the seller and the prospective buyer. The licensee must provide a written consent form that states

- that the licensee will be representing both the seller and the buyer;
- that a dual agent assists the seller and the buyer in a transaction, but is neutral with regard to any conflicting interests;
- that a dual agent will "not have the ability to satisfy fully the duties of loyalty, full disclosure, reasonable care and obedience to lawful instructions, but shall still owe the duty of confidentiality of material information and the duty to account for funds";
- that a dual agent may not disclose material confidential information received from either client, unless disclosure is expressly authorized, required by law, intended to prevent illegal conduct, or necessary to prosecute a claim against a person represented or to defend a claim against the broker or salesperson; and
- that the duty of confidentiality continues after the brokerage relationship terminates.

A licensee must

- obtain the required signatures on one or more consent forms;
- provide the original forms to the seller and the prospective buyer;
- maintain a copy for three years;
- sign the consent form;
- indicate his or her status as either a broker or a salesperson;
- provide his or her license number; and
- date the form.

The seller and prospective purchaser need not sign the same consent form.

Consent may be given by

- a seller in a written agreement to list their property for sale;
- by a prospective purchaser in a buyer representation agreement; or
- in another document signed either before or after a potential transaction has been identified.

If a party has given consent to dual agency before the identification of a potential transaction, the licensee must give written notice of dual agency after a transaction has been identified. The licensee must give written consent when an agency relationship with the seller or purchaser is created, but notice of a dual

agency relationship must also be given to the prospective purchaser and to the seller after a listed property is first shown to the purchaser.

A licensee is not required to give written notice to each prospective purchaser or seller who comes to an open house showing of real property if the licensee, "by sign, poster, distributed listing literature or property description form conspicuously discloses any pre-existing agency relationship."

Statutory section 87AAA amended 1973; § 87AAA3/4 amended 2005. Regulation dated 2005.

[Mass. Gen. Laws Ann. ch. 112, §§ 87AAA, 87AAA3/4 \(2019\); 254 Mass. Code Regs. 3.00\(13\)\(b\) \(2019\)](#)

Massachusetts, General Agency Relationship Requirements

REQUIRED DISCLOSURES

A licensee must request a prospective purchaser or seller to sign and date a disclosure notice, give the original to the prospective purchaser or seller, and maintain a copy for three years. If a prospective purchaser or seller declines to sign the notice, the licensee must note

- the date the notice was given; and
- that the prospective purchaser or seller declined to sign it.

A licensee must provide to a prospective purchaser or seller at the first personal meeting, a notice developed and approved by the board that clearly discloses the licensee's relationship with the party.

A licensee is not required to give a written notice to each prospective purchaser or seller who comes to an open house showing if the licensee, "by sign, poster, distributed listing literature or property description form conspicuously discloses any pre-existing agency relationship." Any listing literature or property description form distributed at an open house must contain a written disclosure of the agency relationship in a form more conspicuous than any other written material.

RESTRICTIONS

A licensee may not

- induce a party to break a lease or sale contract when the “action is effected” for the licensee’s personal gain;
- affirmatively solicit the sale, lease, or listing of residential property on the grounds of alleged change of value due to the presence or prospective entry into the neighborhood of a person or persons of another race, economic level, religion, or ethnic origin; or
- accept a "net" listing for the sale or rental of real property in which the commission is unspecified.

Statutory section amended 1973. Regulation dated 2005.

[Mass. Gen. Laws Ann. ch. 112, § 87AAA \(2019\); 254 Mass. Code Regs. 3.00\(13\) \(2019\)](#)

Massachusetts, General Applicability of Provisions

No relevant provisions were located.

Massachusetts, Other Relevant Provisions

SELF-DEALING

The board may discipline a license who acts as a broker and undisclosed principal in the same transaction. Also, a licensee may not buy, sell, rent, mortgage, or acquire an interest in or represent a client in the buying, selling, renting or exchanging real property in which the licensee or his or her "kin" has a personal financial interest, unless the licensee fully discloses in writing to all parties the nature of his or her interest, and the parties acknowledge the disclosure in writing. A broker may not take an option on real property for which the owner approached the broker to act as a broker without first disclosing that the broker is now a prospective purchaser or lessor and no longer acting as the owner’s broker.

SUBAGENTS

A licensee may not enter into or offer a subagency agreement to another licensee when marketing a property for sale without informing the seller about vicarious liability and obtaining the seller's written consent.

Statutory section 87AAA amended 1973; 87AAA3/4 amended 2005. Regulation dated 2005.

[Mass. Gen. Laws Ann. ch. 112, §§ 87AAA, 87AAA3/4 \(2019\); 254 Mass. Code Regs. 3.00\(11\)\(a\), \(b\) \(2019\)](#)

Massachusetts, Relationship with Buyers

No provisions specifically applicable to buyer's agents were located.

Massachusetts, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee must submit all offers to the owner.

REQUIRED DISCLOSURES

A licensee need not give written notice to each prospective purchaser or seller who comes to an open house, provided the licensee conspicuously discloses his or her pre-existing agency relationship. If the listing literature or property description form is distributed at an open house, the written disclosure of the agency relationship must be more conspicuous than any other written terms.

RESTRICTIONS

A licensee may not enter into a net listing agreement in which the commission is not specified.

Statutory section amended 1973. Regulation dated 2005.

[Mass. Gen. Laws Ann. ch. 112, § 87AAA \(2019\); 254 Mass. Code Regs. 3.00\(11\)\(c\), \(d\); \(13\)\(a\)\(3\) \(2019\)](#)

Massachusetts, Term of Relationship

No relevant provisions were located.

Massachusetts, Transaction Brokers

In Massachusetts, a licensee who performs services for a buyer, a seller, or both, but does not represent either as an agent, is known as a facilitator, a transaction broker, or a salesperson.

TRANSACTION BROKER'S DUTIES

A facilitator has a duty "to present all real property honestly and accurately, disclosing known material defects and accounting for funds." A facilitator does not have a duty of confidentiality with regard to information received from the buyer or the seller.

REQUIRED DISCLOSURES

A facilitator must provide written notice of his or her representation. The notice must:

- state that no agency relationship exists between the facilitator and the buyer or the seller; and
- be provided at "the first personal meeting to discuss a specific property."

Regulation dated 2005.

[254 Mass. Code Regs. 3.00\(13\)\(e\) \(2019\)](#)

Michigan

Michigan, Definitions

Affiliated licensees—individuals who are licensed as salespersons or associate brokers and are employed by the same broker.

Buyer—a purchaser or lessee of real estate.

Buyer's agent—a "licensee acting on behalf of the buyer in a real estate transaction who undertakes to accept the responsibility of serving the buyer consistent with those fiduciary duties existing under common law."

Designated agent—an "individual salesperson or an associate broker who is designated by the broker as the client's legal agent pursuant to a designated agency agreement."

Designated agency agreement—a written agreement “between a broker and a client in which an individual salesperson or associate broker affiliated with that broker is named as that client's designated agent.”

Dual agent—a licensee who is acting as the agent of both the buyer and the seller and who provides services to complete a transaction “without the full range of fiduciary duties owed by a buyer's agent and a seller's agent.”

Real estate transaction—the sale or lease of any legal or equitable interest in real estate that consists of one to four residential dwelling units or a building site for a residential unit.

Seller—the “equitable or legal owner of real estate.”

Seller's agent—a “licensee acting on behalf of the seller in a real estate transaction who undertakes to accept the responsibility of serving the seller consistent with those fiduciary duties existing under common law.”

Supervisory broker—an “associate broker designated in a written agency agreement to act in a supervisory role in an agency relationship.”

Transaction coordinator—a licensee who is not acting as either the buyer’s or the seller’s agent.

Section amended 2008.

[Mich. Comp. Laws Ann. § 339.2517\(11\) \(2019\)](#)

Michigan, Designated Agents

A broker and a client may enter into a designated agency agreement, and generally, a client with a designated agency agreement does not have an agency relationship with any of the designated agent’s affiliated licensees. Two affiliated designated agents may each represent a different party in the same transaction without being considered dual agents.

CONFIDENTIALITY OBLIGATIONS

A designated agent's knowledge of confidential information is not imputed to an affiliated licensee who does not have an agency relationship with that client. A designated agent may not disclose a client's confidential information to any licensee, except to a supervisory broker in order to seek advice or assistance for the client's benefit.

AGREEMENT REQUIREMENTS

A designated agency agreement must contain the name of all associate brokers who are authorized to act as supervisory brokers. If affiliated designated agents represent different parties in the same transaction, the broker and all supervisory brokers are considered disclosed consensual dual agents for that transaction. Designated agents who are affiliated licensees representing different parties in the same transaction must notify their clients that their broker represents both parties before an offer is made or presented. A listing agreement or a buyer's agency agreement may be amended in writing

- to establish a designated agency relationship,
- to change a designated agent, or
- to change supervisory brokers.

Section amended 2008.

[Mich. Comp. Laws Ann. § 339.2517\(6\), \(7\), \(9\), \(10\) \(2019\)](#)

Michigan, Dual Agents

Except in property management situations, a licensee who acts for more than one party in a transaction without the parties' knowledge is subject to discipline.

Section amended 2016.

[Mich. Comp. Laws Ann. § 339.2512\(1\)\(a\) \(2019\)](#)

Michigan, General Agency Relationship Requirements

DUTIES

"Unless knowingly waived by execution of a limited service agreement," a licensee providing services pursuant to a service provision agreement must, at a minimum, provide the following duties:

- exercise "reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship";
- perform the service provision agreement's terms;
- be loyal to the client's interest;
- comply with relevant laws, rules, and regulations;
- refer the client to other licensed professionals for expert advice related to material matters that are not within the broker's expertise;
- provide a timely accounting; and
- maintain as confidential "all information obtained in the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client."

A licensee acting pursuant to a service provision agreement must also provide the following services to his or her client:

- when representing a seller or lessor, market the client's property in the manner agreed upon in the service provision agreement;

- accept delivery of and present offers and counteroffers;
- at the time of execution of an offer to purchase, "recommend to the purchaser that the purchaser require that the seller provide a fee title policy in the amount of the purchase price to the purchaser, issued or certified to the approximate date of closing of the real estate transaction;"
- assist in "developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices" until all parties execute a purchase or lease agreement and all contingencies are satisfied or waived;
- after execution of a purchase agreement, assist as necessary to complete the transaction under the agreement's terms;
- without written approval of the buyer and seller, not close a transaction on any terms or conditions that are contrary to the terms or conditions of an executed purchase agreement; and
- for a broker or associate broker who is involved at the closing, furnish (or cause to be furnished) a complete and detailed signed closing statement showing each party all receipts and disbursements affecting that party, except that this obligation does not apply if the closing is conducted by a title insurance company or its designated agent, that is licensed or authorized to do business in Michigan.

The following services may be waived in a limited service agreement:

- accepting delivery of and presenting offers and counteroffers;
- assisting in "developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices" until all parties execute a purchase or lease agreement and all contingencies are satisfied or waived; and

- after execution of a purchase agreement, assisting as necessary to complete the transaction under the agreement's terms.

REQUIRED DISCLOSURES

A licensee must disclose to a potential buyer or seller

- all types of agency relationships available; and
- the duties that each agency relationship creates.

AGREEMENT REQUIREMENTS

The disclosure agreement must

- be made before the potential buyer or seller discloses to the licensee any confidential information;
- be in writing;
- be provided to the client; and
- substantially conform to the form set forth in § 339.2517.

Section 339.2517 amended 2008; § 339.2512d amended 2016.

[Mich. Comp. Laws Ann. §§ 339.2512d; .2517\(1\), \(3\) \(2019\)](#)

Michigan, General Applicability of Provisions

No relevant provisions were located.

Michigan, Other Relevant Provisions

SELF-DEALING

If a licensee buys or otherwise acquires, directly or indirectly, an interest in real property, he or she must disclose to the property owner that the licensee is licensed before the owner is asked to sign the purchase agreement. Similarly, a licensee that acquires an option to purchase real property from an owner that requested the licensee's services as a real estate licensee in connection with that property, the licensee must disclose to the owner that the licensee is licensed before the owner is asked to sign the option agreement.

"A licensee that buys or otherwise acquires an interest in real property, directly or indirectly, and that is owed a commission, fee, or other valuable consideration as a result of the sale," must disclose that the he or she is licensed to the seller or owner to receive the specified consideration.

Section enacted 2016.

[Mich. Comp. Laws § 339.2516 \(2019\)](#)

Michigan, Relationship with Buyers

No relevant provisions were located.

Michigan, Relationship with Sellers

DUTIES

A licensee representing a seller or lessor pursuant to a service provision agreement must market the client's property in the manner agreed upon in the service provision agreement. The parties may not waive this service in a limited service agreement.

AGREEMENT REQUIREMENTS

A listing agreement entered into between a broker and a seller or lessor must state that discrimination by the broker, salesperson, seller, or lessor is prohibited.

RESTRICTIONS

A licensee representing a seller under a service provision agreement may not advertise the property to the public as "for sale by owner" or otherwise mislead the public to believe that the seller is not represented by a real estate broker.

Section 339.2515 amended 1998; § 339.2512d amended 2016.

[Mich. Comp. Laws Ann. §§ 339.2512d, .2515 \(2019\)](#)

Michigan, Term of Relationship

A service provision agreement must include a definite expiration date. It may not contain a provision requiring the signing party to notify the broker of the party's intention to cancel the agreement upon or after the expiration date.

Amended 2002.

[Mich. Admin. Code r. 339.22305 \(2019\)](#)

Michigan, Transaction Brokers

A licensee may act as a transaction coordinator upon proper notice to all parties to a real estate transaction.

Section amended 2008.

See [Mich. Comp. Laws Ann. § 339.2517\(3\) \(2019\)](#)

Minnesota

Minnesota, Definitions

Buyer's broker—a licensee who represents a buyer under a signed buyer's broker agreement.

Dual agency—a situation in which a licensee owes a duty to more than one party to the transaction, including when

- one licensee represents both the buyer and the seller in a transaction; or
- two or more licensees that are licensed to the same broker, each represent a party to a transaction.

Licensee—a person licensed under chapter 82.

Override clause—a provision:

- in a listing agreement that permits the broker to receive compensation after the listing agreement has expired if the property is sold to persons with whom the licensee had negotiated or shown the property before the expiration of the listing agreement; or
- "in the buyer's representation agreement or similar instrument allowing the broker to receive compensation when, after the buyer's representation agreement has expired, the buyer purchased a property the salesperson had shown the buyer" before the buyer's agreement expired.

Person—a “natural person, firm, partnership, corporation or association, and the officers, directors, employees and agents thereof.”

Protective list—a written list of:

- names and addresses of prospective buyers "with whom a licensee has negotiated the sale or rental of the property or to whom a licensee has exhibited the property" before a listing agreement expires; or

- "addresses of properties that a licensee has negotiated the sale or rental of" before the buyer's agreement expires.

Real estate broker—a person who

- for another and for consideration “lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate”, or advertises as engaged in these activities;
- for another and for consideration negotiates or offers or attempts to negotiate a loan, secured by real estate, that is not a residential mortgage loan;
- for another and for consideration, “lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase or rental of any business opportunity or business, or its good will, inventory, or fixtures”;
- for another and for consideration offers, sells or attempts to negotiate the sale of subdivided land;
- for another and for consideration, promotes a real estate sale by advertising it in a publication issued primarily for such purpose, provided the person meets the other qualifications provided by statute; or
- engages in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not the real estate is owned by the person. Unless represented by a licensee, a person is presumed to be engaged in the business of selling real estate if he engages as principal in five or more transactions during any 12-month period.

Real estate—as used in chapter 82, includes a manufactured home that is affixed to land.

Residential real property or residential real estate—property occupied by, or intended to be occupied by, one to four families as their residence.

Seller's broker—a licensee who represents a seller under a signed seller's broker agreement.

Section amended 2014.

[Minn. Stat. § 82.55 \(2019\)](#)

Minnesota, Designated Agents

No provisions specifically applicable to designated agents were located.

Minnesota, Dual Agents

A licensee may not act on behalf of more than one party to a transaction without all parties' knowledge and consent.

REQUIRED DISCLOSURES

If circumstances create a dual agency situation, the broker must disclose to all parties the change in the parties' relationship with the broker due to the dual agency. In a residential transaction, after making full disclosure, the broker must obtain the consent of all parties in the statutory form, which consent must be set forth in a boxed format in the purchase agreement.

The required dual agency disclosure language provides that the seller and buyer must acknowledge that:

- confidential information regarding price, terms, or motivation to buy or sell will remain confidential unless the party instructs the broker in writing to disclose it, but that other information will be shared;
- a licensee does not represent the either parties' interests to the detriment of the other party; and
- within the limits of dual agency, the licensee will “work diligently to facilitate the mechanics of the sale.”

Section 82.81 amended 2014; § 82.67 amended 2015.

[Minn. Stat. §§ 82.67, subd. 4; 82.81, subd. 12 \(2019\)](#)

Minnesota, General Agency Relationship Requirements

DUTIES

A licensee may prepare and provide a broker price opinion, and a broker may charge and collect a fee for it if his or her license is active and in good standing. He or she may prepare a broker price opinion for:

- an existing or potential seller for the purposes of listing and selling real property;
- an existing or potential real property buyer;
- a third party making decisions or performing due diligence related to certain real property, provided the opinion is in writing; or
- an existing or potential lienholder or other third party for any purpose other than determining a property's value for certain loan-related purposes, provided the opinion is in writing.

REQUIRED DISCLOSURES

In a residential real property transaction, a licensee must provide, at his or her first substantive contact with a consumer, an agency disclosure form as set forth in § 82.67.

The agency disclosure form must provide

- a description of the agency and facilitator relationships available;

- a description of the licensee's role under each option; and
- a signature line for the customer to acknowledge receipt.

Subject to specific exceptions, a licensee must disclose to a prospective purchaser all known material facts that could "adversely and significantly affect" the buyer's use or enjoyment of the property. See § 82.68 for statutory provisions regarding material facts. A licensee has no duty to disclose information regarding airport zoning regulations if the broker or salesperson timely provides a written notice that the interested person can obtain or review a copy of the airport zoning regulations at the county recorder's office.

RESTRICTIONS

A licensee generally may not

- negotiate the sale, exchange, lease, or listing of real property directly with the owner or lessor if he knows that the owner or lessor has an exclusive written contract for the same service with another;
- negotiate the purchase, lease, or exchange of real property knowing that the buyer or lessee has an exclusive written contract granting to another exclusive representation or assistance for the same service of purchase, lease, or exchange of the real property; or
- induce a party to a contract of sale, purchase, lease, or option, or an exclusive listing or buyer's agreement to breach the contract, option, or agreement.

If an owner fails or is unable to consummate a real estate transaction, through no fault of the purchaser, the listing broker may not claim any portion of trust funds the purchaser deposited with the broker, unless the listing broker has a separate agreement with the purchaser.

Sections 82.68, 82.735, and 82.81 amended 2014; § 82.67 amended 2015.

[Minn. Stat. §§ 82.67, subds. 1, 3; .68, subd. 3; .735; .81, subds. 3, 9 \(2019\)](#)

Minnesota, General Applicability of Provisions

The contract requirements set forth in Minn. Stat. § 82.66 and the agency disclosure requirements set forth in § 82.67, subd. 1, apply only to residential real property transactions. Disclosures made according to the requirements for agency relationship disclosures set forth in chapter 82 are "sufficient to satisfy common law disclosure requirements."

Section 82.66 amended 2014; § 82.67 amended 2015.

[Minn. Stat. §§ 82.66, .67 \(2019\)](#)

Minnesota, Other Relevant Provisions

SELF-DEALING

If a licensee directly or indirectly purchases for himself or herself or acquires any interest or option to purchase property, the licensee must affirmatively disclose the following to the property owner before negotiating or consummating a transaction:

- that the licensee is a real estate broker or salesperson, and
- in what capacity the licensee is acting.

Also, a licensee must disclose in writing if a principal in a transaction is a licensee or a relative or business associate of a licensee.

NONPERFORMANCE

If a party puts a licensee on notice that the party will not perform according to the terms of a purchase agreement, the licensee must immediately disclose that fact to the other party to the transaction. If reasonably possible, the licensee must inform the party who will not perform of the licensee's obligation to disclose the

fact to the other party before the licensee makes the disclosure. This obligation does not apply to a party's inability to keep or fulfill any contingency.

Section amended 2014.

[Minn. Stat. § 82.68. subds. 2, 4 \(2019\)](#)

Minnesota, Relationship with Buyers

REQUIRED DISCLOSURES

A listing agreement may authorize a seller's broker to disburse part of his compensation to other brokers, including the buyer's broker.

DUTIES

A buyer's broker owes fiduciary duties to the buyer.

AGREEMENT REQUIREMENTS

A licensee must obtain a signed buyer's broker agreement from a buyer before acting as a buyer's representative. A buyer's broker agreement must be in writing and must include

- a definite expiration date;
- the compensation amount;
- an explanation of the services the broker will provide to the buyer;

- the events or conditions that entitle a broker to compensation;
- an explanation of whether and under what terms the agreement may be canceled;
- information regarding any override clause, including a statement that the override clause will not be effective unless the licensee supplies the buyer with a protective list within 72 hours after the buyer's broker agreement expires;
- the following notice in at least 10-point bold type, immediately preceding any provision relating to the licensee's compensation:

"NOTICE: THE COMPENSATION FOR THE PURCHASE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER'S CLIENT";
- the "dual agency" disclosure statement set forth in Minn. Stat. § 82.66, subd. 2; and
- for buyer's broker agreements involving residential real property, a notice stating that after the agreement expires, the buyer will not be obligated to pay the licensee if the buyer has executed another valid buyer's broker agreement pursuant to which the buyer is obligated to pay another licensee for the purchase, lease, or exchange of the real property.

A buyer's broker agreement may contain an override clause of up to two years in length when used in conjunction with a business purchase or sale, provided specified conditions are met.

RESTRICTIONS

A licensee may not include in a buyer's broker agreement "a holdover clause, automatic extension, or any other similar provision, or an override clause the length of which is more than six months after the expiration of the buyer's broker agreement." A licensee may not enforce an override clause unless he or she furnished a protective list to the buyer within 72 hours after the buyer's broker agreement expired.

Sections amended 2014.

[Minn. Stat. §§ 82.55, subd. 3a; .66, subd. 2; .70, subd. 4 \(2019\)](#)

Minnesota, Relationship with Sellers

REQUIRED DISCLOSURES

If a broker offers a guaranteed sale program, he must disclose in writing, before the parties execute the listing agreement,

- the general terms and conditions under which the broker agrees to purchase the property; and
- the disposition of any profit at the time of the broker's resale.

DUTIES

A seller's broker owes fiduciary duties to the seller.

AGREEMENT REQUIREMENTS

A licensee must obtain a signed listing agreement or other authorization from the owner before advertising to the general public that property is available. A listing agreement must be in writing and must include

- a definite expiration date;
- a description of the real property involved;
- the list price;
- terms required by the seller;

- the compensation amount;
- an explanation of the events or conditions that will entitle the broker to a commission;
- an explanation of whether and under what terms the agreement may be canceled;
- information regarding any override clause, including a statement that the override clause will not be effective unless the licensee supplies the seller with a protective list within 72 hours after the listing agreement expires;
- the following notice in at least 10-point bold type immediately preceding any provision regarding licensee's compensation:

"NOTICE: THE COMPENSATION FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER'S CLIENT";
- for residential property listings, the "dual agency" disclosure statement set forth in Minn. Stat. § 82.66, subd. 1;
- a notice requiring the seller to indicate in writing whether the seller wants the licensee or others to arrange for closing services; and
- for residential listings, a notice stating that after the listing agreement expires, the seller need not pay the licensee if the seller has executed another listing agreement pursuant to which he must pay another licensee for the sale, lease, or exchange of the real property.

A listing agreement may contain an override clause of up to two years when used in conjunction with a business purchase or sale. The length of the override clause must be negotiable between the parties, and the protective list must include each listed party's written acknowledgment that the licensee presented the business to that party. For nonresidential property listings, the protective list must contain the following notice in boldface type:

"IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE PERIOD AND THEN SELL YOUR PROPERTY TO ANYONE WHOSE NAME APPEARS ON THIS LIST, YOU COULD

BE LIABLE FOR FULL COMMISSIONS TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK COMPETENT ADVICE."

RESTRICTIONS

A licensee

- generally may not include in a listing agreement “a holdover clause, automatic extension, or any similar provision, or an override clause the length of which is more than six months” after the listing agreement expires;
- may not try to enforce an override clause, unless a protective list has been furnished to the seller within 72 hours after the listing agreement expires;
- may not guarantee or encourage another person to guarantee future profits or earnings that may result from the purchase or lease of the real property, unless the guarantee and the assumptions upon which it is based are fully disclosed and contained in the purchase or lease agreement; and
- may not discourage prospective parties from seeking the services of an attorney.

Section 82.74 amended 2004 and renumbered 2010; §§ 82.55, 82.66, and 82.81 amended 2014.

[Minn. Stat. §§ 82.55, subd. 23a; .66, subd. 1; .74; .81, subds. 10, 11 \(2019\)](#)

Minnesota, Term of Relationship

A buyer's broker agreement and a listing agreement must provide a definite expiration date.

Section amended 2014.

[Minn. Stat. § 82.66, subds. 1, 2 \(2019\)](#)

Minnesota, Transaction Brokers

In Minnesota, a licensee who performs services for a buyer, a seller, or both, but does not represent either in a fiduciary capacity, is a facilitator.

TRANSACTION BROKER'S DUTIES

A facilitator owes the duty of confidentiality, but owes no other duty except as "required by law" or contained in any written facilitator services agreement. If a facilitator working with a buyer shows a property listed by the facilitator broker or salesperson, then the facilitator must act as a seller's broker. If a facilitator, working with a seller, accepts a property showing by a buyer represented by the facilitator, then the facilitator must act as buyer's broker.

REQUIRED DISCLOSURES

A facilitator must make the required disclosures using the language set forth in § 82.67, subd. 3, including the following statement:

"THE FACILITATOR BROKER OR SALESPERSON DOES NOT OWE ANY PARTY ANY OF THE FIDUCIARY DUTIES LISTED BELOW, EXCEPT CONFIDENTIALITY, UNLESS THOSE DUTIES ARE INCLUDED IN A WRITTEN FACILITATOR SERVICES AGREEMENT."

Section amended 2015.

[Minn. Stat. § 82.67, subd. 3 \(2019\)](#)

Mississippi

Mississippi, Definitions

Agency—the relationship created “when one person, the Principal (client), delegates to another, the agent, the right to act on his behalf in a real estate transaction and to exercise some degree of discretion while so acting.”

Agent—one “who is authorized to act on behalf of and represent another.”

Client—“the person to whom the agent owes a fiduciary duty.”

Customer—a person not represented in a real estate transaction.

Disclosed Dual Agent—an “agent representing both parties to a real estate transaction with the informed consent of both parties, with written understanding of specific duties and representation to be afforded each party.”

First Substantive Meeting—in a transaction in which the broker

- is a seller’s agent, generally before the earliest of showing the property, eliciting confidential information from a buyer, or executing any agreements; and
- is a buyer’s agent, generally at the initial contact with a seller before the earliest of showing the property to a represented buyer, eliciting confidential information from a seller, or executing any real estate agreements.

Single Agency—a broker who represents only one party to a real estate transaction.

Regulation amended 2013.

[30-1601-4 Miss. Code R. § 4.2 \(2019\)](#)

Mississippi, Designated Agents

No provisions were located specifically applicable to designated agents.

Mississippi, Dual Agents

A disclosed dual agent must obtain all parties’ informed written consent before or at the time the dual agency is formalized.

REQUIRED DISCLOSURES

The parties are deemed to have received timely informed written consent to disclosed dual agency if

- the seller, at the time he enters into the representation agreement with the broker, gives written consent to dual agency by signing the "Consent to Dual Agency" portion of "MREC Form A";
- the buyer, at the time he enters into the representation agreement with the broker, gives written consent to dual agency by signing the "Consent to Dual Agency" portion of the "MREC Form A"; and
- the broker confirms that the buyer understands and consents to the dual agency relationship before signing a purchase offer, and that the seller understands and consents to the dual agency relationship before the broker presents the purchase offer.

Regulation amended 2013.

[30-1601-4 Miss. Code R. § 4.3 \(2019\)](#)

Mississippi, General Agency Relationship Requirements

REQUIRED DISCLOSURES

Consumers must be fully informed of agency relationships in real estate transactions. In a single agency, a broker must disclose, in writing,

- to the party for whom the broker is an agent, that the broker is that party's agent, which disclosure must be made before the broker and the party enter into a representation agreement and must be on an "MREC Agency Disclosure Form"; and
- to the party for whom the broker is not an agent, that the broker is an agent of another party, which disclosure must be made at the first substantive meeting with the party and on an "MREC Agency Disclosure Form."

If a party is not available to sign a disclosure form, the broker must make the disclosure orally, so note on the applicable form, and forward the forms for signature as soon as possible. Written electronic transmission fulfills this requirement.

If a party requests not to sign the form acknowledging receipt, the broker must annotate the form with the following statement:

"A COPY OF THIS FORM WAS DELIVERED TO _____ DATE _____. RECIPIENT DECLINED TO ACKNOWLEDGE RECEIPT OF THIS FORM."

AGREEMENT REQUIREMENTS

All contracts must reflect which party the broker represents by a statement over the parties' signatures.

Regulations amended 2013.

[30-1601-3 Miss. Code R. § 3.2; 30-1601-4 Miss. Code R. § 4.3 \(2019\)](#)

Mississippi, General Applicability of Provisions

The real estate agency regulations do not “abrogate the laws of agency as recognized under common law and compliance with the prescribed disclosures will not always guarantee that a Broker has fulfilled all of his responsibilities under the common law of agency.”

A licensee need not comply with the disclosure provisions if engaged in a transaction with a “corporation, non-profit corporation, professional corporation, professional association, limited liability company, partnership, real estate investment trust, business trust, charitable trust, family trust, or any governmental entity in transactions involving real estate.”

Regulations amended 2013.

[30-1601-4 Miss. Code R. §§ 4.1, .4 \(2019\)](#)

Mississippi, Other Relevant Provisions

SELF-DEALING

A real estate licensee is not “exempt from disciplinary actions by the commission when selling property owned by the licensee.”

DISCLOSURE UPDATES

If an agency relationship changes, all parties must acknowledge a new disclosure form.

Regulations amended 2013.

[30-1601-3 Miss. Code R. § 3.1; 30-1601-4 Miss. Code R. § 4.3 \(2019\)](#)

Mississippi, Relationship with Buyers

AGREEMENT REQUIREMENTS

Regulations of the Real Estate Commission provide that exclusive buyer representation agreements must be in writing and "properly identify the terms and conditions under which the buyer will rely on the broker for the purchase of real estate," including:

- the sales price;
- the consideration to be paid;
- all parties' signatures; and
- a definite expiration date.

The buyer may terminate the agreement upon 15 days' written notice to the buyer's exclusive agent.

An Exclusive Buyer Representation agreement must clearly indicate in the body of the document that it is such an agreement.

Regulation amended 2013.

[30-1601-3 Miss. Code R. § 3.2 \(2019\)](#)

Mississippi, Relationship with Sellers

SELLER'S AGENT'S DUTIES

When an offer is made on property owned by a party with whom a broker has a listing agreement, the broker must

- document and date an acceptance or rejection of the offer; and
- upon written request, provide a copy of the document to the person making the offer.

AGREEMENT REQUIREMENTS

An exclusive listing agreements must be in writing, properly identify the property to be sold, and contain all of the terms and conditions, including

- the sales price,
- the consideration to be paid,
- all parties' signatures, and

- a definite expiration date.

An "Exclusive Agency" or "Exclusive Right to Sell" listing must indicate in the body of the document that it is such an agreement.

RESTRICTIONS

Intent to cancel

A listing agreement may not contain a provision requiring the listing party to notify the broker of the party's intent to cancel after the expiration date.

Price opinions

Pursuant to Mississippi regulations, a licensee, in the ordinary course of his or her business, may give an opinion as to the price of real estate for a prospective listing or sale. However, this opinion may not be referred to as an "appraisal."

Pursuant to Miss. Code § 73-35-4, a licensee may prepare a broker's price opinion in those specified situations set forth in § 73-35-4(2). Generally, the real estate licensee may give an opinion to a potential seller, purchaser or third party as to the recommended listing price of real estate, but that opinion is not an "appraisal."

The licensee may charge and collect a fee for a price opinion if:

- the licensee's license is active and in good standing; and
- the broker's price opinion meets the requirements set forth in § 73-35-4(3) and (4).

Statutory section enacted 2011. Regulations amended 2013.

[30-1601-3 Miss. Code R. §§ 3.1, .2 \(2019\); Miss. Code § 73-35-4 \(2019\)](#)

Mississippi, Term of Relationship

A buyer representation agreement and an exclusive listing agreement must contain a definite expiration date.

Regulation amended 2013.

[30-1601-3 Miss. Code R. § 3.2 \(2019\)](#)

Mississippi, Transaction Brokers

No provisions were located specifically applicable to transaction brokers.

Missouri

Missouri, Definitions

Adverse material fact—a fact related to the property that is not reasonably ascertainable or known that negatively affects the property value.

Broker disclosure form—the form currently prescribed by the commission for presentation to a seller, landlord, buyer or tenant who has not entered into a written brokerage services agreement.

Client—a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee.

Confidential information—information obtained by the licensee from the client and designated as confidential by the client or made confidential by §§ 339.710 to .860 or on the client's written instruction, unless the information is made public or becomes public by a source other than the licensee.

Customer—an “actual or potential seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with a licensee.”

Designated agent—a licensee named by a designated broker as the limited agent of a client as provided in § 339.820.

Designated broker—any individual licensed as a broker who is operating as a real estate broker or appointed by a real estate brokerage entity to be responsible for the entity's acts.

Designated transaction broker—a licensee named by a designated broker or deemed appointed by a designated broker as the transaction broker for a client pursuant to § 339.820.

Dual agency—an agency that may result when “an agent licensee or someone affiliated with the agent licensee represents another party to the same transaction.”

Dual agent—a limited agent who, with the written consent of all parties, has entered into an agency brokerage relationship, and not a transaction brokerage relationship, with both the seller and the buyer or both the landlord and the tenant.

Exclusive brokerage agreement—a written brokerage agreement that gives the broker the “sole right, through the broker or through one or more affiliated licensees, to act as the exclusive limited agent, representative, or transaction broker of the client or customer that meets the requirements of section 339.780.”

Limited agent—a licensee whose duties and obligations to a client are as set forth in §§ 339.730 to .750.

Real estate broker-salesperson—a person or entity with a real estate broker license in good standing, who for compensation becomes associated, either as an independent contractor or an employee, with a real estate broker to do real estate acts. A real estate broker-salesperson may not also operate as a real estate broker.

Residential real estate—real property “improved by a structure that is used or intended to be used primarily for residential living by human occupants and that contains not more than four dwelling units or that contains single dwelling units owned as a condominium or in a cooperative housing association, and vacant land classified as residential property.”

Single agent—a licensee who represents only one party in a real estate transaction.

Subagent—a designated broker and his affiliated licensees, “engaged by another designated broker, together with the broker's affiliated or appointed affiliated licensees, to act as a limited agent for a client, or a designated broker's unappointed affiliated licensees engaged by the designated broker, together with the broker's appointed affiliated licensees, to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to sections 339.730 to 339.740 as does the client's designated broker.”

Transaction broker—any licensee who

- assists the parties to a transaction without an agency or fiduciary relationship to either party;
- is neutral;
- assists one or more parties, but has not entered into a specific written agency agreement to represent the parties; or
- assists another party to the same transaction either solely or through licensee affiliates.

A licensee is deemed to be a transaction broker and not a dual agent, if notice of assumption of transaction broker status is provided to the buyer and seller immediately upon default to transaction broker status, and such status is confirmed in writing before the contract is executed.

Section 339.710 amended 2010; § 339.010 amended 2015.

[Mo. Ann. Stat. §§ 339.010, .710 \(2019\)](#)

Missouri, Designated Agents

DESIGNATED BROKER'S AND AGENT'S DUTIES

A designated broker must adopt a written policy that identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant. A designated agent or designated transaction broker, to the extent allowed by their licenses, have the same duties and responsibilities to the client and customer as set forth in §§ 339.730 to 339.755, except as provided in § 339.820.

A designated broker entering into a limited agency agreement with a client for listing property or representing the person in a real estate transaction may appoint in writing affiliated licensees as designated agents to the exclusion of all other affiliated licensees. A licensee's general duties and obligations arising from the limited agency relationship must be disclosed in writing to the seller and the buyer or to the landlord and the tenant pursuant to §§ 339.760 to 339.780. Alternatively, a licensee may act as an agent in any transaction in accordance with a written agreement as described in § 339.780.

AGREEMENT REQUIREMENTS

A written agreement for brokerage services must be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into written agreements on behalf of the designated broker. See § 339.780 for additional requirements applicable to designated brokers acting in various agency roles.

Sections 339.820 and 339.830 amended 1999; § 339.760 amended 2004; §§ 339.720 and 339.780 amended 2005.

[Mo. Ann. Stat. §§ 339.720, .760, .780, .820, .830 \(2019\)](#)

Missouri, Dual Agents

DUAL AGENT'S DUTIES

A licensee may act as a dual agent only with all parties' consent, which is presumed by a written agreement pursuant to § 339.780. A dual agent is a limited agent for both the seller and the buyer or the landlord and the tenant in one transaction and generally has the duties and obligations set forth in §§ 339.730 and .740.

CONFIDENTIALITY OBLIGATIONS

Generally, a dual agent may disclose any material information to one client that the licensee gains from the other client, unless it is confidential. However, a dual agent may not disclose the following information without the consent of the client to whom the information pertains:

- that a buyer or tenant is willing to pay more than the offered price;
- that a seller or landlord is willing to accept less than the asking price;
- any party's motivating factors;
- that a client will agree to other financing terms; and
- the terms of any prior offers or counteroffers.

Also, a dual agent may not disclose to one client confidential information about the other client unless

- the disclosure is required by law;
- failure to disclose the information would constitute a misrepresentation; or
- disclosure is necessary to defend the licensee against a wrongful conduct action.

Knowledge or information is not imputed between a client and a dual agent or among persons within an entity engaged as a dual agent.

REQUIRED DISCLOSURES

A licensee acting as a dual agent in a real estate transaction must immediately disclose his agency status to all parties to a transaction. A designated broker who becomes a dual agent and does not personally represent any of the parties in a designated agency transaction need not disclose his agency status if all parties consented in writing pursuant to § 339.750(1).

Statutory section amended 1996. Regulation amended 2009.

[Mo. Ann. Stat. § 339.750 \(2019\); Mo. Code Regs. Ann. tit. 20, § 2250-8.095\(C\) \(2019\)](#)

Missouri, General Agency Relationship Requirements

DUTIES

As outlined below in "Agreement Requirements," statutory provisions include minimum service requirements for exclusive brokerage agreements.

AGREEMENT REQUIREMENTS

All exclusive brokerage agreements must specify that the broker, "through the broker or through one or more affiliated licensees," must provide at least the following services:

- accepting delivery of and presenting to the client or customer offers and counteroffers;
- assisting the client or customer "in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and the counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived"; and
- answering the client's or customer's questions relating to any "offers, counteroffers, notices, and contingencies."

REQUIRED DISCLOSURES

In a residential real estate transaction, as early as practicable during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for services, a licensee must provide a written copy of the broker disclosure form provided by the commission. If the customer or client has already entered into a written agreement with a designated broker, no other licensee need make the required disclosures. Disclosures made pursuant to §§ 339.710 through .860 are sufficient to disclose brokerage relationships to the public. *See* Mo. Code Regs. Ann. tit. 4, § 250-8.096 for details regarding the document's requirements and Mo. Code Regs. Ann. tit. 4, § 250-8.097 for details related to the statutory requirement that licensees must present agency alternatives to the public.

Statutory section 339.770 amended 2002; § 339.780 amended 2005. Regulations amended 2009.

[Mo. Ann. Stat. §§ 339.770, .780 \(2019\)](#); *see also* [Mo. Code Regs. Ann. tit. 20, §§ 2250-8.090, .096, .097 \(2019\)](#)

Missouri, General Applicability of Provisions

Sections 339.710 to .860 supersede the common law of agency regarding to whom the fiduciary duties of an agent are owed in a real estate transaction, but do not limit civil actions for negligence, fraud, misrepresentation or breach of contract.

Section enacted 1996.

[Mo. Ann. Stat. § 339.840 \(2019\)](#)

Missouri, Other Relevant Provisions

SELF-DEALING

A licensee must declare any personal involvement in a transaction in which the licensee may have an interest. *See* Mo. Code Regs. Ann. tit. 4, § 250-8.110 for detailed disclosure requirements.

Regulation amended 2006.

[Mo. Code Regs. Ann. tit. 20, § 2250-8.110 \(2019\)](#)

Missouri, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A licensee representing a buyer or tenant is a limited agent with the duty and obligation:

- to perform the terms of any written agreement with the client;
- to exercise reasonable skill and care;
- to promote the client's interests with good faith, loyalty, and fidelity, including seeking an acceptable price and terms, timely presenting all written offers to and from the client unless a purchase or lease contract is in effect, disclosing adverse material facts that the licensee knows or should know, and advising the client to obtain expert advice on matters beyond the licensee's expertise;
- to account in a timely manner for all money and property received;
- to comply with all requirements of §§ 339.710 through .860, § 339.100(2), and any related rules and regulations; and
- to comply with all applicable federal, state, and local laws.

A buyer's agent owes no duty to a customer, except that the licensee must disclose to any customer all adverse material facts the licensee knows or should know. A buyer's agent may show properties in which the client is interested to other prospective buyers without breaching any duty to the client, and may show competing buyers the same property and assist competing buyers in attempting to purchase a particular property. A client may agree in writing that the agent may retain other designated brokers as subagents. A designated broker acting on the buyer's behalf as a subagent is a limited agent.

INSPECTION DUTY

A buyer's agent has no duty to conduct an independent investigation of the client's financial condition for the customer's benefit or to verify the accuracy or completeness of the client's or an independent investigator's statements.

CONFIDENTIAL INFORMATION

A licensee acting as a buyer's agent may not disclose any confidential information about the client unless

- required by statute, rule, or regulation;
- failure to disclose would constitute a misrepresentation; or
- disclosure is necessary to defend the affiliated licensee against a wrongful conduct action.

REQUIRED DISCLOSURES

See Mo. Code Regs. Ann. tit. 4, § 250-8.095 for details regarding the timing of disclosures under various agency situations.

AGREEMENT REQUIREMENTS

Every written buyer authorization agreement must contain

- a description of the type of property that the buyer or tenant seeks;
- the commission or fee, including bonuses;

- a definite beginning and an expiration date;
- the licensee's duties and responsibilities;
- a statement permitting or prohibiting the broker (1) from offering subagency, (2) acting as a disclosed dual agent or transaction broker, and (3) if dual agency or transaction broker are permitted, the dual agent's or transaction broker's duties and responsibilities;
- a statement specifying whether or not the designated broker is authorized to cooperate with and compensate other designated brokers, including seller's agents and/or transaction brokers;
- a statement confirming that the buyer received the Broker Disclosure Form either on or before the earlier of the time the buyer's agency agreement was signed or the licensee obtained personal or financial information;
- the parties' signatures;
- the agreement type; and
- all other terms and conditions that the buyer prescribes.

The agreement must not contain a provision requiring a buyer or tenant to notify the broker of his intent to cancel the agreement after the expiration date. All parties must initial any addenda, riders, endorsements, attachments, or changes to the agreement, and the licensee must give a copy of every written agreement to the buyer or tenant and retain a copy in his office.

RESTRICTIONS

A licensee may not enter into a brokerage agreement with a buyer if the licensee knows or should know that the buyer has an unexpired, exclusive agreement with another broker, unless the buyer initiated the discussion and the licensee did not solicit the discussion, in which case the licensee may enter into an agreement that

will take effect after the current agreement expires. A buyer or tenant agency agreement may not be assigned, sold or transferred to another broker without the written consent of all parties.

Statutory section amended 1998. Regulations amended 2009.

[Mo. Ann. Stat. § 339.740 \(2019\)](#); [Mo. Code Regs. Ann. tit. 20, § 2250-8.090\(5\) \(2019\)](#); *see also* [Mo. Code Regs. Ann. tit. 20, § 2250-8.095 \(2019\)](#)

Missouri, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's or landlord's agent is a limited agent with the following duties and obligations:

- to perform client's written agreement's terms;
- to exercise reasonable skill and care for the client;
- to promote the client's interests with good faith, loyalty, and fidelity, including seeking an acceptable price and terms unless the property is subject to a sales contract, presenting all written offers to and from the client in a timely manner, disclosing to the client all adverse material facts the licensee knows or should know, and advising the client to obtain expert advice on matters that are beyond the licensee's expertise;
- to account in a timely manner for all money and property;
- to comply with all requirements of §§ 339.710 to .860, § 339.100(2), and all related rules and regulations; and
- to comply with all applicable federal, state, and local laws.

A licensee acting as a seller's or landlord's agent owes no duty or obligation to a customer, except to disclose all adverse material facts the licensee knows or should know. A seller's agent may show properties not owned by the client to prospective buyers and may list competing properties without breaching any duty to the client. A seller may agree in writing that the agent may retain subagents.

INSPECTION DUTY

A seller's or landlord's agent need not conduct an independent inspection or discover any adverse material facts for the customer's benefit and need not independently verify the accuracy of statements made by the client or an independent inspector.

CONFIDENTIAL INFORMATION

A seller's or landlord's agent may not disclose confidential information about the client unless

- required by statute, rule or regulation;
- failure to disclose the information would be a misrepresentation; or
- disclosure is necessary to defend the affiliated licensee against a wrongful conduct action.

AGREEMENT REQUIREMENTS

A written agreement for brokerage services must contain

- the price;
- the commission to be paid, including bonuses;

- a definite beginning and an expiration date;
- the licensee's duties and responsibilities;
- a statement that permits or prohibits the designated broker from offering subagency;
- a statement that permits or prohibits the designated broker from acting as a disclosed dual agent or a transaction broker, and, if permitted, the duties and responsibilities of a dual agent or transaction broker;
- a statement regarding whether the designated broker is authorized to cooperate with and compensate other designated brokers, including buyer's agents or transaction brokers;
- a statement confirming that the seller received the Broker Disclosure Form prescribed by the commission on the earlier of the signing of the seller's agency agreement or the licensee obtaining any personal or financial information;
- all parties' signatures;
- the listing type;
- the property's legal description or street address; and
- all other terms and conditions.

The agreement must contain no provision requiring an owner to notify the broker of his intent to cancel the listing after the expiration date. All parties must initial any addendums, riders, endorsements, attachments, or changes to the written agreement. The licensee must give a copy of the written agreement to the property owner.

GENERAL LISTING AGREEMENT REQUIREMENTS

A listing agreement must

- be in writing;
- be delivered to the owner before a broker may advertise or place a sign on the property; and
- contain all terms, conditions, a definite expiration date and all parties' signatures.

RESTRICTIONS

A licensee may not enter into a brokerage agreement with an owner if the licensee knows or should know that the owner has an unexpired exclusive brokerage agreement for the property with another broker, unless the owner initiates the discussion and the licensee did not solicit the discussion, in which case the licensee may enter into an agreement that takes effect after the current agreement expires. Also, a licensee may not make or enter into a net listing agreement, which is an agreement that stipulates a net price the owner will receive, with the broker receiving the excess as commission.

REQUIRED DISCLOSURES

A seller's agent or subagent must disclose his agency status no later than the first showing to an unrepresented buyer or tenant. If the buyer or tenant is represented, the disclosure may be made to the buyer or tenant or their agent upon first contact with either party. *See* Mo. Code Regs. Ann. tit. 4, § 250-8.095 for the timing of the disclosure for other agency relationships.

Statutory section amended 1998. Regulations amended 2009.

[Mo. Ann. Stat. § 339.730 \(2019\); Mo. Code Regs. Ann. tit. 20, §§ 2250-8.090\(4\), .095 \(2019\)](#)

Missouri, Term of Relationship

The agency relationship begins on the broker's agreement's effective date and continues until "performance, completion, termination or expiration" of the agreement. A real estate broker owes no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the following:

- accounting in a timely manner for all money and property received; and
- treating as confidential client's information that may reasonably be expected to have a negative impact on the client's real estate activity unless the client grants written consent to disclose, disclosure is required by law, the information is made public from a source other than the broker, or disclosure is necessary to defend the designated broker against a wrongful conduct action.

Section enacted 1996.

[Mo. Ann. Stat. § 339.790 \(2019\)](#)

Missouri, Transaction Brokers

TRANSACTION BROKER'S DUTIES

A real estate licensee may act as a transaction broker by providing real estate service to a party without an agency or fiduciary relationship to any party. A transaction broker must

- perform the terms of any agreement made with any party;
- exercise reasonable skill, care and diligence, including presenting all written offers and counteroffers in a timely manner, informing the parties regarding the transaction, suggesting the parties obtain expert advice as to matters beyond the broker's expertise, and accounting for all money and property received;
- disclose to each party any known adverse material facts;
- assist the parties in complying with contract terms and conditions;

- comply with all applicable requirements of §§ 339.710 to .860, § 339.010(2), and the related rules and regulations; and
- comply with all applicable federal, state and local laws.

A transaction broker may act as follows without breaching any obligation or responsibility:

- show alternative properties not owned by the seller to a prospective buyer;
- list competing properties;
- show properties in which the buyer is interested to other prospective buyers; and
- serve as a single agent, subagent, designated agent or broker, limited agent, or disclosed dual agent for the same or different parties in other real estate transactions.

A licensee may withdraw from representing a client who has not consented to a transaction brokerage, and such withdrawal does not prejudice the licensee's ability to continue to represent the other client in the transaction or limit the licensee from representing the client in another transaction. A licensee is considered a transaction broker unless the designated broker enters into a written seller's agent agreement with the party to be represented pursuant to § 339.780(2) or other events set forth in § 339.720(2) occur.

INSPECTION DUTY

A transaction broker has no duty

- to conduct an independent inspection,

- to investigate for adverse material facts, or
- to conduct an independent investigation of the buyer's financial condition.

CONFIDENTIALITY OBLIGATIONS

A transaction broker may not disclose the following without the informed consent of the party that disclosed the information to the broker:

- that a buyer or tenant is willing to pay more than the purchase price or lease rate offered;
- that a seller or landlord is willing to accept less than the asking price or lease rate;
- any party's motivating factors;
- that a seller or buyer will agree to other financing terms;
- any confidential information about the other party, unless disclosure is required by law or failure to disclose would constitute fraud or dishonest dealing.

Knowledge is not imputed in a transaction broker relationship.

REQUIRED DISCLOSURES

A seller's or landlord's transaction broker who "has not been deemed a transaction broker" pursuant to § 339.710(19)(c) must disclose the brokerage relationship no later than the first showing to an unrepresented buyer or tenant. If the buyer is represented by another licensee, the disclosure may be made to the buyer or his agent upon first contact. A buyer's or tenant's transaction broker "who has not been deemed a transaction broker" pursuant to § 339.710(19)(c) must disclose the brokerage relationship no later than the first showing to an unrepresented seller. If the seller is represented, the disclosure may be made to the seller or his agent

upon first contact. *See* Mo. Code Regs. Ann. tit. 4, § 250-8.095 for the required timing of disclosures related to other relationships involving a transaction broker.

A licensee who becomes a transaction broker pursuant to § 339.710(19)(c), must immediately disclose his status to all parties. A designated broker who becomes a transaction broker and does not personally represent any of the parties in a designated agency transaction is not required to disclose his status provided all parties consented to his status.

AGREEMENT REQUIREMENTS

Every seller's transaction brokerage agreement must contain

- the price;

- the commission, including bonuses;

- a definite beginning and an expiration date;

- the licensee's duties and responsibilities;

- the signatures of all owners and the broker;

- the agreement type;

- the property's legal description or street address;

- all other terms and conditions;

- a statement regarding whether the designated broker is authorized to cooperate with and compensate other designated brokers, including buyer's agents or other transaction brokers; and
- a statement confirming that the seller received the Broker Disclosure Form on the earlier of the time the transaction brokerage agreement was signed or the licensee obtained any personal or financial information.

The agreement may not contain a provision requiring an owner to notify the broker of his intent to cancel after the expiration date. All parties must initial any addendums, riders, endorsements, attachments, or changes to the agreement, and the licensee must give a copy to the property owner at the time the owner signs the agreement.

A buyer's transaction brokerage agreement must contain

- a description of the property type the buyer or tenant is seeking;
- the commission or fee, including bonuses;
- a definite beginning and an expiration date;
- the licensee's duties and responsibilities;
- the signatures of the buyers or tenants and the broker;
- the agreement type;
- all other terms and conditions;
- a statement regarding whether the designated broker is authorized to cooperate with and compensate other designated brokers, including seller's agents or other transaction brokers; and

- a statement confirming that the buyer received the Broker Disclosure Form on the earlier of the signing of the transaction brokerage agreement or the licensee obtaining any personal or financial information.

The agreement may not contain a provision requiring a buyer to notify the broker of his intent to cancel the contract after it expires. All parties must initial any addendums, riders, endorsements, attachments, or changes to the agreement, and the licensee must give a copy of every written agreement to the buyer and retain a copy in the broker's office.

RESTRICTIONS

A licensee may not enter into an agreement with a party if the licensee knows or should know that the party has an unexpired exclusive brokerage service agreement with another broker, unless the party initiates the discussion and the licensee did not solicit the discussion, in which case the licensee may enter into an agreement that will take effect after the current contract expires. Transaction brokerage agreements may not be assigned or transferred to another broker without all parties' express written consent.

Statutory section 339.755 amended 1999; § 339.720 amended 2005. Regulations amended 2009.

[Mo. Ann. Stat. §§ 339.720, .755 \(2019\); Mo. Code Regs. Ann. tit. 20, §§ 2250-8.090\(6\), \(7\); .095\(D\) \(2019\)](#)

Montana

Montana, Definitions

Agent—as used in this context, includes a subagent.

Broker—an individual who

- for another or for consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or collects or attempts to collect rents;

- is employed by a real estate owner or lessor to conduct the sale, leasing, or other disposition of real estate for consideration;
- charges an advance fee or contracts to collect a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in Montana through its “listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers”;
- makes real estate information available by public display to potential buyers;
- aids or attempts or offers to aid, for a fee, any person in locating or obtaining real estate;
- receives compensation for referring a prospective buyer or seller to a licensee;
- performs asset management services for real property in connection with the property's marketing or transfer; or
- advertises that the individual is engaged in any of the above activities.

Buyer—a person who is interested in acquiring real property or who has entered into an agreement to acquire an interest in real property, including tenants or potential tenants.

Buyer agent—a licensee who, pursuant to a written buyer broker agreement, acts as a buyer’s agent in a real estate transaction, including a buyer subagent and an in-house buyer agent designate.

Buyer broker agreement—a written agreement pursuant to which a prospective buyer employs a broker to locate real estate.

Buyer subagent—a licensee who, pursuant to a subagency offer, acts as the buyer’s agent.

Dual agent—a licensee who, pursuant to a written listing agreement or buyer broker agreement or as a subagent, acts as the agent of both the buyer and seller with written authorization. An in-house buyer or seller designated agent is not considered a dual agent.

Entry-only listing—"a listing in which the seller and the seller's agent have agreed to limit the seller agent's involvement in the transaction process."

In-house buyer agent designate—a licensee who is employed by or associated with a broker and designated as a buyer's exclusive agent for a specific transaction and who is not considered to be acting for any party other than the buyer.

In-house seller agent designate—a licensee who is employed by or associated with a broker and designated as a seller's exclusive agent for a specific transaction and who is not considered to be acting for any party other than the seller.

Licensee—includes anyone who has been issued or applied for a license.

Listing agreement—a written agreement between a seller and a broker for the sale of real estate.

Negotiations—includes

- efforts to act as an intermediary between parties;
- facilitating and participating in contract discussions;
- completing forms; and
- presenting offers and counteroffers.

Person—includes “individuals, partnerships, associations, and corporations, foreign and domestic,” except that when referring to a licensed person, it means an individual.

Real estate—includes leaseholds and other interests or estates in land.

Real estate transaction—selling, exchanging, leasing, or granting an option in real estate, including all “communication, interposition, advisement, negotiation, and contract development and closing.”

Salesperson—an individual who, for compensation, is associated with a real estate broker to sell, purchase, or negotiate real estate.

Seller—a person who has entered into a listing agreement to sell real estate, including landlords who have an interest in or are party to a lease or rental agreement.

Seller agent—a licensee who, pursuant to a written listing agreement, acts as a seller’s agent, including a seller subagent and an in-house seller agent designate.

Seller subagent—a licensee who acts as a seller’s agent pursuant to a subagency offer.

Statutory broker—a licensee who assists one or more parties to a real estate transaction without acting as an agent or representative of any party; a licensee is presumed to be a statutory broker unless the licensee has entered into a listing agreement, a buyer broker agreement, or disclosed a relationship other than statutory broker.

Statutory section amended 2019. Regulation amended 2018.

[Mont. Code Ann. § 37-51-102 \(2017\)](#); [Mont. Admin. R. 24.210.301 \(2019\)](#)

Montana, Designated Agents

Although an in-house designated agent is defined by statute, no provisions specifically applicable to the agency relationship were located; general agency provisions apply.

Section amended 2019.

See [Mont. Code Ann. § 37-51-102 \(2017\)](#)

Montana, Dual Agents

Generally, a licensee may not "act as an agent for a party or parties in a real estate transaction where that agency representation conflicts with the obligations owed by the licensee to another party." However, this restriction explicitly does not prohibit dual agency.

It is unprofessional conduct for a licensee to act as a dual agent in a transaction if the licensee is a principal.

DUAL AGENT'S DUTIES

A dual agent is "obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent," except a dual agent

- must disclose to a buyer or seller any known adverse material facts, regardless of any confidentiality considerations; and
- may not disclose, without written consent, that the buyer is willing to pay more than the offered price or the seller is willing to accept less than the asking price, either party's motivating factors, and any information that a party indicates in writing should be kept confidential.

REQUIRED DISCLOSURES

As of June 23, 2018, it is unprofessional conduct for a licensee to act as a dual agent in a transaction without a written agreement from each principal.

An agent who contemplates or becomes a dual agent must disclose the potential or actual relationship to the buyer and seller and receive the parties' consent before or at the time the dual agency arises. If the buyer's or seller's agent has not given the buyer or seller the initial disclosure provided in Mont. Code Ann. § 37-51-

314(6), the agent must use the initial disclosure form; if the agent has given the initial disclosure, the subsequent disclosures must take the form provided by § 37-51-314(7).

Statutory section 37-51-314 amended 2005; § 37-51-313 amended 2017. Regulation amended 2018.

[Mont. Code Ann. §§ 37-51-313\(7\), \(8\); -314\(5\) \(2017\); Mont. Admin. R. 24.210.641\(2\), \(5\) \(2019\)](#)

Montana, General Agency Relationship Requirements

DUTIES

A licensee must advise his principal and any other party with whom the licensee is working that the party should secure outside professional services when appropriate.

INSPECTION DUTY

A licensee must try to ascertain all pertinent facts concerning property in any transaction in which the licensee acts, so that the licensee may “avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.”

REQUIRED DISCLOSURES

A licensee must disclose the existence and nature of relevant agency or other relationships to all parties to a real estate transaction. The initial disclosure must

- be written;
- contain a description of the duties owed by the broker and the salesperson as set forth in § 37-51-313;
- state as follows:

"IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER";

- define "adverse material fact";
- identify the type of relationship;
- contain the buyer's or seller's and the licensee's signature; and
- provide the disclosure date.

The disclosure may also contain

- a description of the other relationships and corresponding duties available, as long as the disclosure clearly indicates the relationship being disclosed;
- a consent to creating a dual agency relationship;
- other definitions in or provisions provided by law; and
- other information "not inconsistent with the information required in the disclosure."

A written disclosure that complies with § 37-51-314 is construed as

- sufficient disclosure of the relationship between a licensee and a buyer or seller, and

- conclusively establishing the obligations owed by a licensee to a buyer or seller.

Statutory section 37-51-314 amended 2005; § 37-51-313 amended 2017. Regulation amended 2018.

[Mont. Code Ann. §§ 37-51-313; -314\(1\), \(6\), \(9\), \(10\) \(2017\); Mont. Admin. R. 24.210.641\(5\) \(2019\)](#)

Montana, General Applicability of Provisions

The duties set forth in chapter 37-51 replace the duties of agents provided elsewhere in state law or common law.

Section amended 2017.

[Mont. Code Ann. § 37-51-313\(1\) \(2017\)](#)

Montana, Other Relevant Provisions

SELF-DEALING

A licensee must disclose that he is a licensee when the licensee first seeks information about any property, whether for the licensee's own account or as agent for another.

Montana's regulations provide that it is unprofessional conduct for a licensee:

- to act as a seller's agent in a transaction in which the licensee is the buyer;
- to act as a buyer's agent in a transaction in which the licensee is the seller; or
- to submit a competing offer as a principal in a transaction with the licensee's client.

DISCLOSURE UPDATES

The subsequent disclosure required in Mont. Code Ann. § 37-51-314 or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure,

- must be written, and
- must contain the information required by § 37-51-314(6)(d), (6)(e), and (6)(g), and
- may be included in other documents involved in the real estate transaction.

If a party has not previously consented to a dual agency relationship, the subsequent disclosure must include the information required by § 37-51-314(6), including written consent to the dual agency relationship.

MISREPRESENTATIONS

A party to a real estate transaction is not liable for his agent's misrepresentation unless

- the party has actual knowledge of the misrepresentation; or
- the agent or subagent is repeating the party's misrepresentation.

A broker is not liable for a misrepresentation made by the broker's subagent unless

- the broker has actual knowledge of the misrepresentation;

- the subagent is an employee of the broker; or
- the broker or subagent is repeating a broker's misrepresentation.

An agent is not liable for a principal's misrepresentation unless the agent has actual knowledge of the misrepresentation.

Statutory section 37-51-315 amended 2001; § 37-51-314 amended 2005. Regulation amended 2018.

[Mont. Code Ann. §§ 37-51-314\(7\), -315 \(2017\); Mont. Admin. R. 24.210.641\(5\) \(2019\)](#)

Montana, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's agent, in his relationship with the buyer, must

- act solely in the buyer's best interests, except after written disclosure and with the buyer's written consent, a buyer's agent may "represent multiple buyers interested in buying the same property or similar properties to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers";
- obey promptly and efficiently buyer's lawful instructions;
- disclose all relevant and material information concerning the transaction, that the agent knows but the buyer cannot discover, unless the information is subject to confidentiality arising from a prior or existing agency relationship with another buyer or a seller;
- safeguard the buyer's confidences;

- exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the broker's agreement's terms;
- fully account for funds or property that come into the buyer's agent's possession; and
- comply with all applicable laws.

A buyer agent, in his relationship with the seller, must

- disclose any known adverse material facts concerning the buyer's ability to perform;
- disclose to the seller if the buyer agent has no personal knowledge of the truthfulness of information regarding adverse material facts that concern the ability of the buyer to perform on any purchase offer;
- act in good faith with a seller and his agent; and
- comply with all applicable laws.

Montana regulations provide that unless the buyer waives the obligation in writing, it is unprofessional conduct for a licensee acting as a buyer's agent:

- to fail to participate in negotiations; and
- to fail to submit to the buyer all offers and counter offers until an offer has been accepted or the buyer broker agreement terminates.

Buyer agents are not obligated to show properties after the seller has accepted an offer unless the buyer directs the agent in writing to do so.

REQUIRED DISCLOSURES

A buyer's agent must make the required relationship disclosures as follows:

- the initial disclosure must be made to the buyer at the time the buyer's broker agreement is signed;
- if a licensee is acting as a buyer's subagent, the licensee must make a subsequent disclosure at the time negotiations begin; and
- any subsequent disclosures must be made to the seller when negotiations begin.

AGREEMENT REQUIREMENTS

It is unprofessional conduct for a licensee to act as a buyer agent without a written buyer broker agreement.

Effective April 9, 2015, a licensee must obtain an appropriate written buyer broker agreement before performing the acts of a buyer agent. A licensee who is acting as a buyer agent without a written buyer broker agreement is nevertheless obligated to comply with the requirements of chapter 37-51.

RESTRICTIONS

If a buyer broker has clients making offers on the same property, the buyer agent may not disclose to a client the name of the competing client who is also making an offer or disclose the competing offer's terms or provisions.

Statutory section 37-51-314 amended 2005; § 37-51-313 amended 2017. Regulation amended 2018.

[Mont. Code Ann. §§ 37-51-313\(4\), \(5\), \(10\); -314\(3\) \(2017\); Mont. Admin. R. 24.210.641\(5\) \(2019\)](#)

Montana, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's agent, in his relationship with the seller, must

- act solely in the seller's best interests, except that after written disclosure and with the seller's written consent, a seller's agent may represent multiple sellers of property or list properties for sale that may compete with the seller's property;
- obey seller's lawful instructions;
- disclose all relevant and material information that is known to the seller's agent and not discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship with a buyer or another seller;
- "safeguard the seller's confidences";
- exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the listing agreement;
- account to the seller for any funds or property of the seller that are in the seller's agent's possession; and
- comply with all applicable laws.

A seller agent, in his relationship with the buyer, must

- disclose to a buyer any adverse material facts that are known to the seller's agent, except that the seller's agent need not inspect the property or verify seller's statements;
- disclose to a buyer when the seller's agent has no personal knowledge of the truthfulness of information regarding adverse material facts;
- act in good faith with a buyer and his agent; and
- comply with all applicable laws.

A licensee entering into a listing agreement must verify that the principal listing the property is the owner or authorized by the owner to list the property. The licensee may, but need not, conduct a title search or obtain a title report.

Pursuant to a regulatory amendment certified to the Secretary of State on May 4, 2009, and unless the seller waives the obligation in writing, it is unprofessional conduct for a licensee acting as a seller's agent:

- to fail to participate in negotiations; or
- to fail to submit to the seller all offers and counter offers received until the pending transaction has closed or the listing agreement terminates.

A seller's agent is not obligated to continue to actively market the property after the seller has accepted an offer unless directed in writing by the seller to do so.

It is unprofessional conduct for a licensee acting as a listing agent on an entry-only listing to fail to "comply with all other statute and rule requirements of a real estate licensee."

INSPECTION DUTY

A seller agent need not inspect property or verify the seller's statements.

REQUIRED DISCLOSURES

A seller's agent must make the required relationship disclosures as follows:

- an agent must make the initial disclosure at the time the listing agreement is executed;
- if a licensee is acting as a seller subagent, he must make a subsequent disclosure at the time negotiations begins; and
- a licensee must make any required subsequent disclosure to the buyer when negotiations begin.

AGREEMENT REQUIREMENTS

Montana regulations provide that it is unprofessional conduct for a licensee to act as a seller agent without a written listing agreement.

A licensee must obtain an appropriate written listing agreement before performing the acts of a seller agent. A licensee who is acting as a seller agent without a written listing agreement is nevertheless obligated to comply with the requirements of chapter 37-51.

RESTRICTIONS

A licensee may not when acting as a listing agent, disclose the name of a person making an offer or the offer's amount or terms to other interested persons, except that the listing agent may disclose that an offer has been made.

Statutory section 37-51-314 amended 2005; § 37-51-313 amended 2017. Regulation amended 2018.

[Mont. Code Ann. §§ 37-51-313\(2\), \(3\), \(10\); -314\(2\) \(2017\); Mont. Admin. R. 24.210.641\(5\) \(2019\)](#)

Montana, Term of Relationship

An agency relationship continues until the earliest of

- the agent's completed performance;
- the agreement's stated expiration date; or
- the "occurrence of any authorized termination of the listing agreement or buyer broker agreement."

A statutory broker's relationship continues until the transaction is completed, terminated, or abandoned.

Upon termination of an agency relationship, a licensee has no further duties to the principal, except

- to account for the principal's money and property;
- to keep confidential all information that the principal made confidential, unless disclosure is authorized by the principal's subsequent conduct, disclosure is required by law or to prevent a crime, the information is disclosed by someone other than the licensee, disclosure is reasonably necessary to defend the licensee's conduct, or disclosure of an adverse material fact that concerns the principal's property or his or her ability to perform a purchase offer.

Section amended 2017.

[Mont. Code Ann. § 37-51-313\(11\), \(12\) \(2017\)](#)

Montana, Transaction Brokers

A statutory broker is not the agent of either the buyer or the seller.

TRANSACTION BROKER'S DUTIES

A statutory broker, while not the buyer's or seller's agent, must

- disclose to a buyer any adverse material facts concerning the property that are known to the statutory broker, but the statutory broker need not inspect the property or verify the seller's statements;
- disclose to a seller any adverse material facts that are known to the statutory broker concerning the buyer's ability to perform a purchase offer;
- exercise reasonable care, skill, and diligence; and
- comply with all applicable laws.

REQUIRED DISCLOSURES

A statutory broker must make

- the initial disclosure, as provided by Mont. Code Ann. § 37-51-313(6), to the buyer at the time the statutory broker first tries to locate property for the buyer; and
- the subsequent disclosure, as provided by § 37-51-313, to the seller at the time negotiations begin.

Section 37-51-314 amended 2005; § 37-51-313 amended 2017.

[Mont. Code Ann. §§ 37-51-313\(6\), -314\(4\) \(2017\)](#)

Nebraska

Nebraska, Definitions

Affiliated licensee—an associate broker or salesperson under a designated broker's supervision.

Asset management company—a business firm or association that "sells, conveys, or otherwise offers an interest in real property that belongs to a (1) bank, savings and loan association, or other financial institution created and regulated pursuant to state or federal law, (2) mortgage-holding entity chartered by Congress, or (3) federal, state, or local governmental entity."

Brokerage relationship—the relationship between a designated broker and a client or the relationship between the client and the designated broker's affiliated licensees.

Client—a “seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee.”

Confidential information—information made confidential by law or the client’s written instruction, unless the information is made public by a source other than the licensee.

Customer—a “seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with a licensee.”

Designated broker—an individual holding a broker's license who “has full authority to conduct the real estate activities of a real estate business.”

Dual agent—a limited agent who, with all parties’ written informed consent, has entered into a brokerage relationship with both the seller and buyer or both the landlord and tenant.

Licensee—a “designated broker, an associate broker, and a salesperson.”

Purchaser—a person who acquires or attempts to acquire an interest in land.

Single agent—a limited agent who has entered into a brokerage relationship with only one party in a real estate transaction, including a buyer's agent, a landlord's agent, a seller's agent, and a tenant's agent.

Sections 76-2404, and 76-2409 enacted 1994; § 76-2405 amended 2011; § 81-885.01 amended 2019.

[Neb. Rev. Stat. Ann. §§ 76-2404, -2405, -2409; 81-885.01\(4\), \(11\) \(2019\)](#)

Nebraska, Designated Agents

A designated broker entering into a limited agency agreement with a client may appoint in writing affiliated licensees to act as limited agents of that client to the exclusion of all other affiliated licensees. A designated broker is not considered to be a dual agent solely because of an appointment under § 76-2427. However, any licensee who personally represents both the seller and buyer or both the landlord and tenant in a transaction is a dual agent and must comply with the relevant provisions of §§ 76-2401 to -2430 and with all applicable laws regarding relationships with asset management companies.

A licensee, who is under the supervision of a designated broker and who elects to use the designation authority set forth in § 76-2427 and “which licensees also act in a supervisory capacity under the designated broker, may be treated in the same manner as the designated broker for purposes of determining dual agency only if the broker designates such supervisory positions in his or her written policy.”

Statutory section amended 2011. Regulation effective 1995.

[Neb. Rev. Stat. Ann. § 76-2427 \(2019\); 301 Neb. Admin. Code § 1-003 \(2019\)](#)

Nebraska, Dual Agents

A dual agent must obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent.

DUTIES

A dual agent is a limited agent for both the seller and buyer and generally has the duties set forth in §§ 76-2417 and -2418.

CONFIDENTIALITY OBLIGATIONS

Except as set forth below, a dual agent may disclose information to one client that the licensee gains from the other client if the information is relevant to the transaction or client. A dual agent may disclose to both clients all known adverse material facts. The following information may not be disclosed by a dual agent without the informed written consent of the client to whom the information pertains:

- that a buyer or tenant is willing to pay more than the offered price;
- that a seller or landlord is willing to accept less than the asking price;
- the client's motivating factors; and
- that a client will agree to other financing terms.

A dual agent may not disclose to one client confidential information about the other client unless disclosure is required by law or failure to disclose would constitute fraudulent misrepresentation.

In a dual agency, no knowledge is imputed between a client and the dual agent or among persons within an entity engaged as a dual agent.

REQUIRED DISCLOSURES

The parties' consent to dual agency must include the licensee's duties as specified in § 76-2419. The buyer's or tenant's consent need not refer to a specific property. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer must confirm in writing the dual-agency status and the party or parties responsible for paying compensation before the parties enter into a sale or lease contract for the property.

Section 76-2422 amended 2011; § 76-2419 amended 2002.

[Neb. Rev. Stat. Ann. §§ 76-2419, -2422 \(2019\)](#)

Nebraska, General Agency Relationship Requirements

A limited agent in a transaction may be a single agent, a subagent, or a dual agent. A licensee is considered a buyer's or tenant's limited agent unless the designated broker enters into:

- a written seller's or landlord's agent agreement with the party to be represented;
- a subagency agreement with another designated broker;
- a written dual agency agreement with the parties; or
- a written agency agreement pursuant to § 76-2422(6).

A licensee may work with one party in separate transactions pursuant to different relationships, as long as the licensee complies with §§ 76-2401 to -2430 and the state's laws regarding relationships with asset management companies to establish the relationship for each transaction.

A designated broker must adopt a written policy that identifies and describes the relationships in which the designated broker and affiliated licensees may engage. A designated broker need not offer more than one of the brokerage relationships listed in § 76-2416.

INSPECTION DUTY

A licensee need not verify the accuracy or completeness of any disclosure statement prepared regarding the property's condition.

REQUIRED DISCLOSURES

The licensee's general duties arising from a limited agency relationship must be disclosed to the seller and the buyer pursuant to §§ 76-2420 to -2422.

At the earliest practicable opportunity during or following the first substantial contact with a party who has not entered into a written agreement for brokerage services, the licensee offering brokerage services to that person or for that property must

- provide the person with a written copy of the current brokerage disclosure pamphlet, which must be approved by the commission; and
- disclose in writing the brokerage relationships offered to that person or disclose in writing which party the licensee is representing.

If a party has already entered into a written agreement for brokerage services or a brokerage relationship without a written agreement, no other licensee is required to make these required disclosures.

The required written disclosure form must contain a signature block for the client or customer to acknowledge receipt of the disclosure. If the customer fails or refuses to sign the disclosure, the licensee must note that fact on a copy of the disclosure and retain the copy. A licensee need not give the written disclosures required by § 2421 to an entity that is purchasing, leasing, or selling real property

- that contains five or more residential dwelling units;
- that is subdivided for five or more residential dwelling units; or
- any portion of which is zoned or assessed as commercial or industrial property.

Section 76-2420 enacted 1994; §§ 76-2416 and 76-2421 amended 2011; § 76-2,120 amended 2015.

[Neb. Rev. Stat. Ann. §§ 76-2416, -2420, -2421, -2,120\(10\) \(2019\)](#)

Nebraska, General Applicability of Provisions

Neb. Rev. Stat. §§ 76-2401 to -2430 and the state's laws regarding relationships with asset management companies supersede the parties' duties and responsibilities under common law, including an agent's fiduciary responsibilities, except as provided in § 76-2422(6).

Section amended 2011.

[Neb. Rev. Stat. Ann. § 76-2429 \(2019\)](#)

Nebraska, Other Relevant Provisions

SUBAGENTS

A seller or landlord may agree in writing with his agent that other designated brokers may be retained and compensated as subagents.

A designated broker acting as a subagent on the seller's or landlord's behalf is a limited agent with the obligations set forth in § 76-2417(1) through (4). A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents.

A designated broker acting as a subagent on the buyer's or tenant's behalf is a limited agent with the obligations set forth in § 76-2418 (1) through (4).

MISREPRESENTATIONS

A client is not liable for his limited agent's misrepresentation arising out of the limited-agency agreement unless the client knew or should have known of the misrepresentation. A limited agent or subagent is not liable for his client's misrepresentation arising out of the brokerage-services agreement unless the licensee knew or should have known of the misrepresentation.

Section 76-2426 amended 2002; §§ 76-2417 and 76-2418 amended 2011.

[Neb. Rev. Stat. Ann. §§ 76-2417\(5\), -2418\(5\), -2426 \(2019\)](#)

Nebraska, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's or tenant's agent is a limited agent with the following duties:

- to perform the terms of the client's written agreement;
- to exercise reasonable skill and care;
- to promote the client's interests with good faith, loyalty, and fidelity;
- to seek a price and terms acceptable to the client, except that the licensee need not seek other properties while the client is party to a purchase contract, a lease or a letter of intent to lease;
- except in a relationship with an asset management company, to present all written offers to and from the client in a timely manner;
- to disclose in writing to the client known adverse material facts;
- to advise the client to obtain expert advice as to material matters beyond the licensee's expertise;
- to account in a timely manner for all money and property received; and
- to comply with all applicable laws.

A buyer's or tenant's agent owes no duty or obligation to a seller or landlord, except that the licensee must disclose in writing to the seller or landlord all known adverse material facts, including facts concerning the client's financial ability to perform the transaction.

A buyer's or tenant's agent may

- show competing buyers or tenants the same property, and

- assist competing buyers or tenants in attempting to purchase or lease a particular property.

INSPECTION DUTIES

A buyer's or tenant's agent owes no duty

- to conduct an independent investigation of the client's financial condition, or
- to verify the accuracy of statements made by the client or an independent inspector.

CONFIDENTIALITY OBLIGATIONS

A buyer's or tenant's agent may not disclose confidential information about his client unless

- disclosure is required by law, or
- failure to disclose would constitute fraudulent misrepresentation.

A buyer's or tenant's limited agent may not disclose the following without the party's informed written consent:

- that the buyer or tenant is willing to pay more than the offered price;
- the buyer's or tenant's motivating factors; and
- that the buyer or tenant will agree to financing terms other than those offered.

REQUIRED DISCLOSURES

A buyer's or tenant's agent working with a seller or landlord who is not represented by a licensee must provide a written disclosure to the customer, containing

- a statement that the licensee is the buyer's or tenant's agent, and not the customer's agent; and
- a list of the tasks that the agent may perform with the customer.

Statutory section 76-2420 amended 1994; §§ 76-2418, 76-2421, and 76-2422 amended 2011; § 76-2,120 amended 2015. Regulation effective 1995.

[Neb. Rev. Stat. Ann. §§ 76-2420, -2,120\(10\), -2418, -2421, -2422 \(2019\); 301 Neb. Admin. Code § 1-002 \(2019\)](#)

Nebraska, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's or landlord's agent is a limited agent with the following duties:

- to perform the terms of the client's written agreement;
- to exercise reasonable skill and care;
- to promote the client's interests with good faith, loyalty, and fidelity;
- to seek a price and terms that are acceptable to the client, except that the licensee need not seek additional offers while the property is subject to a sale contract, a lease, or a letter of intent to lease;

- except in a relationship with an asset management company, to present all written offers to and from the client in a timely manner;
- to disclose in writing all adverse material facts actually known by the licensee;
- to advise the client to obtain expert advice as to material matters beyond the licensee's expertise;
- to account in a timely manner for all money and property received; and
- to comply with all relevant laws.

A seller's or landlord's agent owes no duty to a buyer or tenant, except that a licensee must disclose in writing all known adverse material facts, including those pertaining to environmental hazards that are required to be disclosed by law, the property's physical condition, material defects in the property or its title, or any material limitation on the client's ability to perform the contract's terms.

A seller's or landlord's agent may show properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty to the client.

INSPECTION DUTY

A seller's or landlord's agent owes no duty

- to conduct an independent inspection of the property; or
- to verify the accuracy of any statement made by the client or an independent inspector.

CONFIDENTIALITY OBLIGATIONS

A seller's or landlord's limited agent may not disclose the following information without the party's informed written consent:

- that the seller or landlord is willing to accept less than the asking price;
- the party's motivating factors; and
- that the seller or landlord will agree to financing terms other than those offered.

REQUIRED DISCLOSURES

A seller's or landlord's agent, working with a buyer or tenant who is not represented by a licensee must provide a written disclosure to the customer containing

- a statement that the licensee is the seller's or landlord's agent, and not the customer's agent; and
- a list of the tasks that the agent may perform with the customer.

AGREEMENT REQUIREMENTS

A designated broker with a single agency relationship with a seller or landlord must enter into a written agency agreement with the party to be represented, which agreement must include the following, except in a relationship with an asset management company:

- the licensee's duties;

- the compensation terms;
- a fixed expiration date; and
- whether a sub-agency offer may be made to another designated broker.

If a licensee is a limited seller's agent for a builder, the parties may establish the compensation terms for specific new construction property on or before the date the builder accepts the contract to sell.

Statutory sections amended 2011. Regulation effective 1995.

[Neb. Rev. Stat. Ann. §§ 76-2417, -2421, -2422 \(2019\); 301 Neb. Admin. Code § 1-001 \(2019\)](#)

Nebraska, Term of Relationship

An agency relationship starts when the licensee begins representing a client and continues until "performance or completion of the representation." If the representation is not performed or completed, the relationship ends at the earlier of:

- the expiration date agreed upon by the parties; or
- the parties' "termination or relinquishment of the relationship."

Except as agreed in writing, a licensee owes no duty after termination or expiration except

- to account for all money and property received; and
- to keep confidential all information that was made confidential by §§ 76-2401 to -2430 and the state's laws regarding relationships with asset management companies, by instruction

from the client, or by the broker's policy, unless the client consents in writing to disclosure or disclosure is required by law.

Section amended 2011.

[Neb. Rev. Stat. Ann. § 76-2423 \(2019\)](#)

Nebraska, Transaction Brokers

REQUIRED DISCLOSURES

A broker, who is not otherwise involved in a transaction before the parties have entered into a written purchase or sale agreement, may close the transaction as long as he complies with all relevant laws. If the broker is providing only ministerial acts, he must disclose, before closing and in writing, to all parties that he is not representing either party. Both parties must sign the disclosure and the broker must maintain a copy. If a broker participates in a transaction before the parties have entered into a written agreement for the purchase, sale or exchange of real estate, "the broker must fulfill the applicable obligations of a broker to the seller and the buyer."

Regulation amended 2005.

[299 Neb. Admin. Code § 2-013 \(2019\)](#)

Nevada

Nevada, Definitions

Agency—a relationship between a principal and an agent that arises out of a brokerage agreement pursuant to which the agent is "engaged to do certain acts on behalf of the principal in dealings with a third party." Except as otherwise provided, a licensee's duties set forth in §§ 645.252 or 645.254 may not be waived.

Brokerage agreement—an oral or written contract between a client and a broker in which the broker agrees to accept consideration for "assisting, soliciting or negotiating the sale, purchase, option, rental or lease of real property, or the sale, exchange, option or purchase of a business."

Client—a person who has entered into a brokerage agreement or a property management agreement with a broker.

Licensee—a person who holds a license as a real estate broker, broker-salesman or salesman.

Real estate—an interest or estate in real property, including “freeholds, leaseholds and interests in condominiums, town houses or planned unit developments,” whether the property is located in Nevada or elsewhere.

Statutory section 645.005 amended 2005; § 645.009 amended 2003; § 645.020 amended 1975; 645.0045 enacted 2007. Regulation effective 1982.

[Nev. Rev. Stat. Ann. §§ 645.005, .009, .020, .0045 \(2017\); Nev. Admin. Code § 645.043 \(2019\)](#)

Nevada, Designated Agents

If a real estate broker assigns different affiliated licensees to separate parties to a real estate transaction, the licensees need not obtain the written consent required by § 645.252(d).

CONFIDENTIALITY OBLIGATIONS

An assigned licensee may not disclose, except to the real estate broker, confidential information relating to a client in violation of § 645.254.

Section enacted 1995.

[Nev. Rev. Stat. Ann. § 645.253 \(2017\)](#)

Nevada, Dual Agents

In a dual agency, a licensee must obtain the written consent of each party for whom he is acting before continuing to act as an agent. A licensee may not accept compensation from more than one party to a transaction without full disclosure to all parties.

AGREEMENT REQUIREMENTS

The written consent must include

- a description of the transaction;
- a statement that the licensee is acting for “two or more parties to the transaction who have adverse interests and that in acting for these parties, the licensee has a conflict of interest”;
- a statement that the licensee will not disclose confidential information for one year after the brokerage agreement is revoked or terminated, unless required by a court or given written permission by the party;
- a statement that a party need not consent to the licensee acting on his behalf;
- a statement that the party is consenting without coercion and understands the terms of the consent; and
- any changes to a party to the transaction.

Statutory section amended 2007. Regulation amended 2004.

[Nev. Rev. Stat. Ann. § 645.252 \(2017\); Nev. Admin. Code § 645.605 \(2019\)](#)

Nevada, General Agency Relationship Requirements

DUTIES

A licensee acting as an agent in a transaction must

- make the required disclosures to each party as soon as practicable;
- exercise reasonable skill and care with respect to all parties;

- provide to each party the appropriate disclosure form, as provided by the division, to each party for whom the licensee is acting as an agent in the transaction and any unrepresented party to the real estate transaction.

A licensee who has entered into a brokerage agreement must

- exercise reasonable skill and care to carry out the agreement's terms;
- seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the agreement or acceptable to the client;
- present all offers as soon as practicable, unless the client chooses to waive the licensee's duty to present all offers and signs a waiver on a Division-prescribed form;
- disclose material facts to the client;
- advise the client to obtain advice from an expert relating to matters beyond the licensee's expertise;
- account for all money and property as soon as practicable; and
- not deal with any party to a transaction in a "deceitful, fraudulent or dishonest manner."

INSPECTION DUTY

Unless otherwise agreed in writing, a licensee need not

- independently verify the accuracy of an inspector's statements;

- conduct an independent inspection of a party's financial condition; or
- investigate the property's condition.

CONFIDENTIALITY OBLIGATIONS

A licensee may not disclose confidential information relating to a client for one year after the revocation or termination of the brokerage agreement, unless

- required to do so pursuant to court order; or
- the client consents in writing.

REQUIRED DISCLOSURES

A licensee acting as an agent in a real estate transaction must disclose the following to each party as soon as practicable:

- any material facts that he knows or should have known;
- each source from which he will receive compensation;
- whether he is or has an interest in a principal to the transaction;
- his agency relationship; and
- except as otherwise provided in § 645.253, that he is acting for more than one party to the transaction.

The disclosures must be made as soon as practicable, but no later than the date and time the client or any party not represented by a licensee signs any written document.

AGREEMENT REQUIREMENTS

When a licensee prepares a written brokerage agreement authorizing or employing him to purchase or sell real estate for compensation, he must deliver a copy of the written brokerage agreement to the client “signing it at the time the signature is obtained, if possible, or otherwise within a reasonable time thereafter.”

Every brokerage agreement for an exclusive agency representation must

- be in writing;
- have a “definite, specified and complete termination”;
- contain no provision requiring the client to notify the real estate broker of his intention to cancel the exclusive features of the agreement; and
- be signed by both the client and the broker.

A broker who has the exclusive authority to represent a client under an exclusive agency listing agreement, buyer’s brokerage agreement, or listing agreement may authorize another licensee to negotiate directly with that client if he or she obtains the broker's written authorization. Upon request, the broker must provide a copy of the authorization to any licensee cooperating with the broker. Any negotiation conducted by a licensee with a seller, purchaser, lessor, or tenant pursuant to an authorization does not create an express or implied agency relationship between the licensee and the authorizing broker's client. A licensee who cooperates with a broker and who negotiates an agreement pursuant to such a relationship may communicate with the authorizing broker's client to assist in closing, and any related communication does not create an express or implied agency relationship between the licensee and the authorizing broker's client.

RESTRICTIONS

A licensee cooperating with a broker pursuant to an exclusive agency agreement may not “invite the cooperation of another licensee without the consent of the listing broker or the agent.” No more than one licensee may place a sign giving notice of property for sale unless authorized by the owner in writing. A person must obtain the exclusive broker’s consent before negotiating a lease or sale with the owner. However, a broker who holds an exclusive agreement

- must cooperate with other brokers whenever it is in his client’s interest; and
- may share commissions on a previously agreed basis.

See regulations 645.675 and .678 for provisions related to agreements for an advanced fee and regulation 645.772 et seq. for provisions specific to persons acting as a qualified intermediary facilitating a tax-deferred property exchange.

Statutory sections 645.252 and 645.254 amended 2007; §§ 645.300 and 645.3205 enacted 1995; § 645.320 amended 2003. Regulation 645.535 amended 1996; r. 645.637 amended 2006; uncodified regulation effective 2008.

[Nev. Rev. Stat. Ann. §§ 645.252, .254, .300, .3205, .320 \(2017\); Nev. Admin. Code §§ 645.535, .535.541, .637 \(2019\)](#)

Nevada, General Applicability of Provisions

A licensee need not comply with any common law principles that may otherwise apply to any of the licensee’s duties set forth in Nev. Rev. Stat. §§ 645.252, .253, and .254 and the related regulations.

Section enacted 1995.

[Nev. Rev. Stat. Ann. § 645.251 \(2017\)](#)

Nevada, Other Relevant Provisions

SELF-DEALING

In determining whether a licensee is guilty of gross negligence, incompetence, or conduct that constitutes deceitful, fraudulent or dishonest dealing, the commission considers whether the licensee has disclosed in writing, any interest he has or contemplates in a property or timeshare with which he is dealing. The disclosure must include a statement of

- whether he expects to receive any compensation, dividends or profits from any person who will perform services related to the property and, if so, that person's or company's identity;
- his affiliation with or financial interest in "any person or company that furnishes services related to the property";
- any interest in or financial arrangement with any person or company providing maintenance or other services for the property;
- any expected referral fee; and
- full disclosure to and consent from each party if the licensee receives compensation from more than one party in a real estate transaction.

Also, in each real estate transaction involving a licensee as agent or principal, the licensee must disclose, in writing, to his client and to any party not represented by a licensee, his or her relationship as his or her client's agent or his or her status as a principal. The licensee must make the disclosure as soon as practicable, but no later than the time a document is signed by the client or any party not represented by a licensee, or both. The prior disclosure must be confirmed in a separate provision incorporated in or attached to that document.

A licensee may not acquire or dispose of any timeshare or real property for himself, any member of his immediate family, his firm, any member of his firm, or an entity in which he has an ownership interest unless he first discloses in writing that

- he is acquiring, leasing or disposing of the property for himself or for a member, firm, or entity with which he has a relationship; and
- he is a real estate licensee, whether his license is active or inactive.

MISREPRESENTATIONS

A licensee is not liable for his client's misrepresentations unless the licensee knew his client made the misrepresentation, and failed to inform the person that the statement was false.

Statutory section amended 2001. Regulations 645.605 and 645.640 amended 2004; r. 645.637 amended 2006.

[Nev. Rev. Stat. Ann. § 645.259 \(2017\)](#); [Nev. Admin. Code §§ 645.605, .637, .640 \(2019\)](#)

Nevada, Relationship with Buyers

BUYER'S AGENT'S DUTIES

If a licensee represents a buyer in a transaction and the buyer does not accept a counteroffer within a reasonable time after it was presented to him, the licensee must provide the seller with written notice, signed by the buyer, informing the seller that the buyer did not accept the counteroffer.

AGREEMENT REQUIREMENTS

An exclusive buyer's brokerage agreement may

- authorize "the broker specified in the agreement to receive compensation from the seller or lessor of the property or the broker of the seller or lessor"; and
- may provide that the purchaser or tenant is not required to compensate the broker if the property is purchased or leased solely through the purchaser's or tenant's efforts.

Regulation 645.632 amended 2000; r. 645.551 added 2008.

[Nev. Admin. Code §§ 645.551, .632\(2\) \(2019\)](#)

Nevada, Relationship with Sellers

SELLER'S AGENT'S DUTIES

If a licensee represents a seller in a transaction and if the seller does not accept an offer within a reasonable time it was presented to him, the licensee must provide the buyer with a written notice, signed by the seller, that informs the buyer that the seller has not accepted the offer.

Regulation 645.632 amended 2000.

[Nev. Admin. Code § 645.632\(1\) \(2019\)](#)

Nevada, Term of Relationship

An exclusive listing agreement must

- be in writing; and
- have a “definite, specified and complete” termination date.

Section amended 2003.

[Nev. Rev. Stat. Ann. § 645.320 \(2017\)](#)

Nevada, Transaction Brokers

No specifically applicable provisions were located.

New Hampshire

New Hampshire, Definitions

Agency—a fiduciary relationship between a principal and an agent arising out of a brokerage agreement, whereby the agent is engaged act on behalf of the principal.

Appointing agent—a "broker named by the principal broker who appoints individual real estate licensees to represent either the buyer or tenant, or the seller or landlord, in an office of a firm that practices designated agency."

Brokerage agreement—a written contract between a principal and a brokerage firm intended to bring parties together for the sale, purchase, exchange, or lease of real estate.

Buyer—a party involved in the purchase or exchange of real estate.

Buyer agent—a licensee acting on the behalf of a buyer or tenant in the purchase, exchange, rent or lease of real estate.

Designated agent—a "licensee who has been appointed by an appointing agent to represent one party of a real estate transaction and who owes that party fiduciary duties, whether or not the other party to the same transaction is represented by another individual licensee associated with the same brokerage firm."

Disclosed dual agent—a licensee acting for more than one party whose interests may differ in a single transaction, with the knowledge and written consent of all parties for whom the licensee acts.

Facilitator—"an individual licensee who assists one or more parties during all or a portion of a real estate transaction without being an agent or advocate for the interests of any party to such transaction."

Licensee—a broker or salesperson licensed in New Hampshire.

Managing broker—a "broker who manages a branch office."

Ministerial acts—administrative acts that a licensee performs, including

- showing property;
- preparing offers or agreements to sell, purchase, exchange, rent, or lease;
- conveying the prepared offers or agreements to the appropriate parties; and
- providing “information and assistance concerning professional services not related to the provisions of RSA 331-A.”

Net listing—a listing in which the commission is the difference between the selling price and a minimum selling price acceptable to the seller.

Principal—the party that contracts with a real estate brokerage firm to act on its behalf in a fiduciary relationship.

Principal broker—the individual broker that the New Hampshire real estate commission holds responsible for the actions of licensees assigned to the broker.

Real estate—includes

- leaseholds;
- other interests or estates in land;
- business opportunities that involve a real estate interest; and

- the sale and resale of time-share and manufactured-housing units.

Seller—a party who owns the real estate intended for sale, exchange, rent or lease.

Seller agent—a licensee acting on the behalf of a seller or landlord in the sale, exchange, or lease of real estate.

Subagent—a licensee engaged by the principal broker, under a party's authority, to perform agency functions on behalf of the seller, landlord, buyer, or tenant.

Tenant—a party who has entered into or intends to enter into a rental or lease arrangement with a landlord, and includes a lessee.

Statutory section amended 2016. Regulations amended 2017.

[N.H. Rev. Stat. Ann. § 331-A:2 \(2018\)](#); [N.H. Code Admin. R. Ann. Rea 101.01, 404.04\(f\) \(2019\)](#)

New Hampshire, Designated Agents

An appointing agent may appoint designated agents.

DESIGNATED AGENT'S DUTIES

A designated agent

- who represents a seller or landlord, must comply with all duties set forth in § 331-A:25-b (as described in "Relationship with Sellers"); and
- who represents a buyer or tenant, must comply with all duties set forth in § 331-A:25-c (as described in "Relationship with Buyers").

Once an appointing agent appoints a designated agent, the designated agent is responsible for satisfying the agency duties owed to a party.

If an appointing agent has appointed designated agents for both the buyer (or tenant) and the seller (or landlord) in the same transaction, the appointing agent is a dual agent who does not exclusively represent either party. In that case, the appointing agent is neutral as to the parties' conflicting interests, but still owes the parties the duties of

- confidentiality;

- material information disclosure; and
- accounting.

The following designated-agency situations do *not* create dual agencies:

- if designated agents "are affiliated with the same managing broker in the same transaction," unless the same designated agent has agreed to represent both the buyer and the seller;
- if the appointing agent has "separately appointed the designated seller agent and the designated buyer agent within the same firm"; or
- when firms that represent only buyers have appointed designated buyer agents within the firm, or firms that represent only sellers have appointed designated seller agents within the firm.

Appointing a designated agent does not limit an appointing agent's or a principal broker's liability or responsibility for a designated agent's breach of duty.

REQUIRED DISCLOSURES

An appointing agent may not appoint a designated agent without the represented party's written consent at the beginning of the party's agency relationship with the real estate brokerage firm. A licensee must obtain consent to designated agency within the listing agreement or the buyer agency/tenant representation contract. There is a "conclusive presumption" that a party has consented to a designated agency relationship if the party signed a brokerage agreement containing an explanation of designated agency.

Designated agents may not be substituted without the represented party's informed written consent.

If both parties have consented to designated agency, written notice must also be provided to both parties that designated agency has occurred with both parties. This notice must be provided before the execution of a purchase and sale or lease agreement.

If the designated seller's agent and the designated buyer's agent are affiliated with the same broker and both parties have consented to designated agency, a separate consent to dual agency of the appointing agent is not required. However, if the designated seller (or landlord) agent is also the designated buyer (or tenant) agent in the same transaction, the designated agent is a dual agent who must obtain a separate informed consent to dual agency.

CONFIDENTIALITY OBLIGATIONS

Information known or acquired by a designated agent is not imputed to the appointing agent or to other licensees within the same firm. Also, an appointing agent's receipt of confidential information is not imputed to any other appointing or affiliated agents from the same firm.

If an appointing agent has appointed designated agents for both the buyer (or tenant) and the seller (or landlord) in a transaction, the appointing agent is a dual agent, who is neutral as to any conflicting interests of the parties. However, the appointing agent continues to owe both parties the duty of confidentiality.

Statutory section enacted 2008. Regulations amended 2017.

[N.H. Rev. Stat. § 331-A:25-e \(2018\); N.H. Code Admin. R. Ann. Rea 404.04\(c\), \(i\); 701.01\(h\) \(2019\)](#)

New Hampshire, Dual Agents

A licensee may act as a disclosed dual agent only with the written consent of all parties to the anticipated transaction at the time the dual agency relationship occurs, but no later than the time a written offer is prepared.

Pursuant to regulation 701, a licensee intending to act as a dual agent must

- at the time he or she first meets with a consumer to discuss a specific property, provide a written agency relationship disclosure;
- on "the listing contract and buyer agency/tenant representation contract, give the client the option to accept or deny a dual agency statement of consent to showings";
- have the buyer or tenant and seller or landlord review and sign the informed consent to dual agency agreement at the time the dual agency occurs, but no later than the preparation of a written offer; and
- indicate in writing on the offer that the broker is acting as a dual agent.

DUAL AGENT'S DUTIES

A disclosed dual agent must

- perform the terms of the written disclosed dual agency agreement;
- present in a timely manner all offers or agreements to and from the parties;
- timely account for all money and property received;

- inform the parties of the laws and rules regarding disclosure of real estate conditions; and
- preserve confidential information acquired during the written disclosed dual agency relationship or from any prior brokerage agreement.

CONFIDENTIALITY OBLIGATIONS

A disclosed dual agent must preserve all confidential information received during the agency relationship or from any prior brokerage agreement. The confidentiality obligation continues beyond the termination, expiration, completion, or performance of the relationship and must be maintained unless

- the party to whom the information pertains consents in writing to disclosure of the information;
- a source other than the licensee makes the information public;
- disclosure is necessary to defend the licensee against a wrongful conduct claim; or
- disclosure is otherwise required by law.

REQUIRED DISCLOSURES

A licensee may not act as an agent for more than one party in a transaction without

- making full disclosure; and
- obtaining the written consent of "all parties to the anticipated transaction at the time in which a dual agency relationship occurs, but no later than the preparation of a written offer."

Statutory section 331-A:25-d amended 2005; § 331-A:26 amended 2019. Regulation amended 2017.

[N.H. Rev. Stat. Ann. §§ 331-A:25-d; :26 \(2018\); N.H. Code Admin. R. Ann. Rea 701.01\(g\) \(2019\)](#)

New Hampshire, General Agency Relationship Requirements

A licensee may be

- a seller agent,
- a buyer agent,
- a disclosed dual agent, or
- a subagent.

If the parties intend another relationship, it must be described in a written document signed by all parties before the licensee renders services.

DUTIES

A licensee who provides services pursuant to a brokerage agreement has the duties of

- loyalty,
- obedience,
- disclosure,

- confidentiality,
- reasonable care,
- diligence, and
- accounting.

INSPECTION DUTY

Although a licensee must disclose to a prospective buyer or tenant any known material conditions affecting the property, the licensee does not have an affirmative obligation to investigate material defects.

REQUIRED DISCLOSURES

A licensee must provide a written brokerage relationship disclosure to the consumer at the time of the "first business meeting." A licensee showing a property listed with another agency must disclose their brokerage relationship verbally or in writing to the other party's agent before showing the property and in writing on the offer. A licensee must use the commission-adopted "[Brokerage Relationship Disclosure Form](#)." A licensee need not give the disclosure form to a buyer/tenant, a seller/landlord or other licensees who attend an open house if the licensee, "by sign, poster, pamphlet or other conspicuous means, discloses the licensee's brokerage relationship with the seller."

If a buyer or seller does not enter into a relationship with the licensee or will not sign a disclosure form, the licensee must note that fact on a copy of the disclosure form and retain the document for three years.

AGREEMENT REQUIREMENTS

A licensee may not negotiate on behalf of a seller or lessor the sale, purchase, exchange or lease of any real estate, or collect or attempt to collect rent, without a signed written contract, providing for the listing of the real estate. The contract must contain

- the execution date;
- the address, location, description and asking price of the real estate;
- all parties' names and addresses;
- the professional fee; and
- the expiration date.

All parties must agree in writing to any contract extension, which must be for a specific time period.

RESTRICTIONS

Net listings are prohibited.

Statutory section enacted 1996. Regulations amended 2017.

[N.H. Rev. Stat. Ann. § 331-A:25-a \(2018\); N.H. Code Admin. R. Ann. Rea 404.04; 701.01, .02 \(2019\)](#)

[New Hampshire, General Applicability of Provisions](#)

No relevant provisions were located.

[New Hampshire, Other Relevant Provisions](#)

SELF-DEALING

A licensee may not issue a comparative market analysis on any real property in which the licensee has an interest, unless the interest is clearly stated in the competitive market analysis report.

A licensee must disclose in writing to an owner, the licensee's "intention or true position" if the licensee purchases for himself, or acquires or intends to acquire an interest in or option to purchase or lease property. A licensee must also disclose to a potential buyer or lessee, a licensee's ownership interest in property the licensee offers for sale or lease.

The disclosure must be:

- made before any offer to purchase, sell, or lease; and
- acknowledged in writing by all parties.

MISREPRESENTATION

A licensee may not make, publish, or distribute false statements, descriptions or promises that would reasonably induce a person to act, if the statements

- purport to be made or performed by either the licensee or licensee's principal, and
- the licensee knew or reasonably could have known that the statements, descriptions or promises were false.

A licensee also may not knowingly commit or be a party to any "material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device, whereby any other person relies upon the word, representation or conduct of the licensee."

Section amended 2019.

[N.H. Rev. Stat. Ann. § 331-A:26 \(2018\)](#)

New Hampshire, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's or tenant's licensee must

- perform the terms of the written brokerage agreement;
- promote the buyer's or tenant's interests;
- seek real estate at the price and terms specified by the buyer or tenant, except that the licensee need not seek other real estate if the buyer or tenant is party to a purchase contract or lease unless the brokerage agreement so provides;
- timely present offers to and from the buyer or tenant;
- timely account for money and property received;
- inform the buyer or tenant of the laws and rules regarding disclosure of real estate conditions;
- preserve confidential information;
- be "able to introduce the same real estate to other prospective buyers or tenants without breaching any fiduciary duty to the buyer or tenant";
- treat all prospective sellers or landlords honestly; and

- be able to perform ministerial acts, such as “showing property, preparing offers or agreements, and conveying those offers or agreements to the buyer or tenant and providing information and assistance concerning professional services not related to the real estate brokerage services,” in which case performing ministerial acts are not construed as violating the brokerage agreement, provided the licensee gave the appropriate written agency disclosure to the seller or landlord.

A licensee engaged by a buyer or tenant must also disclose to a prospective buyer or tenant any "material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the licensee has actual knowledge." The disclosure must occur before the buyer or tenant makes a written offer to purchase or lease the property. (This requirement does not create an affirmative obligation for a licensee to investigate material defects.)

CONFIDENTIALITY OBLIGATIONS

A licensee must preserve confidential information received from the buyer or tenant during a brokerage agreement, and the obligation continues beyond the termination, expiration, completion, or performance of the relationship. The licensee must maintain confidentiality unless

- the buyer or tenant grants written consent to disclose the information;
- a source other than the licensee makes the information public;
- disclosure is necessary to defend the licensee against a wrongful conduct claim; or
- disclosure is required by law.

REQUIRED DISCLOSURES

A licensee must provide a written brokerage relationship disclosure to a consumer at "the time of first business meeting."

AGREEMENT REQUIREMENTS

A licensee may not act on behalf of a buyer or lessee without a signed, written contract. The "buyer agency/tenant representation contract" must contain

- the execution date;
- the general description, location and price range of real estate;
- all parties' names and addresses;
- the professional fee; and
- the contract's expiration date.

All parties must agree in writing to any provisions to extend the contract for a specific time period.

Statutory section amended 2008. Regulations amended 2017.

[N.H. Rev. Stat. Ann. § 331-A:25-c \(2018\); N.H. Code Admin. R. Ann. Rea 404.04, 701.01\(b\) \(2019\)](#)

New Hampshire, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's or landlord's licensee must:

- perform the brokerage agreement's terms;
- promote the seller's or landlord's interests;
- seek a sale, lease, or exchange at the price and terms acceptable to the seller or landlord, except that the licensee need not seek additional purchase offers while the real estate is subject to a sale contract unless the brokerage agreement so provides;
- timely present all offers and agreements to and from the seller or landlord, even if the real estate is subject to a sale contract;
- timely account for all money and property received;
- inform the seller or landlord that he may be liable for the principal broker's and subagent's acts;
- inform the seller or landlord of the disclosure laws regarding the condition of the real estate;
- preserve confidential information;
- be able to promote alternative real estate to prospective buyers or tenants and to list competing properties for sale or lease, without breaching any duty to the seller or landlord;
- treat all prospective buyers or tenants honestly;
- insure that all required real estate condition disclosures are complied with;
- be able to provide assistance to the buyer or tenant by "performing ministerial acts such as showing property, preparing offers or agreements, and conveying those offers or agreements to the seller or landlord and providing information and assistance concerning professional services not related to the

real estate brokerage services,” which acts will not be construed as violating the brokerage agreement, provided the buyer or tenant has received the licensee’s agency disclosure.

A licensee engaged by a seller or a landlord must also disclose to a prospective buyer or tenant any "material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the licensee has actual knowledge." The disclosure must occur before the buyer or tenant makes a written offer to purchase or lease the property. (This requirement does not create an affirmative obligation for a licensee to investigate material defects.)

REQUIRED DISCLOSURES

A licensee must provide a written brokerage relationship disclosure to a consumer at "the time of first business meeting."

AGREEMENT REQUIREMENTS

A licensee may not negotiate on behalf of a seller or lessor the sale, purchase, exchange or lease of any real estate, or collect or attempt to collect rent, without a signed written contract, providing for the listing of the real estate. The contract must contain

- the execution date;
- the address, location, description and asking price of the real estate;
- all parties' names and addresses;
- the professional fee; and
- the expiration date.

All parties must agree in writing to any contract extension, which must be for a specific time period.

CONFIDENTIALITY OBLIGATIONS

A licensee must preserve a seller's or landlord's confidential information acquired during a brokerage agreement. The obligation continues beyond the termination, expiration, completion, or performance of the relationship, and must be maintained unless

- the seller or landlord grants written consent to disclose the information;
- a source other than the licensee makes the information public;
- disclosure is necessary to defend the licensee against a wrongful conduct claim; or
- disclosure is otherwise required by law.

Statutory section amended 2008. Regulations amended 2017.

[N.H. Rev. Stat. Ann. § 331-A:25-b \(2018\); N.H. Code Admin. R. Ann. Rea 404.04, 701.01\(a\) \(2019\)](#)

New Hampshire, Term of Relationship

No relevant provisions were located.

New Hampshire, Transaction Brokers

A licensee in New Hampshire who assists, but does not represent, either party in a transaction is a facilitator.

TRANSACTION BROKER'S DUTIES

A facilitator must disclose to a prospective buyer or tenant "any material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the facilitator has actual knowledge." The disclosure must occur any time before the buyer or tenant makes a written offer to purchase or lease the property. This does not create an affirmative obligation on the part of the facilitator to investigate material defects.

A facilitator must treat all prospective parties honestly.

A facilitator's duties apply to a party only in the particular property transaction involving that party.

Performing ministerial acts does not form an agency relationship with a seller, landlord, buyer, or tenant.

Effective August 4, 2015, a facilitator must "present in a timely manner all offers and agreements to and from the parties during a real estate transaction."

CONFIDENTIALITY OBLIGATIONS

Unless otherwise agreed, a facilitator has no duty to keep information received from a party confidential.

AGREEMENT REQUIREMENTS

The parties in a transaction involving a facilitator "may or may not enter into a contractual relationship."

Section amended 2015.

New Jersey

New Jersey, Definitions

Broker or salesperson—a person who performs in New Jersey as an agent or employee of a subdivider and includes any real estate broker or salesperson licensed pursuant to § 45:15-1 *et seq.* or “any person who purports to act in any such capacity.”

Brokerage agreement—a written agreement between a brokerage firm and a party describing the terms under which the firm will perform services.

Brokerage firm—a “licensed corporate, partnership or sole proprietor broker, and all individuals licensed with that broker.”

Informed consent to dual agency—a party’s written authorization for a firm that represents them as their agent to also represent the other party to a transaction as an agent, which consent may be obtained only after the brokerage firm has disclosed

- all material facts that might reasonably impact on the party's decision to authorize dual agency, including the extent of the conflicts of interests involved, and the specific ways in which each consenting party will receive less than full agency representation from the dual agent;
- to the consenting party, the other business relationships offered by that licensee; and
- the party's right to consult an attorney.

Party—an actual or prospective seller, lessor, buyer or lessee of a real estate interest.

Residential real estate—as used in regulation 5-6.4, a property or structure that will serve as the purchaser’s residence.

Short term rental—the rental of residential property for not more than 125 consecutive days under the terms of an oral rental agreement or written lease that contains a specific termination date, but not including a month-to-month tenancy.

Transaction broker—a brokerage firm that works with both parties to arrive at a sale or rental agreement and facilitates the closing of the transaction, but does not represent or have an agency relationship with either party to the transaction.

Statutory section amended 2006. Regulation 11:5-6.4 amended 2009; r. 11:5-6.9 amended 1998 and readopted 2009.

[N.J. Stat. Ann. § 45:15-16.28 \(2019\)](#); N.J. Admin. Code §§ 11:5-6.4, .9 (LexisNexis 2019)

New Jersey, Designated Agents

No provisions were located specifically applicable to designated agents.

New Jersey, Dual Agents

The commission may penalize a licensee who acts for more than one party to a transaction without all parties' knowledge.

CONFIDENTIALITY OBLIGATIONS

The text of the required disclosure form, as set forth in regulation 11:5-6.9(h), indicates that a licensee acting as a dual agent may not disclose confidential information to the other party without the party's express permission. Confidential information includes

- the highest price a buyer can afford;
- the lowest price a seller will accept; and
- the parties' motivations.

REQUIRED DISCLOSURES

The text of the required disclosure form, as set forth in regulation 11:5-6.9(h), indicates that a licensee acting as a dual agent must

- before acting as a disclosed dual agent, make a written disclosure to both parties;
- explain to each party that, in addition to working as their agent, their firm will also work as the agent for the other party; and
- explain the effect working as a disclosed dual agent will have on the fiduciary duties the firm owes to the buyer and the seller.

AGREEMENT REQUIREMENTS

Before acting as a dual agent, a brokerage firm must have the written informed consent of the parties to the transaction, and informed consent is not acquired through distribution of the general Consumer Information Statement alone. A licensee must also secure the parties' signatures on a separate writing, confirming the parties' informed consent to disclosed dual agency. The writing may be part of or attached to a brokerage agreement.

RESTRICTIONS

A licensee may not receive compensation from both a seller and buyer or a tenant and landlord for representing both parties in the same transaction, even if the licensee disclosed the dual agency to both parties.

Statutory section amended 2018. Regulation 11:5-6.9 amended 1998 and readopted 2009; r. 11:5-7.1 amended 2012.

[N.J. Stat. Ann. § 45:15-17\(b\) \(2019\)](#); N.J. Admin. Code §§ 11:5-6.9(b), (h); -7.1 (LexisNexis 2019)

New Jersey, General Agency Relationship Requirements

DUTIES

A licensee must

- “protect and promote, as he would his own,” his client’s or principal’s interests;
- deal fairly with all parties to the transaction;
- make a reasonable effort to ascertain all material information concerning the property’s physical condition and the buyer’s financial qualifications;
- unless otherwise directed by the owner in writing, cooperate with all other licensees using cooperation arrangements, which must protect and promote the licensee’s client’s interests;
- recommend that legal counsel be obtained whenever any party’s interests so require; and
- deliver to the maker of an offer or counteroffer a copy of the executed offer or counteroffer immediately upon signature.

INSPECTION DUTY

A licensee must make a “reasonable effort” to ascertain material information regarding the property’s condition and the buyer’s financial qualifications. (See N.J. Admin. Code § 11:5-6.4(b) for details regarding what constitutes “reasonable effort” in this context.)

REQUIRED DISCLOSURES

A licensee must disclose

- all material information that they know or should know regarding the property's physical condition to their client or principal and, if appropriate, to any other party to a transaction;
- any actual or potential conflicts of interest that the licensee reasonably anticipates;
- to consumers, what type of brokerage services the licensee will provide;
- in all offers, contracts, or leases that are not exempt, the following statement:

By signing below the sellers (or landlords as applicable) and purchasers (or tenants as applicable) acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in this transaction prior to the first showing of the property;

- in all offers, contracts, or leases, the regular business name of the broker with whom the licensee is licensed and his business relationship;
- to other licensees, what business relationship they have with the party with whom they have a brokerage agreement, and with any other parties with whom they may be working, as described in detail at N.J. Admin. Code § 11:5-6.7, .9(k); and
- if a brokerage firm owns the property being sold, a Consumer Information Statement, revised as provided by N.J. Admin. Code § 11:5-6.7, -.9(m).

At the time of listing residential property, a licensee must provide to the owner a copy of a summary of the New Jersey Law Against Discrimination, state the provisions of the Law Against Discrimination, and state which properties are covered by and which are exempt from this law. Also, a licensee who provides mortgage-financing services to buyers must provide certain written disclosures to the buyer and seller as a condition of receiving compensation.

AGREEMENT REQUIREMENTS

A brokerage firm must include the following in the brokerage agreement:

- a statement acknowledging receipt of the Consumer Information Statement; and
- a declaration of business relationship, indicating the broker's regular business name and in what capacity the licensee will operate with respect to the other party to the agreement, which declaration must contain, in print larger than the predominant print, the following language:

"I, _____, as an authorized representative of _____, intend, as of this time, to work with you as a (indicate one of the following):

- seller's agent only
- buyer's agent only
- seller's agent and disclosed dual agent if the opportunity arises
- buyer's agent and disclosed dual agent if the opportunity arises
- transaction broker only
- seller's agent on properties on which this firm is acting as the seller's
- agent and transaction broker on other properties"

RESTRICTIONS

A listing agreement or sale contract may not contain

- a prescribed or predetermined fee or commission; or
- a commission clause suggesting to a seller that the commission is a prescribed rate or amount.

Regulation 11:5-6.2 amended 1993 and readopted 2009; r. 11:5-6.4 amended 2009; rr. 11:5-6.7 and 11:5-6.9 amended 1998 and readopted 2009.

N.J. Admin. Code §§ 11:5-6.2(a), (b); .4(a), (b), (c), (f), (i), (j); .7; .9(i), (j), (k)—(m) (Lexis-Nexis 2019)

New Jersey, General Applicability of Provisions

The disclosure requirements of N.J. Admin. Code § 11:5-6.9 apply to:

- transactions involving the sale of residential real estate with one to four dwelling units or vacant one-family lots;
- residential lease transactions other than short term rentals, provided that in short-term rentals, a licensee must include in all leases a statement indicating that he is acting either as the landlord's agent, the tenant's agent, a disclosed dual agent, or a transaction broker; and
- brokerage agreements on residential properties, including short term rental listing agreements.

Regulation amended 1998 and readopted 2009.

N.J. Admin. Code § 11:5-6.9 (LexisNexis 2019)

New Jersey, Other Relevant Provisions

SELF-DEALING

A licensee may not

- sell property, in which he has an ownership interest, unless the licensee first discloses the interest and his status as a broker, broker-salesperson, or salesperson to the purchaser in the sale contract; or
- purchase property without first disclosing to the seller in the sale contract his status as a real estate broker, broker-salesperson, or salesperson.

Section amended 2018.

[N.J. Stat. Ann. § 45:15-17\(p\), \(q\) \(2019\)](#)

New Jersey, Relationship with Buyers

See N.J. Admin. Code § 11:5-6.5 for provisions related to a person engaged in the business of referring, for a fee, prospective residential tenants to possible rental units.

REQUIRED DISCLOSURES

A licensee must supply information to a buyer regarding his business relationship as follows:

- verbally inform buyers of the business relationship before the first discussion at which a buyer's motivation or financial ability to buy is discussed;
- if the first discussion occurs during a business meeting on the buyer's real estate needs, licensees must deliver the written Consumer Information Statement to the buyers prior to the discussion;
- if the first such discussion is by telephone or in a social setting, the licensee must, after verbally informing the buyer of the four business relationships, deliver the written Consumer Information Statement to the buyer at their next meeting;
- if the written Consumer Information Statement has not been delivered to the buyer, the licensees must deliver the written statement to the buyer no later than the first showing or, if no showing occurs, the preparation of an initial offer or contract; and
- those licensees who intend to enter into a buyer-brokerage relationship must deliver the Consumer Information Statement no later than the presentation of the buyer-brokerage agreement.

The mandatory text of the Consumer Information Statement is set forth in N.J. Admin. Code § 11:5-6.9(h).

Regulations amended 1998 and readopted 2009.

N.J. Admin. Code § 11:5-6.9(e)(1), (h) (LexisNexis 2019); *see also* N.J. Admin. Code § 11:5-6.5 (LexisNexis 2019)

New Jersey, Relationship with Sellers

REQUIRED DISCLOSURES

A licensee must supply information to the seller regarding his business relationship as follows:

- a licensee must verbally inform sellers of the four business relationships before the first discussion at which the seller's motivation or desired selling price is discussed;
- if the first discussion occurs during a business meeting on the seller's real estate needs, the licensee must deliver the written Consumer Information Statement to the seller before the discussion;
- if the first discussion is by telephone or in a social setting, the licensee, after having verbally informing the seller of the business relationships, must deliver the written Consumer Information Statement to the seller at the next meeting;

- on unlisted properties where the written Consumer Information Statement has not been delivered to the seller, a licensee must deliver the written statement to the seller no later than the first showing, and, if no showing occurs, no later than the presentation of the initial offer or contract; and
- a licensee who intends to enter into a listing or transaction brokerage agreement with a seller, must deliver the Consumer Information Statement no later than the beginning of the agreement presentation.

The mandatory text of the Consumer Information Statement is set forth in N.J. Admin. Code § 11:5-6.9(h).

AGREEMENT REQUIREMENTS

A listing agreement must include the following:

- the commission clause in a listing or sale agreement for the sale of one- to four-family dwelling units must contain, in print larger than the predominant size print, the language, "As seller you have the right to individually reach an agreement on any fee, commission, or other valuable consideration with any broker. No fee, commission or other consideration has been fixed by any governmental authority or by any trade association or multiple listing service.";
- upon request, the listing broker must advise the seller of the rate or amount of any commission split;
- a listing agreement that provides for listing property with any real estate multiple listing service must specify the service's complete name;
- all written listing agreements must include in print larger than the predominant size print, a provision regarding commission splits; and
- if the client or principal directs the listing broker not to cooperate with all other licensees, evidence of this intent in writing in the form of a Waiver of Broker Cooperation as set forth by regulation.

RESTRICTIONS

A licensee may not enter into a "net listing" contract, which is an agreement that authorizes a broker to sell at a specified net dollar return to the seller, permitting the broker to retain as commission the difference between that return and the actual sales price.

Regulation 11:5-6.9 amended 1998; r. 11:5-6.2 amended 1993 and readopted 2009; r. 11:5-6.4 amended 2009.

N.J. Admin. Code §§ 11:5-6.2 (c)—(e), (f); .4(f); .9(e)(2), (h) (LexisNexis 2019)

New Jersey, Term of Relationship

No relevant provisions were located.

New Jersey, Transaction Brokers **TRANSACTION BROKER'S DUTIES**

The text of the required disclosures form, as set forth in N.J. Admin. Code § 11:5-6.9(h), indicates that a transaction broker has the following duties:

- to treat all parties honestly; and
- to act in a competent manner.

The form also indicates that a transaction broker:

- is not required to keep confidential any information;
- may locate qualified buyers for a seller or suitable properties for a buyer;
- may work with both parties in an effort to arrive at a sale agreement and perform tasks to facilitate closing the transaction; and
- primarily serves as a manager of the transaction, but may not advise or counsel either party on how to gain an advantage at the expense of the other party.

AGREEMENT REQUIREMENTS

The text of the required disclosure form, as set forth in N.J. Admin. Code § 11:5-6.9(h), indicates that a transaction brokerage agreement with a seller or landlord must specifically state whether a notice on the property will be circulated in a multiple listing service.

Regulation amended 1998 and readopted 2009.

See N.J. Admin. Code § 11:5-6.9(h) (LexisNexis 2019)

New Mexico

New Mexico, Definitions

Agent—the brokerage "authorized, solely by means of an express written agreement, to act as a fiduciary for a person" and to provide real estate services that are subject to the commission's jurisdiction; in the case of an associate broker, the person who has been authorized to act by his or her qualifying broker.

Associate broker—a person who, for compensation, is "associated with or engaged under contract by a qualifying broker to carry on the qualifying broker's business as a whole or partial vocation," and who:

- lists, negotiates, sells, buys, offers to sell, or offers to buy real estate;
- manages property for others;
- leases, rents or auctions real estate or offers to do the same;
- advertises or holds himself out as being engaged in the business of dealing real estate options for others; or

- charges an advance fee or contracts to collect a fee in connection with a contract to promote the sale of real estate through its listing in a publication issued primarily for that purpose or to refer information to brokers.

Client—a person who has entered into an express written agreement for real estate services.

Customer—a person who uses real estate services but does not enter into an express written agreement with a brokerage.

Dual agency—an express written agreement modifying an exclusive agency agreement by providing that the brokerage will act as a facilitator in a real estate transaction, rather than as an exclusive agent for either party.

Exclusive agency—an express written agreement, pursuant to which the brokerage agrees to represent as an exclusive agent the interests of that person in a transaction, including buyer, seller, and designated agency and subagency agreements.

Real estate—“land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest.”

Transaction broker—a "qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship." A transaction broker relationship is not a fiduciary relationship.

Statutory section amended 2019. Regulation amended 2012.

[N.M. Stat. § 61-29-2\(A\) \(2019\); N.M. Admin. Code tit. 16, § 61.19.9 \(2019\)](#)

New Mexico, Designated Agents

In New Mexico, a designated agency is a form of exclusive agency.

Regulation amended 2012.

[N.M. Admin. Code tit. 16, § 61.19.9 \(2019\)](#)

New Mexico, Dual Agents

A dual agency occurs if

- an associate or qualifying broker is an agent for both a seller client and a buyer client in the same transaction;
- an associate or qualifying broker is an agent for either a seller client or a buyer client, and the agent's qualifying broker is agent for the other party to the transaction; and
- a buyer client and a seller client have different associate brokers in an agency relationship supervised by the same qualifying broker, and the broker does not create a designated agency, in which case both the associate brokers and the qualifying broker are dual agents.

DUAL AGENT'S DUTIES

A dual agent must act as a facilitator, rather than as an exclusive agent of either party.

CONFIDENTIALITY OBLIGATIONS

A licensee may not disclose to the other party information obtained before the clients grant written authority for dual agency, unless required by law or permitted by the client who originally disclosed the confidential information.

AGREEMENT REQUIREMENTS

Before writing or presenting offers, a dual agent must obtain written authority from both clients in a separate dual agency agreement.

Regulation amended 2006.

[N.M. Admin. Code tit. 16, § 61.19.10 \(2019\)](#)

New Mexico, General Agency Relationship Requirements

A brokerage:

- may provide real estate services to a client pursuant to a written agreement that does not create an agency relationship, in which case no agency duties are imposed; and
- may provide real estate services to a customer without entering into an express written agreement and without creating an agency relationship, in which no agency duties are imposed.

DUTIES

A broker must:

- disclose the applicable set of broker duties owed to buyers, sellers, landlords of rental property, and tenants as set forth in regulation 16.61.19.8 before the broker generates or presents any written document that has the potential to become an express written agreement; and
- obtain from that party written acknowledgement that the broker has made those disclosures.

A licensee must perform all duties established by the commission.

Duties owed to prospective parties

As of January 15, 2018, a broker owes the following duties to prospective buyers, sellers, landlords, and tenants:

- to act with "honesty and reasonable care and ethical and professional conduct";
- to comply with all applicable laws;
- to perform all written agreements with the prospective buyer, seller, landlord, or tenant;
- to provide written disclosure of any potential conflict of interest or other written agreement that the broker has in the transaction; and
- to disclose in writing any adverse material facts the broker actually knows about the property or the transaction or about the parties' financial ability to complete the transaction, except that "adverse material facts" do not include information "covered by federal fair housing laws or the New Mexico Human Rights Act."

In the case of prospective parties for whom the broker is not directly providing real estate services, the broker must make the disclosure and acknowledgment of receipt through the broker who is directly providing real estate services to that party.

Duties owed to parties for whom the broker is directly providing services

In addition to the broker duties owed to prospective parties, brokers owe the following duties to the buyers, sellers, landlords, and tenants for whom the broker is directly providing real estate services:

- to assist the party in completing the transaction, unless otherwise agreed in writing, including presenting all offers or counter-offers in a timely manner and actively assisting in complying with the contract and closing the transaction (as of January 15, 2018, if the broker is not providing this service, advice, or assistance, the party must agree in writing that the broker is not expected to provide such service, advice, or assistance);
- to acknowledge that there may be matters related to the transaction that are outside the broker's knowledge or expertise, for which the broker will suggest that the party seek expert advice;
- to advise the party to consult with an attorney regarding the effectiveness, validity, or consequences of any written document the brokerage generated or presented to the party that has the potential to become an express written agreement;
- to account promptly for all funds or property received;

- to maintain any confidential information learned during any prior agency relationship, unless disclosure is with the former principal's written consent or is required by law; and
- to disclose in writing the brokerage relationship options available in New Mexico.

If a broker is working for a landlord as a residential property manager, the broker also owes the landlord all duties owed under the law of agency. See regulation 16.61.19.8(C) for additional duties brokers working as property managers owe to tenants.

Obligations to Other Brokers

A broker owes the following professional obligations to other brokers, but brokers are not required to provide to one another a list of these obligations:

- to act with "honesty and reasonable care and ethical and professional conduct";
- to timely present offers or counter-offers and responses, unless otherwise agreed in writing by the party for whom the broker is directly providing real estate services;
- to actively assist the party for whom the broker is directly providing real estate services in complying with the contract's terms and conditions and with closing the transaction, unless otherwise agreed in writing;
- to comply with applicable laws;
- to disclose in writing any adverse material facts the broker actually knows about the property or the transaction or about the parties' financial ability to complete the transaction, except that "adverse material facts" do not include information "covered by federal fair housing laws or the New Mexico Human Rights Act."
- to disclose in writing any potential conflict of interest the broker has in the transaction, "including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction"; and

- to not interfere with a purchase agreement or any express written agreement another broker has with a buyer, seller, landlord, or tenant.

REQUIRED DISCLOSURES

A licensee must give his or her prospective buyer, seller, landlord or tenant, before the licensee generates or presents a written document that may become an express written agreement, a list of the licensee's duties, as set forth by the commission.

Before generating or presenting any written document that may become an express written agreement, the broker must make the following disclosures in writing to prospective buyers, sellers, landlords, and tenants:

- any written brokerage relationship the broker has with any other parties to the transaction;
- any material interest or relationship the broker has in the transaction; and
- any adverse material facts the associate broker or qualifying broker knows about the property, the transaction, or the parties' financial ability to complete the transaction, except that adverse material facts do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

AGREEMENT REQUIREMENTS

For all transactions first executed on or after January 1, 2000, no agency relationship exists unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No agency relationship may be assumed or created orally or by implication.

Statutory section 61-29-10.1 amended 2003; § 61-29-10.2 amended 2005. Regulation amended 2019.

[N.M. Stat. §§ 61-29-10.1, -10.2 \(2019\); N.M. Admin. Code tit. 16, § 61.19.8 \(2019\)](#)

New Mexico, General Applicability of Provisions

No relevant provisions were located.

New Mexico, Other Relevant Provisions

SELF-DEALING

A broker must disclose in writing to his or her prospective buyers, sellers, landlords, and tenants any potential conflict of interest or any other written agreement that the broker has in the transaction, including, among other things, any written relationship the broker has with any other parties to the transaction, any "material interest or relationship of a business, personal, or family nature that the broker has in the transaction," and any "written

agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction."

Also, a broker advertising to sell or exchange real property the broker owns (or partially owns) must indicate in his or her advertising, including signs, that the broker owns the real property. This disclosure must also be made in the listing contract, purchase agreement, or exchange agreement. If an owner-broker engages a third-party broker to list his or her property, the third-party broker need not make an owner-broker disclosure in advertising and signs, but must disclose the ownership interest in the listing contract, purchase agreement, or exchange agreement. Similarly, a broker advertising to rent or lease real property that the broker owns is not required to disclose his or her ownership interest in advertising and signs, but must disclose it in the rental or lease agreement.

Regulation 61.19.9 amended 2012; r. 61.32.8 amended 2019; r. 61.19.8 amended 2018.

[N.M. Admin. Code tit. 16, § 61.19.8, .19.9, .32.8 \(2019\)](#)

New Mexico, Relationship with Buyers

CONFIDENTIALITY OBLIGATIONS

As of January 15, 2018, unless otherwise authorized in writing, a broker who is directly providing real estate

services to a buyer or tenant may not disclose the following to the seller or owner:

- that the buyer or tenant has indicated they will pay a price greater than the price submitted in a written offer;
- the buyer's or tenant's motivation for buying or leasing; or
- any other information the buyer has requested in writing remain confidential, unless its disclosure is required by law.

Regulation amended 2019.

[N.M. Admin. Code tit. 16, § 61.19.8\(B\)\(8\) \(2019\)](#)

New Mexico, Relationship with Sellers

CONFIDENTIALITY OBLIGATIONS

As of January 15, 2018, unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller or owner may not disclose the following to the buyer or tenant:

- that the seller or owner has indicated they will accept a sales or lease price less than the property's asking or listed price;
- that the seller or owner will agree to financing terms other than those offered;
- the seller or owner's motivations for selling or leasing; or
- any other information the seller or owner has requested in writing remain confidential, unless its disclosure is required by law.

Regulation amended 2019.

[N.M. Admin. Code tit. 16, § 61.19.8\(B\)\(7\) \(2019\)](#)

New Mexico, Term of Relationship

No relevant provisions were located.

New Mexico, Transaction Brokers

TRANSACTION BROKERS

A transaction broker relationship is a nonfiduciary relationship.

A licensee working with a consumer may provide real estate services without agency by an express written agreement that does not provide for agency, in which case no agency relationship or duties are imposed.

TRANSACTION COORDINATORS

A “transaction coordinator” is a person engaged by a broker who assists the broker in the processing of the real estate transaction, and whose services may include, without limitation: "gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing."

A broker who engages a transaction coordinator to perform activities that may require a real estate license whether within the broker’s brokerage or outside the broker’s brokerage, is responsible for disclosing, in writing, the name(s) of the transaction coordinator to the buyer, seller and brokers in the transaction.

If a transaction coordinator performs duties that require a real estate license and works directly with a customer or client or other brokers and parties involved in the transaction, the transaction coordinator owes the following broker duties:

- the broker must maintain "any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal’s written consent or is required by law;"
- unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner may not disclose the following to the buyer/occupant in a transaction: (a) that the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price; (b) that the seller/owner will agree to financing terms other than those offered; (c) the seller/owner’s motivations for selling/leasing; or (d) "any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;" and
- unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant may not disclose the following to the seller/owner in the transaction: (a) that the buyer/tenant has previously indicated they will pay a price greater than that submitted in a written offer; (b) the buyer/tenant’s motivation for buying/leasing; or (c) "any other information the buyer has requested in writing remain confidential, unless disclosure is required by law."

See N.M. Admin. Code tit.16, § 61.20.8 for additional provisions governing transaction coordinators.

Regulation 61.19.9 amended 2012; r. 61,1,7 amended effective January 1, 2019; r. 61.20.8 promulgated effective January 1, 2019.

[N.M. Admin. Code tit. 16, §§ 61.1.7\(CCC\), \(EEE\); 61.19.9; 61.20.8 \(2019\)](#)

New York

New York, Definitions

Advance consent to dual agency—a seller's or a buyer's written informed consent stating that the listing or buyer's agent may act as a dual agent for the seller and a buyer of the residential real property that is the subject of the listing agreement.

Advance consent to dual agency with designated sales agents—a seller's or a buyer's written informed consent that indicates the name of the agent appointed to represent him or her as a designated sales agent for residential real property that is the subject of a listing agreement.

Agent—a person who is licensed as a broker, associate broker, or salesperson and is acting as a fiduciary.

Broker's agent—an agent that "cooperates or is engaged by" a listing, buyer's, or tenant's agent (but works for a different firm) to assist the listing, buyer's, or tenant's agent in locating property. A broker's agent does not have a direct relationship with the seller, buyer, landlord, or tenant, and that party may not provide instructions or direction directly to the broker's agent. Therefore, the seller, buyer, landlord, or tenant do not have vicarious liability for a broker's agent's acts. However, listing, buyer's, or tenant's agents do provide direction and instruction to a broker's agent, so they are liable for the broker's agent's acts.

Buyer—a transferee in a residential real property transaction.

Buyer's agent—an agent who contracts to locate residential real property for a party or who finds a buyer for a property, presents an offer to the seller, and negotiates on behalf of the buyer.

Dual agent—an "agent who is acting as a buyer's agent and a seller's agent or a tenant's agent and a landlord's agent in the same transaction."

Designated sales agent—a salesman or associate broker, who:

- is working under a broker's supervision; and

- has "been assigned to represent a client when a different client is also represented by such real estate broker in the same transaction."

Landlord—the lessor in a residential real property transaction.

Landlord's agent—"a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, acts as a landlord's subagent or acts as a broker's agent to find or obtain a tenant for residential real property."

Listing agent—a person who has entered into a listing agreement to act as a seller's or a landlord's agent for compensation.

Listing agreement—a contract between a residential real property owner and an agent, by which the agent is authorized to sell or lease the residential real property or to find a buyer or lessee.

Real estate broker—generally, any "person, firm, limited liability company or corporation, who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates or offers or attempts to negotiate, a loan secured or to be secured by a mortgage, other than a residential mortgage loan . . . or other incumbrance upon or transfer of real estate, or is engaged in the business of a tenant relocater, or who . . . performs any of the above stated functions with respect to the resale of condominium property originally sold pursuant to the provisions of the general business law governing real estate syndication offerings."

Residential real property—real property, used or occupied (or intended to be used or occupied) as a home or residence and improved by a one- to four-dwelling units, or condominium or cooperative apartments, but not unimproved real property upon which dwellings are to be constructed.

Seller—the transferor in a residential real property transaction, including an owner who lists residential real property for sale with an agent or who receives an offer to purchase residential property.

Seller's agent—a listing agent who "acts alone, or an agent who acts in cooperation with a listing agent, acts as a seller's subagent or acts as a broker's agent to find or obtain a buyer for residential real property."

Tenant—a lessee in a residential real property transaction.

Tenant's agent—an agent who "contracts to locate residential real property for a tenant or who finds a tenant for a property and presents an offer to lease to the landlord or landlord's agent and negotiates on behalf of the tenant."

Section 440 amended 2006; § 443 amended 2010.

[N.Y. Real Prop. Law §§ 440, 443\(1\) \(2019\)](#)

New York, Designated Agents

The disclosure form set forth at § 443(4)(a) addresses "Dual Agency with Designated Sales Agents." If the buyer and the seller provide their informed consent in writing, the principals or the broker who represents both parties as a dual agent may designate one sales agent to represent the buyer and another to represent the seller to negotiate a real estate transaction. Subsection 443(4)(b) contains similar provisions that apply to a broker representing both a landlord and a tenant in the same transaction.

DUTIES

The disclosure form set forth at § 443(4)(a) provides that, in negotiations between the buyer and the seller,

- the designated sales agent for the buyer functions as the buyer's agent representing the buyer's interests and advocating on behalf of the buyer; and
- the designated sales agent for the seller functions as the seller's agent representing the seller's interests and advocating on behalf of the seller.

A designated sales agent "cannot provide the full range of fiduciary duties to the buyer or seller."

Subsection 443(4)(b) contains similar provisions that apply to negotiations between a landlord and a tenant.

REQUIRED DISCLOSURES

The disclosure form set forth at § 443(4)(a) provides that a designated sales agent must explain that "like the dual agent under whose supervision they function, they cannot provide undivided loyalty." The form must state, "A buyer or seller should carefully consider the possible consequences of a dual agency relationship with designated sales agents before agreeing to such representation."

Subsection 443(4)(b) contains similar provisions that apply to landlord/tenant situations.

The buyer-seller form and the landlord-tenant form must each be "a one page, two-sided form, printed front and back."

Section amended 2010.

[N.Y. Real Prop. Law § 443\(4\) \(2019\)](#)

New York, Dual Agents

The disclosure form set forth at § 443(4)(a) provides that a broker may represent both the seller and the buyer in a transaction if both parties give their written informed consent. Subsection 443(4)(b) contains similar provisions that apply to a broker representing both the landlord and the tenant in a single transaction. A party may provide advance informed consent to dual agency and dual agency with designated sales agents by so indicating on the form set forth in § 443(4).

DUAL AGENT'S DUTIES

The disclosure form set forth at § 443(4)(a) states that a dual agent must specify that he or she will not be able to provide the full range of fiduciary duties to the parties. An agent's obligations are also subject to any specific provisions set forth in the agreement between the agent, and the buyer and the seller.

Subsection 443(4)(b) contains similar provisions that apply if a dual agent represents both a landlord and a tenant.

REQUIRED DISCLOSURES

The statutory disclosure form provides that a dual agent must "explain carefully" to both parties that he or she is "acting for the other party as well." The agent must also explain the possible effects of dual representation, including that the buyer and seller are giving up their right to undivided loyalty. The disclosure form must also state, "A buyer or seller should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation."

Subsection 443(4)(b) contains similar provisions that apply to a broker representing both a landlord and a tenant in the same transaction.

The buyer-seller form and the landlord-tenant form must be "a one page, two-sided form, printed front and back."

Section amended 2010.

[N.Y. Real Prop. Law § 443\(4\) \(2019\)](#)

New York, General Agency Relationship Requirements

DUTIES

A broker must immediately deliver a copy of any instrument to all parties executing the document, if

- the broker or a licensee under his supervision prepared the document; or
- the instrument relates to the broker's employment or to any matters pertaining to the transaction.

REQUIRED DISCLOSURES

A real estate broker must

- "make it clear" for which party he is acting; and
- not receive compensation from more than one party without the broker's client's full knowledge and consent.

The required disclosure form is set forth at N.Y. Real Prop. Law § 443(4), which section applies only to transactions involving residential real property. The buyer-seller form and the landlord-tenant form must each be "a one page, two-sided form, printed front and back."

AGREEMENT REQUIREMENTS

An agent must provide to the buyer or seller a copy of the required signed acknowledgment and maintain a copy for at least three years. If the party refuses to sign an acknowledgment receipt, the agent must document the facts of the refusal and maintain a copy for at least three years.

RESTRICTIONS

A broker may not

- negotiate the sale, exchange or lease of property directly with an owner or lessor if he or she knows that the party has an existing written contract granting exclusive authority to another broker;
- induce any party to a sale contract to break the contract in order to substitute a new contract with another principal; or
- enter into a net listing contract.

Statutory section amended 2010. Regulation 175.19 filed 1962; r. 175.12 amended 2015; r. 175.7 amended 2016; history of other regulations unknown.

[N.Y. Real Prop. Law § 443\(3\)\(d\)—\(f\), \(4\) \(2019\); N.Y. Comp. Codes R. & Regs. tit. 19, §§ 175.7, .8, .9, .12, .19 \(West 2019\)](#)

New York, General Applicability of Provisions

The disclosure requirements set forth in § 443:

- apply only to transactions involving residential real property;
- do not apply to a licensee who works with a party according to the terms agreed to by the licensee and the party in a capacity other than as an agent; and
- do not limit or alter the application of the common law of agency with respect to residential real estate transactions.

Section amended 2010.

[N.Y. Real Prop. Law § 443\(2\), \(5\), \(6\) \(2019\)](#)

New York, Other Relevant Provisions

SELF-DEALING

A broker may not buy for himself property listed with the broker without first making his position clearly known to the listing owner. Before a real estate broker buys for a client property in which the broker has an ownership interest, he must disclose his interest to all parties. Before a broker sells property in which he has an interest, he must disclose his interest to the purchaser.

BROKER'S AGENTS

A broker's agent does not have a direct relationship with a buyer or seller, and the buyer or seller cannot provide instructions or direction directly to the broker's agent. Therefore, the buyer and the seller do not have vicarious liability for the broker's agent's acts. However, because the listing or buyer's agent does provide direction and instruction to the broker's agent, the listing or buyer's agent is liable for the broker's agent's acts.

Statutory section amended 2010. History of regulation unknown.

[N.Y. Real Prop. Law § 443\(4\) \(2019\); N.Y. Comp. Codes R. & Regs. tit. 19, §§ 175.4, .5, .6 \(West 2019\)](#)
[New York, Relationship with Buyers](#)

BUYER'S AGENT'S DUTIES

The disclosure form set forth at § 443(4)(a) delineates that a buyer's agent has the following duties to the buyer:

- reasonable care,
- undivided loyalty,
- confidentiality,
- full disclosure,
- obedience, and
- accounting.

A buyer's agent's obligations are also subject to other specific provisions contained in the parties' agreement.

Subsection 443(4)(b) contains similar provisions that apply to a tenant's agent.

A buyer's agent has the following duties to the seller:

- to exercise reasonable skill and care;

- to deal honestly, fairly and in good faith; and
- to disclose all known facts that materially affect the buyer's ability or willingness to perform that are not inconsistent with the agent's fiduciary duties to the buyer.

REQUIRED DISCLOSURES

A buyer's or tenant's agent must

- provide a disclosure form to the buyer or tenant before entering into an agreement to act as the buyer's or tenant's agent;
- obtain a signed acknowledgment from the buyer or tenant;
- provide a disclosure form to the seller or landlord (or his or her agent) at his or her first substantive contact with the seller or landlord; and
- generally, obtain a signed acknowledgment from the seller or landlord.

The disclosure form set forth at § 443(4)(a) explicitly provides that a buyer's agent does not represent the seller's interests. Subsection 443(4)(b) contains similar provisions that apply to a tenant's agent. The buyer-seller form and the landlord-tenant form must each be "a one page, two-sided form, printed front and back."

Section amended 2010.

[N.Y. Real Prop. Law § 443\(3\)\(c\), \(4\) \(2019\)](#)

New York, Relationship with Sellers

SELLER'S AGENT'S DUTIES

The text of the disclosure form set forth at § 443(4)(a) provides for the following fiduciary duties to the seller:

- reasonable care,
- undivided loyalty,
- confidentiality,
- full disclosure,
- obedience, and
- a duty to account.

A seller's agent is also subject to any specific provisions contained in the parties' agreement.

Subsection 443(4)(b) contains similar provisions that apply to a landlord's agent.

In dealing with the buyer, a seller's agent should

- exercise reasonable skill and care;
- deal honestly, fairly and in good faith; and
- disclose all known facts that materially affect the value or desirability of property, unless otherwise provided by law.

A real estate broker may not offer a property for sale or lease without the owner's authorization.

REQUIRED DISCLOSURES

A listing agent must

- provide the statutory disclosure form to a seller or landlord before entering into a listing agreement with the seller or landlord;
- generally, obtain a signed acknowledgment from the seller or landlord;
- provide the disclosure form to a buyer or tenant (or his or her agent) at his or her first substantive contact with the buyer or tenant; and
- generally, obtain a signed acknowledgement from the buyer or tenant.

The disclosure form set forth at § 443(4)(a) explicitly provides that a seller's agent does not represent the buyer's interests. Subsection 443(4)(b) contains similar provisions that apply to a landlord's agent. The buyer-seller form and the landlord-tenant form must each be "a one page, two-sided form, printed front and back."

AGREEMENT REQUIREMENTS

In all commission agreements that provide for an exclusive listing of residential property, the broker must have attached to or printed on the listing (and obtained the homeowner's signature) the following explanation in at least six-point type:

EXPLANATION:

An 'exclusive right to sell' listing means that if you, the owner of the property, find a buyer for your house, or if another broker finds a buyer, you must pay the agreed commission to the present broker. An 'exclusive agency' listing means that if you, the owner of the property find a buyer, you will not

have to pay a commission to the broker. However, if another broker finds a buyer, you will owe a commission to both the selling broker and your present broker.

If a broker who is a member of a multiple listing service obtains an exclusive listing of residential property, the listing agreement must provide that the homeowner has the option of having all negotiated offers to purchase submitted through the listing or selling broker.

RESTRICTIONS

A real estate broker may not be a party to an exclusive listing contract that contains an automatic continuation of the listing period.

Statutory section amended 2010. Regulation 175.24 amended 2015; history of other regulations unknown.

[N.Y. Real Prop. Law § 443\(3\), \(4\) \(2019\); N.Y. Comp. Codes R. & Regs. tit. 19, §§ 175.10, .15, .24 \(West 2019\)](#)

New York, Term of Relationship

No specifically relevant provisions were located. However, a real estate broker may not be a party to an exclusive listing contract that contains an automatic continuation of the listing period beyond the fixed termination date.

History of regulation unknown.

[N.Y. Comp. Codes R. & Regs. tit. 19, § 175.15 \(West 2019\)](#)

New York, Transaction Brokers

No provisions specifically applicable to transaction brokers were located.

North Carolina

North Carolina, Definitions

No relevant provisions were located.

North Carolina, Designated Agents

If a firm represents both the buyer and the seller in a transaction, the firm may, with both parties' prior approval, designate individual brokers associated with the firm to represent only the seller's interests and another individual broker to represent only the buyer's interests in the transaction. However, a broker-in-charge may not act as a designated agent for a party if a provisional broker under his supervision will act as a designated agent for another party with a competing interest.

CONFIDENTIALITY OBLIGATIONS

An individual licensee may not act as a designated agent if he or she has received confidential information concerning the other party to the transaction.

If a firm acting as a dual agent designates an individual broker to represent the seller, the designated broker may not, without the seller's permission, disclose to the buyer or his broker that

- the seller may agree to another price or terms;
- the seller's motivation, unless disclosure is required by law; and
- any information that the seller has identified as confidential, unless disclosure is required by law.

If a firm acting as a dual agent designates an individual broker to represent the buyer, the broker so designated may not, without the buyer's permission, disclose to the seller or his broker that

- the seller may agree to another price or terms;
- the seller's motivation, unless disclosure is required by law; and
- any information that the seller has identified as confidential, unless disclosure is required by law.

REQUIRED DISCLOSURES

A designated broker must disclose the identity of all licensees designated to represent the buyer and the seller. The disclosure must occur no later than the presentation of the first offer.

AGREEMENT REQUIREMENTS

The designated agency authority must be reduced to writing no later than the time the parties are required to reduce their dual agency agreement to writing.

Regulation amended 2015.

[21 N.C. Admin. Code 58A.0104\(d\), \(j\), \(k\), \(l\), \(m\) \(2019\)](#)

North Carolina, Dual Agents

REQUIRED DISCLOSURES

A firm that represents more than one party in a real estate transaction must disclose its dual agency to the parties. The commission may discipline a licensee who acts for more than one party in a transaction without "the knowledge of all parties for whom he or she acts."

CONFIDENTIALITY DISCLOSURES

If an individual broker represents both the buyer and seller in a transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the agreement that the broker may not disclose the following information about one party to the other without permission:

- that a party may agree to a price or terms other than those offered;
- the party's motivation, unless disclosure is required by law; and
- any information that a party has identified as confidential, unless disclosure is required by law.

AGREEMENT REQUIREMENTS

A broker representing one party may not represent another party in the same transaction without each party's written authority, which must be obtained upon the relationship's formation. However, if a buyer or tenant is represented by a broker without a written agreement, as permitted by 21 N.C. Admin. Code 58A.0104(a), the parties must agree in writing to the dual agency no later than the time that one of the parties makes an offer.

Statutory section amended 2011. Regulation amended 2015.

[N.C. Gen. Stat. § 93A-6\(a\)\(4\) \(2018\); 21 N.C. Admin. Code 58A.0104\(d\), \(i\), \(n\) \(2019\)](#)

North Carolina, General Agency Relationship Requirements

DUTIES

The commission may reprimand, suspend, or revoke a real estate license if the licensee:

- makes a willful or negligent misrepresentation or omission of a material fact;
- makes a false promise that is likely to “influence, persuade, or induce”;
- pursues “a course of misrepresentation or making of false promises through agents, advertising or otherwise”;
- fails to make an accounting within a reasonable time;
- fails to deliver, within a reasonable time, a copy of any purchase agreement or offer; or
- fails to deliver a complete, detailed closing statement to the broker's client.

A real estate broker acting as an agent in a residential real estate transaction has the duty to inform each of his or her clients of that client's rights and obligations under chapter 47E (regarding residential property disclosures).

REQUIRED DISCLOSURES

A broker, at the first substantial contact with a prospective buyer or seller, must:

- provide the prospective buyer or seller with a copy of "Working with Real Estate Agents";
- provide the broker's name and license number on the publication;
- review the publication with the buyer or seller; and

- determine whether the agent will act as the buyer's or seller's agent in the transaction.

The "Working with Real Estate Agents" is available on the Commission's website at www.ncrec.gov or upon request to the commission.

If the first substantial contact occurs by telephone or other electronic means, the broker must, at the earliest opportunity, but no later than three days from the date of first substantial contact, mail or otherwise transmit a copy to the party and review it with him or her at the earliest practicable opportunity. In this context, "first substantial contact" includes contacts between a broker and a consumer in which either party begins to act as though an agency relationship exists and the consumer begins to disclose personal or confidential information to the broker.

AGREEMENT REQUIREMENTS

Generally, a broker must deliver a copy of any executed "written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document" to his or her customer or client within three days of the broker's receipt of the document. However, a broker need not deliver copies of leases or rental agreements to the property owner, if the broker:

- obtains the owner's prior written authority to enter into and retain copies of leases or rental agreements on the owner's behalf;
- executes the lease or rental agreement on a pre-printed form and does not change any material terms without the owner's prior approval unless required by law; and
- delivers to the property owner, within 45 days following execution, an accounting that identifies the following: the leased property; the tenants' names, phone numbers, and home addresses; and the rental rates and any collected rents.

Upon the property owner's request, the broker must deliver a copy of any lease or rental agreement within five days.

A real estate brokerage service agreement must:

- be in writing;
- be signed by the parties; and
- contain, in a clear and conspicuous manner, the following provision: "The broker shall conduct all his brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller." This provision must be "set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement."

Effective for written agreements signed by a *commercial* real estate owner (or the owner's agent) on or after October 1, 2011, a broker may have a lien on the real estate in the amount that the broker is due under a signed written agreement for broker services, if:

- the broker has performed as set forth in the agreement;
- the agreement clearly sets forth the broker's duties; and
- the agreement sets forth the conditions upon which the broker earns the compensation and the amount of the compensation.

Every written agreement for brokerage services of any kind in a real estate transaction must:

- provide a definite time period;
- include the broker's license number; and

- provide for its termination without prior notice at the expiration of the stated period, except that an agency agreement between a landlord and broker to procure tenants or receive rents may allow for automatic renewal as long as the landlord may terminate with notice at the end of any contract period.

Effective July 1, 2015, every written agreement for brokerage services that includes a penalty for early termination must set forth the provision in a clear and conspicuous manner that is distinguished from other provisions.

Statutory section 93A-6 amended 2011; § 44A-24.3 enacted 2011; § 47E-8 amended 2014.
Regulation 58A.0106 amended 2018; r. 58A.0104 amended 2015.

[N.C. Gen. Stat. §§ 44A-24.3, 47E-8, 93A-6 \(2018\); 21 N.C. Admin. Code 58A.0104, .0106 \(2019\)](#)

North Carolina, General Applicability of Provisions

The provisions of N.C. Admin. Code tit. 21, r. 58A.0104(c), (d) and (e) do not apply to real estate brokers representing sellers in auctions.

Regulation amended 2015.

[21 N.C. Admin. Code 58A.0104\(g\) \(2019\)](#)

North Carolina, Other Relevant Provisions

SELF-DEALING

Effective July 1, 2015, a broker who is selling property in which the broker has an ownership interest generally may not represent a buyer of that property. However, a broker who is selling commercial real estate in which the broker has less than 25-percent ownership interest may represent a buyer if the buyer consents to the representation after full written disclosure of the broker's ownership interest.

A firm listing a property owned by a broker affiliated with the firm may represent a buyer of the property as long as:

- any individual broker representing the buyer on the firm's behalf does not have an ownership interest in the property; and
- the buyer consents to the representation after full written disclosure of the broker's ownership interest.

A broker or firm with an existing listing agreement for a property may not enter into a contract to purchase that property unless, before entering into the contract, the listing broker or firm first discloses in writing:

- that the listing broker or firm may have a conflict of interest in the transaction; and
- that the seller-client may want to seek independent counsel from an attorney or another licensed broker.

Before the listing broker enters into a contract to purchase the listed property, the listing broker and firm must either terminate the listing agreement or transfer the listing to another broker affiliated with the firm.

Before the listing firm enters into a contract to purchase the listed property, the listing broker and firm must disclose to the seller-client in writing that the seller-client has the right to terminate the listing. The listing broker and firm must terminate the listing upon the seller-client's request.

Regulation amended 2015.

[21 N.C. Admin. Code 58A.0104\(o\), \(p\) \(2019\)](#)

North Carolina, Relationship with Buyers

REQUIRED DISCLOSURES

In every transaction, a buyer's broker must, at his or her initial contact with the seller or the seller's agent, disclose that the broker represents the buyer's interests. Also, in every real estate sales transaction other than an auction, the broker must, no later than the time of delivery of an offer, provide the seller or his agent with a written disclosure that the licensee represents the buyer's interests. The confirmation may be contained in the buyer's offer and must include the broker's license number.

AGREEMENT REQUIREMENTS

A buyer's or tenant's broker's agreement must

- "be express";
- be reduced to writing and signed no later than the time one of the parties makes an offer.

However, every agreement between a broker and a buyer or tenant that seeks to bind the buyer or tenant "for a period of time" or to restrict the buyer's or tenant's right to work with other agents or without an agent must be in writing and signed "from its formation."

Regulation amended 2015.

[21 N.C. Admin. Code 58A.0104\(a\), \(f\) \(2019\)](#)

North Carolina, Relationship with Sellers

REQUIRED DISCLOSURES

A seller's broker, whether an agent or subagent, must disclose in writing to the prospective buyer at the first substantial contact that the broker represents the seller's interests. The written disclosure must include the broker's license number. If the first substantial contact occurs by telephone or other electronic means, the broker must

- immediately disclose by similar means which party he represents, and
- immediately, but in no event later than three days from the first substantial contact, mail or transmit to the buyer a copy of the written disclosure.

AGREEMENT REQUIREMENTS

An agreement between a broker and an owner for brokerage services must be in writing and signed by the parties at the time of its formation.

Regulation amended 2015.

[21 N.C. Admin. Code 58A.0104\(a\), \(e\) \(2019\)](#)

North Carolina, Term of Relationship

A written brokerage services agreement must include, among other provisions,

- a definite time period; and
- a provision regarding termination without prior notice at its expiration, except that an agency agreement between a landlord and broker may be automatically renewable as long as the landlord may terminate with notice at the end of any contract period.

Effective July 1, 2015, every written agreement for brokerage services that includes a penalty for early termination must set forth the provision in a clear and conspicuous manner that distinguishes it from other provisions.

Regulation amended 2015.

[21 N.C. Admin. Code 58A.0104\(a\) \(2019\)](#)

North Carolina, Transaction Brokers

No relevant provisions were located.

North Dakota

North Dakota, Definitions

Appointed agent—a licensee appointed by a designated broker of the licensee's brokerage firm to act solely for one client to the exclusion of other licensees of that firm.

Client—a person that has entered into a written agency agreement with a brokerage firm.

Customer—a "buyer, prospective buyer, seller, lessee, or lessor that is not represented by that real estate brokerage firm in a real property transaction."

Designated broker—a licensee designated by a real estate brokerage firm to act on behalf of the firm.

Dual agency—a situation in which a brokerage firm or its licensee owe a duty to more than one party in a real estate transaction, which is established only as follows:

- when one licensee represents both the buyer and the seller in a transaction; or
- when two licensees, licensed to the same broker, each represent a party to the transaction. "Dual agency" does not exist unless both the seller and the buyer have a written agency agreement with the same firm.

Real estate brokerage firm—a person that is

- providing real estate brokerage services through that person's licensees, and
- that is licensed as a real estate brokerage firm.

Substantive contact—as used in N.D. Admin. Code §§ 70-02-01-15.1(2), generally

- when representing the seller, before signing the listing agreement;
- when representing the buyer, before signing the buyer's broker agreement;
- with all other parties, such as potential buyers or sellers not represented by the licensee, before discussing personal financial information or beginning negotiations.

In situations in which it is impossible as a practical matter to obtain a signed written disclosure statement at the first substantive contact, such as telephone contact, the licensee must orally disclose the licensee's representation status, as soon as practicable.

Statutory section amended 2011. Regulation amended effective 2012.

[N.D. Cent. Code § 43-23-06.1 \(2019\)](#); [N.D. Admin. Code § 70-02-03-15.1\(1\) \(2019\)](#)

North Dakota, Designated Agents

A brokerage firm, through a designated broker, may appoint in writing the licensee within the firm who will act as the client's appointed agent to the exclusion of all other licensees in the firm. If the firm appoints an appointed agent for clients who are or may be parties in the same transaction, the brokerage firm and its licensees are not dual agents as to those clients, and no knowledge is imputed among or between such clients, the firm, and the appointed agents.

A designated broker must have "a written company policy that identifies and describes the types of real estate agency relationships in which the agency may engage." Also, the policy manual of an agency that offers representation to both buyers and sellers must address the agency's procedures:

- "intended to prevent any mishandling of information through both formal and informal sharing of information within the agency";
- agency office space arrangements; and
- the "personal relationships of agents who are representing clients with adverse interests."

DESIGNATED AGENT'S DUTIES

An appointed agent must

- keep the designated broker fully informed of all activities conducted by the appointed agent during the transaction, and
- notify the designated broker of any other activities that might affect the designated broker's responsibility.

An appointment of a new or additional agent does not relieve the first appointed agent of any of fiduciary duties he or she owes to the client. At the time new or additional agents are appointed, the designated broker must comply with the applicable procedures, disclosures, and duties.

REQUIRED DISCLOSURES

An appointed agent must disclose the appointment to the client in writing before entering into a brokerage agreement. The disclosure must state at least the following:

- the appointed agent's name;
- that the appointed agent will be the client's agent and will owe the client fiduciary duties, which include the obligation not to reveal to other licensees confidential information obtained from the client, unless the disclosure is to obtain advice or assistance from the broker for the client's benefit;
- that the agency may be representing both the seller and buyer in the transaction;
- a statement that other licensees may be appointed during the brokerage agreement's term if the appointed agent is not be able to fulfill the contract or as by agreement between the designated broker and client; and

- that the client consents or does not consent, in writing, to the appointment.

CONFIDENTIALITY OBLIGATIONS

A designated broker appointing a licensee to act as a client's agent

- must take ordinary and necessary care to protect the client's confidential information;
- may reveal to the agency's designated broker confidential information in order to obtain advice or assistance for the client's benefit;
- must keep confidential information confidential and not disclose such information unless the client requests or permits otherwise.

Statutory section enacted 1995. Regulation 70-02-03-17 amended 2010; r. 70-02-01-21 adopted 2010.

[N.D. Cent. Code § 43-23-12.3 \(2019\)](#); [N.D. Admin. Code §§ 70-02-01-21, -03-17 \(2019\)](#)

North Dakota, Dual Agents

REQUIRED DISCLOSURES

A licensee acting as a dual agent must disclose the relationship to all parties.

Statutory section 43-23-12.1 amended 2011; § 43-23-11.1 amended 2007.

[N.D. Cent. Code § 43-23-12.1 \(2019\)](#); *see also* [N.D. Cent. Code § 43-23-11.1\(1\)\(d\) \(2019\)](#)

North Dakota, General Agency Relationship Requirements

DUTIES

A real estate brokerage firm and its licensees that provide services pursuant to a written agency agreement have the following duties to the client:

- loyalty,
- obedience,
- disclosure,
- confidentiality,
- reasonable care,
- diligence, and
- accounting.

If a brokerage firm does not represent a buyer, prospective buyer, or seller in a real property transaction, the buyer or seller remains a customer. The real estate brokerage firm and its licensees are nonagents that owe the customer the following legal duties:

- to "perform customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion if these acts are to assist the customer for which the services are directly provided";
- to perform acts with honesty and good faith; and

- to disclose to the customer any adverse material facts the licensee actually knows that pertain to the property's title, physical condition, and defects.

These limited duties are subordinate to the duties the real estate brokerage firm and its licensees owe to a client in the same transaction.

Also, unless otherwise agreed in writing, a brokerage firm and its licensees are not obligated to a client, customer, or any other person:

- to discover a property's defects;
- to verify the property's ownership; or
- to verify independently the accuracy or completeness of any statement or representation made by any person other than the brokerage firm and its licensees.

CONFIDENTIALITY OBLIGATIONS

The following information may not be disclosed without the represented party's informed and written consent:

- that the party is willing to pay more than the offered price;
- that the party is willing to accept less than the asking price;
- the party's motivating factors;
- that the party will agree to other financing terms; and

- all information that the party has asked to remain confidential.

A licensee need not keep confidential property defects of which the licensee is aware or which would constitute fraudulent misrepresentation if not disclosed.

REQUIRED DISCLOSURES

In a transaction involving agricultural or commercial property, residential property with dwelling units for five or more families, or commercial leases, a licensee is deemed to be the seller's agent, unless all parties agree otherwise in writing. In such nonresidential transactions, the agency relationship must be disclosed to the parties in writing before they sign a written agreement. Each licensee must disclose the following information "in substantially this form":

"I _____, a real estate licensee, stipulate that I am representing the _____ (Buyer/Seller) in this transaction. _____ Licensee"

In a real estate transaction involving residential property with dwelling units for one to four families, a licensee must identify in writing which party that person represents. The disclosure must be made at the time of the first substantive contact and must be set forth in a separate written document signed by the party. The written disclosure must

- describe the types of representation available, including information pertaining to how that party's interest will be represented in each case, as described in detail in N.D. Admin. Code § 70-02-03-15.1(7);
- explain that a duty of loyalty and faithfulness is owed to the party with whom the licensee has an agency relationship; and
- explain that a licensee must deal honestly with any party, regardless of whether the party is represented by that licensee.

In all transactions in which the licensee performs services for a *customer*, the licensee must disclose the nonagency relationship in writing. The customer must sign the disclosure before the licensee

performs services for the customer. The broker must retain a copy of the signed written disclosure in his or her file. The disclosure must explain that:

- the brokerage firm and its licensees are nonagents that owe the customer only limited legal duties;
- if the brokerage firm and its licensees represent another party in the same real estate transaction, the licensee must place the represented client's interest first.

RESTRICTIONS

A licensee may not negotiate either the sale, lease, or listing of property directly with an owner or the exclusive right to buy with a buyer, if the licensee knows that the owner or the buyer has a written unexpired contract that grants another broker an exclusive right to sell or buy. However, a licensee may enter into an agency contract with such an owner or a buyer if “the contact culminating in such a contract is initiated by the owner or buyer, and not by the licensee, and provided that such agency contract does not become effective until after the expiration or release of any existing agency contract.”

Statutory section amended 2011. Regulation 70-02-03-11 amended 2002; r. 70-02-03-15 effective 1994; r. 70-02-03-15.1 amended effective 2012; r. 70.02-03-15.2 adopted effective 2012.

[N.D. Cent. Code § 43-23-12.1 \(2019\); N.D. Admin. Code §§ 70-02-03-11; -15; -15.1\(2\), \(3\), \(4\), \(6\), \(7\); -15.2 \(2019\)](#)

North Dakota, General Applicability of Provisions

The duties set forth in chapter 43-23 and related regulations supersede any fiduciary duties based on common-law agency principles to the extent the common-law duties are inconsistent with the duties specified in chapter 43-23 or the related rules.

The disclosure requirements set forth in H.D. Cent. Code § 70-02-03-15 apply only to transactions involving agricultural and commercial property, residential property that provides separate dwelling units for five or more families, and commercial leaseholds. Residential property that provides separate dwelling units for one through four families is subject to the agency disclosure requirements of § 70-02-03-15.1.

Statutory section amended 2001. Regulation amended 1994.

[N.D. Cent. Code § 43-23-12.2\(1\) \(2019\)](#); [N.D. Admin. Code § 70-02-03-15 \(2019\)](#)

North Dakota, Other Relevant Provisions

SELF-DEALING

A broker may not himself buy or acquire an interest in

- property listed with the broker, or
- property as to which the broker has been approached by the owner to act as broker without first making the broker's position clearly known to the owner.

Similarly, a broker may not take an option on property if the owner has approached the broker to act as a broker, without first making the broker's position clearly known. Similar restrictions are placed on a salesperson dealing with property listed with the salesperson's employer broker. Also, a broker or salesperson that sells property in which he owns an interest must make such interest known to the purchaser.

A licensee acting on his own behalf must disclose his licensed status in writing to any person with whom he purchases, sells, exchanges, or options real property. All the terms and conditions must be in writing and properly executed and delivered to such person. The broker must retain copies of the disclosure and documents containing the transaction's terms and conditions.

MISREPRESENTATIONS

A client is not liable for a wrongful act, error, omission or misrepresentation made by a licensee, unless the client knows or should have known of the wrongful act, error, omission, or misrepresentation or the licensee is repeating the client's misrepresentation. Similarly, a brokerage firm providing brokerage services to a client is not liable for a wrongful act, error, omission, or misrepresentation made by the client, the listing agent of another firm, or a subagent of another firm, unless the firm knew or should have known of the wrongful act, error, omission, or misrepresentation or the client, listing agent, or subagent is repeating the firm's misrepresentation.

Statutory section amended 2001. Regulations amended 1992.

[N.D. Cent. Code §§ 43-23-12.2\(2\) \(2019\); N.D. Admin. Code § 70-02-03-16, -13 \(2019\)](#)

North Dakota, Relationship with Buyers

AGREEMENT REQUIREMENTS

For residential real property consisting of one to four separate dwelling units, a licensee must obtain a signed buyer's broker agreement before acting as the buyer's agent. A buyer's broker agreement must be in writing and include the following:

- a definite expiration date;
- the commission or other compensation amount;
- a statement describing the services to be provided to the buyer, and the events or conditions that will entitle the licensee to compensation; and
- if the licensee represents both the buyer and the seller in the transaction, a separate dual agency disclosure statement.

Regulation effective 1994.

[N.D. Admin. Code § 70-02-03-05.1 \(2019\)](#)

North Dakota, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee must

- promptly tender to the seller every written purchase offer;

- upon obtaining an acceptance, promptly deliver copies of the executed agreement to both the seller and the buyer;
- verify that all of the transaction's terms and conditions are included in the offer; and
- verify that the parties agree to any text changes before proceeding with the transaction.

If a real estate brokerage firm and its licensees represent two or more sellers or lessors (as clients) that desire to offer competing real property for sale or lease, the brokerage firm and its licensees do not breach their duties to such clients by performing the services, even if the clients' interests are competing. Otherwise, the brokerage firm and its licensees must continue to honor their agency duties to those clients.

AGREEMENT REQUIREMENTS

All listing or sales contracts must state the commission, either as an amount or a percentage.

Statutory section amended 2011. Regulation 70-02-03-05 effective 1994; r. 70-02-03-06 amended 1992.

[N.D. Cent. Code § 43-23-12.1 \(2019\)](#); [N.D. Admin. Code §§ 70-02-03-05, -06 \(2019\)](#)

North Dakota, Term of Relationship

A buyer's broker agreement must include a definite expiration date.

The confidentiality obligations set forth in N.D. Admin. Code § 70-02-03-15.1(3) and (4) remain in effect as long as the party is actively represented, and continues until:

- the represented party permits disclosure;

- disclosure is required by law or by court or commission order; or
- the information is made public by a source other than the licensee.

Statutory section amended 2007. Regulation 70-02-03-05.1 effective 1994; r. 70-02-03-15.1 amended effective 2012.

See [N.D. Cent. Code § 43-23-11.1\(n\) \(2019\)](#); [N.D. Admin. Code §§ 70-02-03-05.1\(1\), -15.1\(5\) \(2019\)](#)

North Dakota, Transaction Brokers

No specifically relevant provisions were located. However, in all transactions in which the licensee performs services for a *customer*, the licensee must disclose the nonagency relationship in writing. The customer must sign the disclosure before the licensee performs services for the customer. The broker must retain a copy of the signed written disclosure in his or her file. The disclosure must explain that:

- the brokerage firm and its licensees are nonagents that owe the customer only limited legal duties; and
- if the brokerage firm and its licensees represent another party in the same real estate transaction, the licensee is required to place the represented party's interest first.

A licensee's limited legal duties to a customer are as follows:

- "to perform the customary acts typically performed by real estate licensees in assisting a transaction to the transaction's closing or conclusion with honesty and good faith"; and

- to disclose to the customer any known adverse material facts that pertain to the property's title, physical condition, and defects.

The real estate brokerage firm and its licensees do not owe a customer "the agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting."

Regulation adopted effective 2012.

[N.D. Admin. Code § 70-02-03-15.2 \(2019\)](#)

Ohio

Ohio, Definitions

Affiliated licensee—a licensed real estate broker or salesperson who is affiliated with a brokerage.

Agency relationship—a relationship in which a licensee represents a person in a real estate transaction.

Agency agreement—a contract between a licensee and a client in which the client promises to pay consideration to the broker or agrees that the licensee may receive consideration from another for performing an act that requires a real estate license.

Agent—a person licensed by chapter 4735 to represent another in a real estate transaction.

Brokerage—"a corporation, partnership, limited partnership, association, limited liability company, limited liability partnership, or sole proprietorship, foreign or domestic, that has been issued a broker's license. 'Brokerage' includes the affiliated licensees who have been assigned management duties that include supervision of licensees whose duties may conflict with those of other affiliated licensees."

Client—a "person who has entered into an agency relationship with a licensee."

Confidential information—information that a client asks be kept confidential or that if disclosed would have an adverse effect on the client's position, unless the agent is required by law to disclose such information.

Contemporaneous offers—"offers to purchase or lease on behalf of two or more clients represented by the same licensee for the same property that the licensee knows, has known, or has reason to know will be taken under consideration by the owner or owner's authorized representative during the same period of time."

Dual agent—either

- a licensee who represents both the purchaser and the seller as clients in the same transaction;
- a brokerage that represents both the purchaser and the seller in the same transaction; or
- a management level licensee who "represents a client in an in-company transaction," provided that a management level licensee is not a dual agent if he or she (a) personally represents either the seller or the buyer in a transaction (in which case he or she represents only that licensee's client's interests) or (b) is the purchaser or seller in a transaction and represents only that licensee's interest.

Exclusive right to sell or lease listing agreement—an agency agreement between a seller and broker that

- meets the requirements of § 4735.55;
- grants the broker "the exclusive right to represent the seller in the sale or lease of the seller's property"; and
- provides that the broker will be compensated if "the broker, the seller, or any other person or entity produces a purchaser or tenant in accordance with the terms specified in the listing agreement or if the property is sold or leased during the term of the listing agreement to anyone other than to specifically exempted persons or entities."

Exclusive agency agreement—an agency agreement between a seller and a broker that

- meets the requirements of § 4735.55;
- grants the broker "the exclusive right to represent the seller in the sale or lease of the seller's property"; and
- provides that the broker will be compensated if "the broker or any other person or entity produces a purchaser or tenant in accordance with the terms specified in the listing agreement or if the property is sold or leased during the term of the listing agreement, unless the property is sold or leased solely through the efforts of the seller or to the specifically exempted persons or entities."

Exclusive purchaser agency agreement—an agency agreement between a purchaser and broker that

- meets the requirements § 4735.55;
- grants the broker "the exclusive right to represent the purchaser in the purchase or lease of property"; and
- provides the broker will be compensated in accordance with the exclusive agency agreement's terms or "if a property is purchased or leased by the purchaser during the term of the agency agreement unless the property is specifically exempted in the agency agreement." The agreement may authorize the broker to receive compensation from the seller and may provide that the purchaser is not obligated to compensate the broker if the property is purchased or leased solely through the purchaser's efforts.

In-company transaction—a real estate transaction in which the purchaser and seller are both represented by the same brokerage.

Licensee—an individual licensed as a real estate broker or salesperson in Ohio.

Management level licensee— a licensee who has been assigned management duties that involve oversight responsibilities for the brokerage's main office, a branch office, or a division within that brokerage, by its principal broker, which management duties include the supervision of affiliated licensees whose agency duties to their clients may conflict with those of other licensees affiliated with the brokerage. See Ohio Admin. Code § 1301:5-6-01 for additional details regarding who is deemed to be a management level licensee.

Purchaser—a party in a transaction who is the “potential transferee of property,” including a person seeking to buy or rent property.

Real estate—an interest or estate in Ohio land, including leaseholds, but not including cemetery interment rights.

Seller—a party in a real estate transaction who is “the potential transferor of property,” including an owner seeking to sell and a landlord seeking to rent or lease property to another person.

Subagency—an agency relationship in which “a licensee acts for another licensee in performing duties for the client of that licensee.”

Timely—“as soon as possible under the particular circumstances.”

Statutory section 4735.01 amended 2018; § 4735.51 amended 2017; § 4735.70 amended 2004.
Regulation effective 2019.

[Ohio Rev. Code Ann. §§ 4735.01, .51, .70 \(2018\)](#); *see also* [Ohio Admin. Code § 1301:5-6-01 \(2019\)](#)

Ohio, Designated Agents

Ohio law does not explicitly address designated agents. However, when two licensees affiliated with the same brokerage represent different clients in the same transaction, each licensee must

- serve as agent of only the party the licensee agreed to represent; and

- fulfill all duties owed to that client.

Ohio regulations also provide that

- when an agency relationship is formed, the client may delegate to that licensee the authority to appoint other licensees within the same brokerage to represent the client's interests, provided the delegation is in writing, is signed by the client, and notifies the client that he has the right to veto the appointment of any other licensee within the brokerage; and
- if the licensee so delegates his authority, the licensee must notify the client at the time the appointment takes place, that the appointment is being made.

If delegating the authority to appoint creates a dual agency relationship, both the seller and the purchaser must "have full knowledge of the dual representation and consent in writing to the dual representation" on the required agency disclosure statement.

Statutory section amended 2004. Regulation amended 2019.

[Ohio Rev. Code Ann. § 4735.72\(B\), \(C\), \(E\) \(2018\); Ohio Admin. Code § 1301:5-6-08 \(2019\)](#)

Ohio, Dual Agents

DUAL AGENT'S DUTIES

The brokerage and management-level licensees in a brokerage with a dual agency relationship must

- objectively supervise the affiliated licensees in fulfilling their duties to their respective clients;
- refrain from being an advocate or negotiating on behalf of either party;
- refrain from disclosing confidential information; and

- refrain from using for the benefit of another client, any client's confidential information.

CONFIDENTIALITY REQUIREMENTS

Brokerage or management-level licensees may

- provide nonconfidential information that suggests objective options or solutions, or
- assist the parties in an unbiased manner to negotiate or fulfill the purchase contract terms,
- provided a client's confidential information is not used in any manner in formulating the suggestions or providing the assistance.

If a brokerage determines that, as a result of the brokerage's or a licensee's failure to maintain confidentiality, one client's confidential information has become known to any affiliated licensee who is representing another client in a dual agency relationship, the brokerage must

- immediately notify both clients of the disclosure in writing; and
- offer to resign representation of both clients.

RESTRICTIONS

A licensee may not participate in a dual agency relationship in which the licensee is a party to the transaction, whether personally or as an officer or member of an entity that has an interest in the subject real property or an entity that intends to purchase, lease, or exchange the real property.

REQUIRED DISCLOSURES

No licensee or brokerage may participate in a dual agency relationship, unless both the seller and the purchaser

- know of the dual representation, and
- consent in writing to the dual representation on the agency disclosure statement described in § 4735.57.

Before obtaining any party's consent, the licensee must disclose to both the purchaser and the seller all relevant information necessary to enable each party to make an informed decision regarding the dual agency relationship. If the information disclosed to the purchaser and the seller changes materially after consent, the licensee must disclose the change to both parties and give them an opportunity to revoke their consent.

No brokerage may participate in a dual agency relationship described in § 4735.70(C) (which provides that dual agents include those that are management level licensees representing a client in an in-company transaction), unless the brokerage has established a confidential information procedure under § 4735.54 so that licensees who represent one client will not have access to or obtain confidential information concerning the other client, and each licensee fulfills his or her duties exclusively to his or her client.

An agency disclosure statement must specify the duties of any licensee acting as a dual agent, and must disclose the following:

- an explanation of the nature of a dual agency relationship;
- that as a result of the dual agency relationship, the dual agent may not be able to advocate on the client's behalf to the same extent the agent may have if the agent represented only one party;
- a description of the duties the brokerage and its affiliates owe to each client, including confidentiality;

- that neither the brokerage nor its affiliated licensees have any material relationship with either client other than those incidental to the transaction, or if the brokerage or its affiliates have a material relationship, the nature of that relationship;
- that the brokerage, as a dual agent, cannot engage in conduct that is contrary to one party's interests or instructions or act in a biased manner on behalf of one party;
- the source of the broker's compensation;
- that the client does not have to consent to the dual agency relations, and the options available for representation if he or she does not consent;
- that the client gave his or her consent to the dual agency relationship voluntarily;
- that the signature indicates informed consent; and
- that the client has read and understood the licensee's duties acting as a dual agent.

Statutory section 4735.73, which previously contained the requirements for dual agency disclosure statements, was repealed effective January 1, 2005, and Ohio Admin. Code §§ 1301:5-6-10 and -11, which previously contained additional details regarding the dual agency consent and the form to be used for the dual agency disclosure statement, were rescinded effective January 1, 2005.

Section 4735.72 amended 2004; § 4735.57 enacted 2004; § 4735.71 amended 2011. Regulation amended 2004.

[Ohio Rev. Code Ann. §§ 4735.57, .71, .72\(B\) \(2018\)](#); *see also* [Ohio Admin. Code § 1301:5-6-04\(C\) \(2019\)](#)

Ohio, General Agency Relationship Requirements

If an agency relationship exists between a licensee and a client, the following are also deemed to be that client's agent:

- the brokerage with whom the licensee is affiliated;
- except as provided in § 4735.70(6), the management level licensees with direct supervisory duties over licensees;
- any licensee employed by or affiliated with the brokerage who receives confidential information from the client's agent;
- any other licensee in the brokerage who assisted in establishing the agency relationship; and
- any licensee in the brokerage who is specifically appointed with the client's consent to represent that client.

Any other affiliated licensee is not that client's agent.

Each brokerage must have a written brokerage policy to be given to prospective sellers and purchasers. The policy must include the following information:

- an explanation of the permissible agency relationships available and the duties that the agent owes the agent's client;
- the brokerage's policy on representing buyers and sellers;
- whether the brokerage and its licensee may act as a dual agent, and the options and consequences if a dual agency situation arises;

- whether another affiliated licensee may become the exclusive agent for the other party in the transaction and whether each licensee will represent only that licensee's client's interests;
- the policy on cooperation with other brokerages;
- that a brokerage that has a purchaser as a client represents the purchaser's interests even if the seller's agent or the seller may compensate that brokerage; and
- that the buyer's or seller's signature acknowledges receipt of the brokerage's agency policy.

The statutory requirements regarding a brokerage agency policy apply only in:

- the sale or lease of vacant land or of a parcel containing one to four residential units; or
- the leasing of residential premises, if the rental or lease agreement is for a term of more than 18 months.

See Ohio Admin. Code § 1301:5-6-03 for a detailed description of the required contents of the mandatory company policy and § 1301:5-6-05 for details regarding disclosure of the company policy on agency relationships.

DUTIES

A licensee, acting as a client's agent or subagent, is the client's fiduciary and must use best efforts to further the client's interest, including

- exercising reasonable skill and care in representing the client;

- performing the written agency agreement's terms;
- following the client's lawful instructions;
- performing all duties specified by law in a manner that is loyal to the client's interests;
- complying with all applicable laws;
- disclosing to the client any material fact that the licensee knows or should know and that is not confidential information;
- advising the client to obtain expert advice when necessary or appropriate;
- accounting in a timely manner for all money and property received; and
- keeping all confidential information confidential, unless the licensee is permitted to disclose the information pursuant to § 4735.74(B).

A licensee may not knowingly give false information to any party to a real estate transaction.

A client may not waive the duties required of a licensee pursuant to § 4735.62 (the general fiduciary duties listed above). A licensee must perform the duties required pursuant to § 4735.63 (the duties of a licensee representing the seller) or § 4735.65 (the duties of a licensee representing the buyer), unless the client agrees to waive the duties and signs a waiver of duties statement.

A broker who has the exclusive authority to represent a client under a written exclusive agency agreement, exclusive right to sell agreement, or exclusive purchaser agency agreement may authorize other licensees to negotiate directly with the client, provided

- the authorization is in writing; and
- the broker complies with the requirements of § 4735.621 (establishing the above-referenced waiver provisions).

INSPECTION DUTY

A licensee is not required

- to discover latent defects in property;
- to advise on matters outside the scope of knowledge required for real estate licensure; or
- to verify the accuracy or completeness of a seller's statements, unless the licensee should reasonably question the statements' accuracy or completeness.

REQUIRED DISCLOSURES

The real estate superintendent must establish by rule an agency disclosure statement, which must contain a place for the licensee and the parties to sign and date the statement and contain sections for the following:

- unless confidential, all parties' names;
- the real estate's address;
- the licensees' names and the names of the brokerages with which each is affiliated;
- the party that each named licensee represents;

- if a licensee representing a buyer and a licensee representing the seller are affiliated, whether the licensees are acting as dual agents or are individually representing the purchaser and seller separately;
- if only one licensee is involved, whether that licensee is a dual agent or represents only one party;
- if both the buyer and the seller are represented by licensees affiliated with the same brokerage, that the brokerage is a dual agent;
- that the client's signature indicates his or her informed consent to the agency relationship; and
- that if the client does not understand the agency disclosure, the client should consult an attorney.

See Ohio Admin. Code § 1301:5-6-06 for additional detailed requirements regarding agency disclosure if a party declines to sign the document.

A licensee must indicate the accurate agency relationship on the agency disclosure statement.

AGREEMENT REQUIREMENTS

The consumer guide to agency relationships must contain the written disclosures required by § 4735.56(B) and must

- be entitled "Consumer Guide to Agency Relationships" in a font size of no less than 14 points;
- contain the brokerage name and fair housing logo;

- contain the disclosures required by § 4735.55(A)(2) and (A)(3) for housing accommodation and vacant land transactions;
- disclose that Ohio law requires the guide to be provided to prospective parties and that the agent is required to obtain their signature acknowledging receipt;
- disclose the brokerage policy on unrepresented customers;
- provide all required disclosures; and
- describe only permissible forms of agency.

An agreement must contain a statement defining "blockbusting" and stating that it is illegal (see Ohio Admin. Code § 1301:5-6-04 for specific required blockbusting language).

A licensee must furnish a copy of the agency agreement to a client in a timely manner.

Statutory sections 4735.53 and 4735.57 amended 2004; §§ 4735.54, 4735.61, and 4735.67 enacted 1996; §§ 4735.621 and 4735.75 enacted 2006; §§ 4735.55, 4735.58, and 4735.62 amended 2011; r. 4735.56 amended 2013. Regulation 1301:5-6-05 amended 2004; rr. 1301:5-6-06, and 1301:5-6-07 amended 2019; r. 1301:5-6-03 amended 2019.

[Ohio Rev. Code Ann. §§ 4735.53\(B\), .54, .55, .56, .57\(A\), .58\(B\), .61, .62, .621, .67\(B\), .75 \(2018\)](#); *see also* [Ohio Admin. Code §§ 1301:5-6-03, -05, -06, -07 \(2019\)](#)

Ohio, General Applicability of Provisions

Except to the extent the agent's duties are specifically set forth in chapter 4735 or otherwise modified by agreement, the agent's duties are determined by common law.

The disclosure requirements of § 4735.58 do not apply to

- the rental or leasing of residential premises, if the rental or lease agreement can be performed in at least eighteen months;
- the referral of a prospective buyer or seller to another licensee; or
- transactions involving the sale, lease, or exchange of foreign real estate or the sale of a cemetery lot or interment right.

Section 4735.55 applies only to an agency agreement in which the property falls within the definition of "housing accommodation."

Statutory section 4735.52 enacted 1996; § 4735.58 amended 2011. Regulation amended 2004.

[Ohio Rev. Code Ann. §§ 4735.52, .58\(D\) \(2018\); Ohio Admin. Code § 1301:5-6-04\(A\) \(2019\)](#)

Ohio, Other Relevant Provisions

DISCLOSURE UPDATES

To change the party a licensee represents in a transaction, a licensee must

- obtain written consent from the party originally represented; and
- promptly notify all persons who had been notified of the original relationship.

MISREPRESENTATIONS

A licensee is not liable to any party for false information that the licensee's client provided to the licensee, unless the licensee either had actual knowledge that the information was false or acted with reckless disregard

for the truth. Similarly, a client is not liable for any misrepresentation a licensee made while representing that client unless the client had actual knowledge of the licensee's misrepresentation.

SELF-DEALING

A licensee who advertises to sell, exchange, or lease property he or she owns must "be identified in the advertisement by name and indicate that the property is agent owned, and if the property is listed with a real estate brokerage, the advertisement shall also indicate the name of the brokerage with which the property is listed."

The real estate commission may adopt rules "to provide for required disclosures when a licensee terminates an agency relationship and becomes a principal in the transaction."

A licensee may not participate in a dual-agency relationship in which the licensee is a party to the transaction, whether personally or as an officer or member of an entity that has an interest in the subject real property or an entity that intends to purchase, lease, or exchange the real property.

Sections amended 2011.

[Ohio Rev. Code Ann. §§ 4735.16\(B\)\(2\), .59, .68, .71 \(2018\)](#)

Ohio, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A licensee representing a purchaser must

- seek property at a price and with terms acceptable to the purchaser, provided that, unless the client so directs, the licensee need not seek additional possibilities if the purchaser is a party to a purchase or lease contract;
- within "the scope of knowledge required for licensure," answer the purchaser's questions and provide the purchaser with information regarding any offers or counteroffers;

- assist the purchaser in "developing, communicating, and presenting offers or counteroffers";
- present any offer to the seller or his or her agent in a timely manner, even if the property is subject to a sale or lease contract or letter of intent to lease;
- timely accept delivery of and present counteroffers to the purchaser; and
- within "the scope of knowledge required for licensure," answer the purchaser's questions regarding the steps he or she must take to fulfill a contract's terms.

A licensee does not breach any duty to the purchaser by showing the same properties to other purchasers or by preparing or presenting contemporaneous offers to purchase or lease the same property.

A licensee does not breach any duty to the purchaser by acting as an agent or subagent for other purchasers, or by acting as a seller's agent or subagent, except that a dual agency relationship must be disclosed to the client.

A licensee must perform the duties required under § 4735.65 (the duties listed above) unless the client

- agrees to waive the duties; and
- signs a "waiver of duties statement."

"A licensee does not breach a duty of confidentiality to any client by disclosing the fact of contemporaneous offers, but shall maintain as confidential between the purchasers the identity of the purchasers and the terms of the offers."

RESTRICTIONS

Without the purchaser's knowledge and consent, a purchaser's agent may not

- extend a subagency offer to other licensees; or
- accept compensation from a broker who represents the seller.

REQUIRED DISCLOSURES

A licensee working directly with a purchaser, whether as the purchaser's agent, the seller's agent or a seller's subagent, must present the brokerage policy on agency to the purchaser for signature unless the purchaser refuses, in which case the licensee must note the refusal on the policy. Unless otherwise provided in § 4735.56(E), the licensee must provide the brokerage policy on agency to the purchaser before the earliest of the following:

- initiating a prequalification evaluation;
- requesting specific financial information from the purchaser to determine the purchaser's ability to purchase or finance real estate;
- showing real estate to the purchaser at other than an open house;
- discussing making an offer with the purchaser; or
- submitting an offer to purchase or lease real estate on the purchaser's behalf.

If the earliest event is by telephone or email, the licensee must disclose by that medium the nature of the licensee's agency relationship with the seller and the buyer. The licensee must provide the purchaser with the brokerage policy on agency at their first meeting following this disclosure.

Prior to preparing a contemporaneous offer, a licensee must disclose that fact to all clients for whom the licensee is preparing, presenting, or has prepared or presented contemporaneous offers to purchase or lease the same property and must refer to another licensee any client that requests such referral. The disclosure must be in writing, unless written disclosure cannot be delivered in a timely manner, in which a verbal disclosure must be provided.

A licensee must also disclose to any purchaser all material facts the licensee knows or should know pertaining to the property's physical condition that the purchaser would not discover by a reasonably diligent inspection.

Sections 4735.60, 4735.66 and 4735.67 enacted 1996; § 4735.65 amended 2017; § 4735.621 enacted 2006; § 4735.58 amended 2011; § 4735.56 amended 2013.

[Ohio Rev. Code Ann. §§ 4735.56, .58\(C\), .60, .621, .65, .66, .67\(A\) \(2018\)](#)

Ohio, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's agent must

- seek a purchase offer at a price and with terms acceptable to the seller, provided that, unless the seller so directs, the licensee need not seek additional offers if the property is subject to a contract;
- accept delivery of and present any purchase offer to the seller in a timely manner, even if the property is subject to a sale or lease contract;
- within "the scope of knowledge required for licensure," answer the seller's questions and provide the seller information regarding any offers or counteroffers;
- assist the seller in "developing, communicating, and presenting offers or counteroffers"; and
- within "the scope of knowledge required for licensure," answer the seller's questions regarding the steps he or she must take to fulfill a contract's terms.

A licensee does not breach any duty to a seller by showing alternative properties to a prospective purchaser or by acting as other sellers' agent or subagent.

A licensee must perform the duties required pursuant to § 4735.63 (the duties listed above) unless the client:

- agrees to waive the duties; and
- signs a "waiver of duties statement."

RESTRICTIONS

Without the seller's knowledge and consent, a licensee may not

- extend a subagency offer to other licensees; or
- offer compensation to a broker who represents a purchaser.

REQUIRED DISCLOSURES

A seller's agent must provide the seller with the brokerage policy on agency before marketing or showing the seller's property and must obtain the seller's signature acknowledging receipt unless the seller refuses, in which case the licensee must note the refusal on the policy.

A seller's agent is generally not required to provide a purchaser with an agency disclosure statement, except as required by § 4735.57(D).

Section 4735.64 enacted 1996; § 4735.63 amended 2006; § 4735.621 enacted 2006; § 4735.58 amended 2011; § 4735.56 amended 2013.

[Ohio Rev. Code Ann. §§ 4735.58\(A\), \(B\)\(3\); .56; .621; .63; .64 \(2018\)](#)

Ohio, Term of Relationship

Each written agency agreement must contain an expiration date. Unless otherwise agreed in writing, a licensee owes no further duty to a client after performing all duties or after the contract has terminated or expired, except that the licensee must:

- provide an accounting of all money and property related to the transaction; and
- keep confidential all information received during the course of the transaction unless:
 - the client permits its disclosure,
 - a law or court order requires disclosure,
 - a source other than the licensee make the information public,
 - the information is necessary to prevent a crime,
 - disclosure is necessary to defend against a wrongful conduct action, or
 - a real estate appraiser assistant registered under chapter 4763 or a real estate appraiser licensed or certified under chapter 4763 requests disclosure regarding sales information in order to perform an appraisal.

Section 4735.55 amended 2011; § 4735.74 amended 2012.

[Ohio Rev. Code Ann. §§ 4735.55\(A\)\(1\); .74 \(2018\)](#)

Ohio, Transaction Brokers

Ohio laws do not explicitly address transaction brokers. However, a licensee may assist a party who is not the licensee's client in a real estate transaction by

- providing “information regarding lenders, inspectors, attorneys, insurance agents, surveyors, draftspersons, architects, schools, shopping facilities, places of worship, and other similar information”; or
- providing certain market information.

A licensee who so assists a party who is not the licensee's client does not violate his agency relationship with the client, and providing such services neither forms nor implies any agency relationship with that party.

Section enacted 1996.

[Ohio Rev. Code Ann. § 4735.69 \(2018\)](#)

Oklahoma

Oklahoma, Definitions

Broker—any “person, partnership, association or corporation, foreign or domestic, who for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting a fee, commission or other valuable consideration, lists, sells or offers to sell, buys or offers to buy, exchanges, rents or leases any real estate, or who negotiates or attempts to negotiate any such activity, or solicits listings of places for rent or lease, or solicits for prospective tenants, purchasers or sellers, or who advertises or holds himself out as engaged in such activities.”

"Broker" is limited to the license types of Broker Manager (BM), Proprietor Broker (BP) or Branch Broker (BB) as defined in the Code.

Brokerage services—the services a broker provides to a party in a transaction.

Licensee—includes any licensed person who performs an act or transaction set out in the definition of a “broker.”

Party—a “seller, buyer, landlord, or tenant or a person who is involved in an option or exchange.”

Person—includes every individual, partnership, association or corporation.

Real estate—includes any real estate interest or estate, including leaseholds, options, condominiums, timeshare units, and cooperatives, but not including oil, gas or mineral interests.

Single-party broker—as of November 1, 2013, the relevant Oklahoma statutes no longer define the term "single-party broker."

Transaction broker—as of November 1, 2013, the relevant Oklahoma statutes no longer define the term "transaction broker."

Statutory section 858-102 amended 2017; § 858-351 amended 2013.

[Okla Stat. Ann. tit. 59, §§ 858-102, -351 \(2018\)](#)

Oklahoma, Designated Agents

No provisions were located specifically addressing designated agents.

Oklahoma, Dual Agents

OVERVIEW

A broker may provide brokerage services to one or both parties in a transaction. However, a broker may not "be an agent, subagent, or dual agent and an offer of subagency shall not be made to other brokers."

DUTIES

When working with both parties to a transaction, a broker owes to both parties all the duties and responsibilities set forth in § 858-353. (See "General Agency Relationship Requirements.")

REQUIRED DISCLOSURES

A broker who is providing brokerage services to both parties must describe and disclose in writing the broker's duties and responsibilities, as set forth in § 858-353. A firm that provides brokerage services to both parties in a transaction must provide written notice to both parties that the firm is providing brokerage services to both parties. The broker or firm must make these disclosures before the parties sign a contract to purchase, lease, option, or exchange real estate.

Sections 858-353 and 858-355.1 amended 2013.

[Okla. Stat. Ann. tit. 59, §§ 858-353, -355.1 \(2018\)](#)

Oklahoma, General Agency Relationship Requirements

OVERVIEW

A broker has the following duties and responsibilities to all parties, which duties and responsibilities are mandatory and may not be abrogated or waived by a broker:

- treat all parties with "honesty and exercise reasonable skill and care";

- unless specifically waived in writing:
 - receive all written offers and counteroffers;

 - reduce offers or counteroffers to a written form upon any party's request; and

- present timely all written offers and counteroffers;
- timely account for all money and property the broker received;
- keep confidential information received from a party or prospective party confidential, as required by statute;
- disclose information pertaining to the property, as required by Oklahoma's Residential Property Condition Disclosure Act; and
- comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules.

A broker has the following duties and responsibilities *only* to a party for whom the broker is providing brokerage services, which duties and responsibilities are mandatory and may not be abrogated or waived by a broker:

- "inform the party in writing when an offer is made that the party will be expected to pay certain costs, brokerage service costs and approximate amount of the costs"; and
- keep the party informed.

If a broker receives a fee or compensation from any party based on a selling price or lease cost, that receipt does not constitute a breach of duty or obligation to any party. Nothing "requires a broker to charge, or prohibits a broker from charging, a separate fee or other compensation for each duty or other brokerage services provided during a transaction."

CONFIDENTIALITY OBLIGATIONS

A broker must keep confidential all confidential information received from a party or prospective party. A broker may not disclose confidential information without the consent of the party disclosing the information, unless:

- the party disclosing the information consents in writing;
- the disclosure is required by law; or
- the information becomes public as the result of someone else's actions.

The following information is considered confidential (and is the only information considered confidential in a transaction):

- that a party is willing to pay more or accept less than an offer;
- that a party is willing to agree to financing terms that are different from those offered;
- a party's motivating factors for purchasing, selling, leasing, optioning, or exchanging the property; and
- information a party specifically designates as confidential, unless the information is public.

REQUIRED DISCLOSURES

A licensee generally must disclose in writing to all parties the licensee's beneficial interest in an entity that provides a product or service or receives a referral fee.

Each party must confirm all required disclosures in writing in a separate provision, incorporated into or attached to the purchase, lease, option, or exchange contract.

If a single-party broker intends to perform fewer services than those required to complete a transaction, the broker must provide a written disclosure to the party for whom the broker is providing services. The disclosure must:

- include a description of the steps for which the broker will not perform services; and
- state that the broker assisting the other party in the transaction is not required to provide assistance with those steps.

AGREEMENT REQUIREMENTS

A brokerage agreement must incorporate as material terms a broker's statutory duties and responsibilities. A broker who is providing brokerage services to one or both parties must describe and disclose in writing the broker's duties and responsibilities set forth in § 858-353 before the parties sign a contract to sell, purchase, lease, option, or exchange real estate.

If a broker intends to provide fewer brokerage services than those required to complete a transaction, the broker must provide written disclosure to the party for whom the broker is providing services. That disclosure must:

- include a description of those steps for which the broker will not provide services; and
- state that the broker assisting the other party is not required to provide assistance with these steps.

A broker may enter into an agreement for brokerage services not enumerated in the state's statutes as long as the agreement is in compliance with the relevant laws and rules.

Associates may not enter into a brokerage agreement in the associate's name and may enter into the agreement only in the broker's name.

Statutory sections 858-359, 858-360, and 858-363 amended 2012; §§ 858-353, 858.355.1, and 858-356 amended 2013; regulation amended 1999.

[Okla Stat. Ann. tit. 59, §§ 858-353, -355.1, -356, -359, -360, -363 \(2018\); Okla Admin. Code § 605:10-15-1 \(2019\)](#)

Oklahoma, General Applicability of Provisions

The duties and responsibilities of a broker specified by statute replace the common law fiduciary duties of an agent. However, the remedies at law and equity supplement the real estate provisions.

Section amended 2012.

[Okla Stat. Ann. tit. 59, § 858-360 \(2018\)](#)

Oklahoma, Other Relevant Provisions

MISREPRESENTATIONS

A party to a transaction is not vicariously liable for a licensee's acts or omissions.

Section amended 2012.

[Okla Stat. Ann. tit. 59, § 858-362 \(2018\)](#)

Oklahoma, Relationship with Buyers

No provisions specifically applicable to buyer's agents were located.

Oklahoma, Relationship with Sellers

No provisions specifically applicable to seller's agents were located.

Oklahoma, Term of Relationship

Except as provided in a written brokerage agreement, a broker owes no duties to a party after termination, expiration, or completion of the agreement, except

- to account for all money and property; and
- to keep confidential all confidential information received during the broker's relationship with a party.

Section enacted 1999.

[Okla Stat. Ann. tit. 59, § 858-358 \(2018\)](#)

Oklahoma, Transaction Brokers

As of November 1, 2013, the relevant Oklahoma statutes no longer reference transaction brokers.

Sections 858-352 and 858-355 repealed 2012, effective 2013.

[Okla Stat. Ann. tit. 59, §§ 858-352, -355](#) (both repealed by [2012 Okla. Sess. Laws ch. 251](#))

Oregon

Oregon, Definitions

Agent—includes

- a real estate broker or principal real estate broker who has entered into a listing agreement, a service contract to represent a buyer, or a disclosed limited agency agreement; or
- a licensed individual who has entered into a written contract with a broker to act as the broker's agent and to function under the broker's supervision.

Buyer—a potential transferee in a real property transaction.

Confidential information—information communicated to a licensee by the buyer or seller of one to four residential units regarding the transaction, including “price, terms, financial qualifications or motivation to buy or sell.” "Confidential information" does not include information that

- the buyer instructs the licensee to disclose about the buyer to the seller or the seller instructs the licensee to disclose about the seller to the buyer; and
- the licensee knows or should know that failing to disclose would constitute fraudulent representation.

Disclosed limited agency—a transaction in which “the representation of a buyer and seller or the representation of two or more buyers occurs within the same real estate business.”

First contact with a represented party—a licensee's initial contact, "whether in person, by telephone, over the Internet, or by electronic mail, electronic bulletin board, or similar electronic method, with an individual who is represented by a real estate licensee or can reasonably be assumed from the circumstances to be represented or seeking representation."

Listing agreement—a contract between an agent and a seller of real property that authorizes the agent, for compensation, to act on behalf of the seller offer the real property for sale or to find and obtain a buyer.

Principal—the person who has permitted or directed an agent to act on the principal’s behalf, generally a buyer or a seller.

Principal real estate broker—either

- an individual who holds an active license as a principal real estate broker; or
- a sole practitioner who conducted professional real estate activity as a sole practitioner before January 1, 2010.

Real estate—includes leaseholds, licenses to use, timeshare estates, and every interest or estate in real property, whether in Oregon or elsewhere.

Real estate broker—an "individual who engages in professional real estate activity and who holds an active license as a real estate broker," including a principal real estate broker.

Real estate licensee—"an individual who holds an active license as a real estate broker, principal real estate broker or real estate property manager."

Real property—any real property estate, including a condominium, timeshare property, option, right of first refusal, and a mobile home or manufactured dwelling owned by the same person who owns the land upon which it is situated, but does not include a leasehold.

Real property transaction—a transaction regarding real property in which an agent is employed to act in the transaction.

Seller—a potential transferor in a real property transaction, including an owner who

- enters into a listing agreement with an agent, whether or no a transfer occurs; or
- receives from a buyer's agent an offer to purchase real property that the seller owns.

Statutory sections amended 2017. Regulation amended 2017.

[Or. Rev. Stat. §§ 696.010, .800 \(2017\); Or. Admin. R. 863-015-0003 \(2019\)](#)

Oregon, Designated Agents

In a real estate transaction in which different agents associated with the same principal broker establish agency relationships with different parties to a transaction, the principal broker may be the only disclosed limited agent of both parties. In a transaction in which one or more licensees establish agency relationships with more than one party to a transaction, those licensees and the principal broker are the only disclosed limited agents of those parties.

DESIGNATED AGENT'S DUTIES

A principal broker acting as a disclosed limited agent must

- supervise the licensees associated with the principal broker;
- avoid advocating on behalf of either party; and
- avoid disclosing or using, without permission, a client's confidential information.

A licensee acting as a disclosed limited agent must

- serve as an agent of only the party with whom he has established an agency relationship;
and
- fulfill the duties owed to the client.

CONFIDENTIALITY OBLIGATIONS

Licensees associated with a principal broker who are acting as disclosed limited agents, must refrain from disclosing or using confidential information relating to the other party that has been acquired as a result of the licensee's association with the principal broker, unless authorized by the party. If a principal broker acting as a disclosed limited agent determines that confidential information of one party has become known to another client as the result of a violation of the relevant statutory sections, the principal broker must promptly and fully disclose the violation to the affected client in writing.

The principal broker must ensure that the broker's licensee representing one client will not have access to or obtain confidential information concerning another client involved in the same transaction.

AGREEMENT REQUIREMENTS

A licensee may establish a disclosed limited agency relationship only by a written agreement that meets all the requirements of Or. Admin. R. 863-015-0210, which contains a form that is prima facie evidence of compliance with the rule. See Or. Admin. R. 863-015-0205 for more details regarding limited agency relationships.

Disclosed limited agency agreements must be in writing, be signed and dated by the parties, and contain

- the "registered business name under which the representation will take place";
- any existing listing or service agreement between the parties to the disclosed limited agency agreement;
- the licensee's name, including the principal broker who will represent the client;
- a description in plain language of the requirements of § 696.815;
- full disclosure of the duties and responsibilities of an agent who represents more than one party to a transaction, which requirement may be fulfilled by providing the client with a copy of the initial agency disclosure pamphlet required by § 696.820, discussing the relevant portions of the pamphlet, and incorporating the pamphlet into the disclosed limited agency agreement; and
- consent and agreement between the parties to the disclosed limited agency agreement regarding representation of the client in future transactions.

Regulation 863-015-0205 amended 2008; rr. 863-015-0200 and -0210 amended 2017.

[Or. Admin. R. 863-015-0200\(3\), \(6\), \(7\), \(8\)—\(10\); -0205; -0210 \(2019\)](#)

Oregon, Dual Agents

A licensee may represent both the seller and the buyer in a transaction under a disclosed limited agency agreement that fully discloses the relationship.

DUAL AGENT'S DUTIES

A disclosed limited agent is bound by the standards of conduct and duties set forth in § 696.815 and has the following duties:

- the duties under § 696.805 to the seller;
- the duties under § 696.810 to the buyer; and
- except with express written permission, not to disclose that the seller will accept a price lower or terms less favorable than the listing price or terms, the buyer will pay a price greater or terms more favorable than the offering price or terms, or specific confidential information.

In a transaction in which different brokers associated with the same principal broker establish agency relationships with different parties to the transaction, the principal broker is the only broker who acts as a disclosed limited agent representing both seller and buyer. The other brokers represent only the party with whom the broker has an agency relationship unless all parties agree otherwise in writing.

The principal broker and licensees representing either the seller or the buyer must

- disclose a conflict of interest in writing to all parties;

- take no action adverse or detrimental to either party's interests; and
- obey both parties' lawful instructions.

Sections amended 2001.

[Or. Rev. Stat. §§ 696.815, .870\(3\)\(c\) \(2017\)](#)

Oregon, General Agency Relationship Requirements

Unless the parties expressly agree to a relationship not prohibited by law, a licensee may establish only

- an exclusive agency relationship between the licensee and the seller or the buyer;
- a disclosed limited agency relationship in which one or more licensees associated with the same principal broker represent both the seller and the buyer in the same transaction;
- a disclosed limited agency relationship in which real estate licensees associated with the same principal broker are designated to represent the buyer and the seller exclusively; or
- a disclosed limited agency relationship where one or more licensees associated with the same principal broker represent more than one buyer in the same transaction.

See Or. Admin. R. 863-015-0200 for additional details regarding establishing agency relationships.

DUTIES

A real estate licensee must promptly deliver every written offer or counteroffer.

RESTRICTIONS

A licensee may not discourage any party from seeking an attorney's advice. Also, the commissioner may discipline a licensee who negotiates or attempts to negotiate a transaction directly with a party, knowing that the party has an exclusive contract with another broker, without the other broker's prior written consent.

REQUIRED DISCLOSURES

The commissioner prescribes by rule the format and content of the "Initial Agency Disclosure Pamphlet," which is informational only. An agent must provide a copy of the initial agency disclosure pamphlet at the first contact with:

- a "prospective party to a real property transaction"; or
- an "unrepresented party seeking representation during the course of a real property transaction."

An agent need not provide a copy of the pamphlet to a party who has, or may be reasonably assumed to have, already received a copy from another agent.

Regulation 863-015-0220, which previously required a real estate business to have a written company policy that sets forth the types of relationships licensees may establish, was deleted in its entirety, effective January 1, 2009.

Statutory section 696.301 amended 2017; § 696.820 amended 2005. Regulation 863-015-0155 amended 2008; r. 863-015-0220 repealed 2008; rr. 863-015-0135, 863-015-0200, and 863-015-0215 amended 2017.

[Or. Rev. Stat. §§ 696.301, .820 \(2017\); Or. Admin. R. 863-015-0135, -0155, -0200, -0215 \(2019\)](#)

Oregon, General Applicability of Provisions

Or. Rev. Stat. §§ 696.301, .392, .600—.785, .995, and the 2011 provisions related to real estate property managers' duties (not yet codified) do not “limit or alter any preexisting common law or statutory right or remedy including actions for fraud, negligence or equitable relief.”

Section 696.835 enacted 1993; § 696.855 amended 2011.

[Or. Rev. Stat. §§ 696.835, .855 \(2017\)](#)

Oregon, Other Relevant Provisions

SELF-DEALING

If an active or inactive licensee offers or negotiates for the sale, exchange, lease option, or purchase of real estate in Oregon and the licensee is a principal to the transaction, the licensee must disclose to the other party that the licensee is a real estate licensee.

The disclosure must

- be contained in any advertising or display signs;
- appear in writing on at least the first written agreement concerning the offer or transaction;
and
- set forth that the licensee is representing himself in the transaction.

These transactions must

- be processed in the same manner as the licensee's other professional real estate activities; and

- comply with the records requirements of r. 863-015-0250.

Each transaction of a real estate broker associated with a principal broker must be conducted under licensee's principal broker's supervision. All documents and funds must be transmitted through the licensee's principal broker. These restrictions apply to offers and transactions entered into by legal entities in which any real estate licensee

- is an owner with an interest of more than 5 percent; and
- "at any time participates in negotiations concerning the offer or transaction on behalf of the entity."

MISREPRESENTATIONS

A principal is not liable for his agent's acts, errors or omissions

- unless the principal participates in or authorizes the act, error or omission; and
- only to the extent that the principal benefited from the act, error or omission;
- and a court determines that the claimant would probably be unable to enforce a judgment against the agent or subagent.

Similarly, a licensee is not liable for an act, error or omission by a principal unless the licensee participates in or authorizes the act, error or omission. Also, unless acknowledged in writing, facts known by an agent are not imputed to the principal and facts known by a principal or an agent are not imputed to the licensee.

Statutory section 696.301 amended 2017; § 696.822 amended 2001. Regulation amended 2017.

[Or. Rev. Stat. §§ 696.301, .822 \(2017\); Or. Admin. R. 863-015-0145 \(2019\)](#)

Oregon, Relationship with Buyers

A licensee other than the seller's agent may act as the buyer's agent. A buyer's agent does not represent even if the buyer's agent is receiving compensation from the seller.

BUYER'S AGENT'S DUTIES

A buyer's agent owes the buyer, other principals and their agents the following duties:

- to deal honestly and in good faith;
- to present all written offers and other written communications to and from the parties in a timely manner, whether or not the property is subject to a sale contract or the buyer is already party to a purchase contract; and
- to disclose known material facts that are not apparent or readily ascertainable.

A buyer's agent owes the buyer the following duties:

- to exercise reasonable care and diligence;
- to account in a timely manner for money and property received;
- to be loyal to the buyer by not taking action that is adverse or detrimental to the buyer's interests;
- to disclose in a timely manner to the buyer any existing or contemplated conflicts of interest;
- to advise the buyer to seek expert advice on matters beyond the agent's expertise;

- to maintain confidential information, except under subpoena or court order, even after the agency relationship terminates; and
- unless otherwise agreed in writing, to make a continuous, good faith effort to find property for the buyer, except that a buyer's agent need not seek additional properties for a buyer subject to a purchase contract or show properties for which there is no written agreement to pay compensation to the buyer's agent.

A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching his or her duty to the buyer.

AGREEMENT REQUIREMENTS

When signing a purchase offer, each buyer must acknowledge any agency relationships. When a seller accepts or rejects a purchase offer in writing, each seller must acknowledge any agency relationships. The acknowledgement must be signed and incorporated into or attached to the offer or acceptance. The agency will prescribe by rule the form and content of the acknowledgment.

Statutory section 696.870 amended 2001, §§ 696.810 and .845 amended 2005.

[Or. Rev. Stat. §§ 696.810, .845, .870\(1\)\(b\), \(3\)\(b\) \(2017\)](#)

Oregon, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's agent owes the seller, other principals, and their agent the following duties:

- to deal honestly and in good faith;

- to present all written offers and other written communications to and from the parties in a timely manner, whether or not the property is subject to a sale contract or the buyer is party to a purchase contract; and
- to disclose known material facts that are not apparent or readily ascertainable.

A seller's agent owes the seller the following duties:

- to exercise reasonable care and diligence;
- to account in a timely manner for money and property received;
- to be loyal to the seller by not taking action adverse or detrimental to the seller's interests;
- to disclose in a timely manner to the seller any conflicts of interest;
- to advise the seller to seek expert advice on matters beyond the agent's expertise;
- to maintain confidential information from or about the seller except under subpoena or court order, even after the relationship terminates; and
- unless otherwise agreed in writing, to make a continuous, good faith effort to find a buyer, unless the property is subject to a sales contract.

A broker or principal broker who enters into a listing agreement must give the seller a "true, legible copy" of the signed agreement when the broker secures the listing.

Unless the licensee or the licensee's agent agrees otherwise in writing, nothing in the above list is intended to imply a duty to investigate matters that are outside the real estate licensee's expertise, including, but not limited to an investigation of:

- the property's condition;
- the title's legal status; or
- the owner's past conformance with law.

A seller's agent may show properties owned by another seller to a prospective buyer and may list competing properties without breaching his duty to the seller.

AGREEMENT REQUIREMENTS

Every listing agreement must

- state an expiration date;
- not require the seller to notify the licensee of his or her intention to cancel the listing after the expiration date;
- not subject the seller to the payment of two or more commissions for one sale; and
- be signed by all parties.

RESTRICTIONS

A licensee may not act to deprive an original listing broker of a commission.

Statutory section 696.870 amended 2001; § 696.805 amended 2005. Regulation amended 2017.

[Or. Rev. Stat. § 696.805, .870\(1\)\(a\), \(3\)\(a\) \(2017\)](#); [Or. Admin. R. 863-015-0130 \(2019\)](#)

Oregon, Term of Relationship

Every listing agreement must state an expiration date.

Regulation amended 2017.

[Or. Admin. R. 863-015-0130 \(2019\)](#)

Oregon, Transaction Brokers

No relevant provisions were located.

Pennsylvania

Pennsylvania, Definitions

Agency relationship—a relationship whereby "the broker or licensees in the employ of the broker act as fiduciaries for a consumer of real estate services by the express authority of the consumer of real estate services."

Buyer agent—a licensee who has entered into an agency relationship with a consumer buyer of real estate.

Commercial property—includes

- property that "is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufacturing facility

or any public accommodation," except for property that consists of fewer than five residential units; and

- vacant land for constructing or locating a building, structure or facility that is "intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufacturing facility or any public accommodation," except for vacant land "suitable" only for the construction or location of fewer than five residential units.

Designated agent—a licensee "designated by the employing broker, with the consent of the principal, to act exclusively as an agent or as agents on behalf of the principal to the exclusion of all other licensees within the broker's employ."

Dual agent—a licensee who, in the same transaction, acts as an agent for the buyer and seller, or lessee and landlord.

Principal—a consumer of real estate services who has entered into an agency relationship with a broker.

Seller agent—a licensee who has entered into an agency relationship with a seller.

Subagent—a broker, not employed by the listing broker, who is engaged to act for the listing broker in selling property as an agent of the seller.

Transaction licensee—a licensed broker or salesperson who "provides communication or document preparation services or performs acts described under the definition of 'broker' or 'salesperson' for which a license is required," without being the consumer's agent or advocate.

Section amended 2018.

[63 Pa. Stat. § 455.201 \(2019\)](#)

Pennsylvania, Designated Agents

A broker may, with the principal's written consent, designate one or more of the broker's licensees to serve as the principal's designated agent.

DESIGNATED AGENT'S DUTIES

A broker designating licensees to act as designated agents must take reasonable care to protect any confidential information disclosed by a principal to the designated agent. A broker must supervise the designated agent's business activities and therefore owes duties to both the seller and the buyer as a dual agent.

In addition to the duties generally required of a licensee, a designated agent must

- be loyal to the principal with whom the agent is working by taking actions consistent with that principal's interests;
- make a good faith effort to find a buyer for a principal who is a seller or to find a property for a principal who is a buyer, unless the property is subject to an existing sale contract or the buyer is a party to an existing purchase contract; and
- disclose to the principal, before writing or presenting an offer, that the other party to the transaction is also represented by a licensee employed by the same broker, and confirming that the broker is a dual agent in the transaction.

Statutory section enacted 1998; regulation promulgated 2002.

[63 Pa. Stat. § 455.606e \(2019\)](#); *see also* [49 Pa. Code § 35.315 \(2019\)](#)

Pennsylvania, Dual Agents

A licensee may act as a dual agent, and a broker serving as a dual agent may designate one licensee to act exclusively as the seller's agent, and another licensee to act exclusively as the buyer's agent. A licensee may act as a dual agent only with the written consent of both parties following the required disclosures at the initial interview, which consent must include a statement of the compensation terms.

DUAL AGENT'S DUTIES

In addition to the duties generally required of a licensee, a dual agent must

- take no action that is detrimental to either party;
- unless otherwise agreed in writing, make a good faith effort to find a buyer for the property, unless the property is subject to an existing sale contract; and
- unless otherwise agreed in writing, make a good faith effort to find a property for the buyer, unless the buyer is party to an existing purchase contract.

A dual agent may show other properties to prospective buyers and may list competing properties for sale without breaching any duty to the seller. A dual agent may also show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer.

Section 455.606 amended 2000; § 455.606d enacted 1998; regulation promulgated 2002.

[63 Pa. Stat. §§ 455.606; .606d \(2019\)](#); [49 Pa. Code § 35.314 \(2019\)](#)

Pennsylvania, General Agency Relationship Requirements

DUTIES

A licensee owes the following duties to consumers:

- to exercise reasonable professional skill and care;
- to deal honestly and in good faith;
- to present all written offers, notices and communications to and from parties in a timely manner, unless a seller waives the duty for a property that is subject to an existing contract for sale, provided certain conditions are met;
- to account in a timely manner for all money and property received;
- to provide the consumer at the initial interview with information required by § 608;
- to disclose any conflicts of interest;
- to advise the consumer to seek expert advice on matters beyond the licensee's expertise;
- to ensure that all services are provided in a reasonable, professional and competent manner;
- to advise the consumer regarding the transaction's status;
- to advise the consumer of tasks that must be completed; and
- to disclose any financial interest, including referral fees or commissions, that a licensee has in any services to be provided by another person.

See 49 Pa. Code § 35.336 for a disclosure summary form to be provided in the purchase or sale of residential or commercial real estate or to the tenant in a residential lease, § 35.337 for a summary to be provided to the owner in a residential or commercial lease, and § 35.339 for the required oral disclosure, which must be read verbatim.

A licensee may not perform a service for consideration paid by the consumer, unless the nature of the service and the fee are set forth in a written agreement between the broker and the consumer. However, an open listing agreement may be oral if the seller is provided with a written memorandum stating the agreement's terms.

INSPECTION DUTY

A licensee owes no duty to independently inspect the property or verify the accuracy of a consumer's representations if the licensee reasonably believes them to be accurate and reliable.

CONFIDENTIALITY OBLIGATIONS

A licensee may not knowingly reveal confidential information or use confidential information to the advantage of the licensee or a third party, unless

- the disclosure is made with the principal's consent;
- the information is disclosed to another licensee or third party acting solely on the principal's behalf;
- the information is required to be disclosed under subpoena or court order;
- the principal intends to commit a crime and disclosing the information is believed necessary to prevent the crime; or

- the licensee uses the information to defend against a wrongful conduct accusation.

REQUIRED DISCLOSURES

At the initial interview, the licensee must disclose to the consumer the following on a form adopted by the commission ("[Consumer Notice](#)"):

- a disclosure of the relationships in which the broker may engage with the consumer, which disclosure must describe the duties that the broker owes in each relationship provided for by statute;
- a statement informing sellers and buyers of their option to have an agency relationship with a broker and that an agency relationship is not presumed and will exist only as set forth in a written agreement;
- a statement that a real estate consumer has the right to limit the broker's activities or practices and that the fee and services to be provided are determined by negotiation;
- a statement identifying any possibility that the broker may provide services to another consumer who may be a party to the transaction, explaining the duties the broker may owe the other party and whether the broker may accept a fee for the services;
- a statement identifying any possibility that the broker may designate an affiliated licensee to represent the separate interest of the parties to the transaction;
- a statement of the broker's policies regarding cooperation with other brokers, including fee sharing;
- a statement that a buyer's broker may be paid a fee that is a percentage of the purchase price and that the buyer's broker will represent the buyer's interests;

- a statement that the broker's employment's duration and the broker's fees are negotiable;
- a description of the purpose of the Real Estate Recovery Fund and the commission's telephone number;
- a statement that the listing agreement's or contract's duration and the broker's commission are negotiable; and
- a statement that any sales agreement must generally contain the property's zoning classification.

The above disclosures do not apply to the sale or lease of commercial property unless the prospective buyer, tenant, seller or landlord is an individual.

In the above disclosure context, an "initial interview" is the "first contact between a licensee and a consumer of real estate-related services where a substantive discussion about real estate needs occurs."

AGREEMENT REQUIREMENTS

An agreement between a broker and a principal or a consumer whereby the consumer must pay consideration must be signed by the consumer and identify the services to be provided and the fee to be paid. An agreement with a buyer or seller must also contain the following information:

- a statement that the broker's fee and the duration of the contract have been determined as a result of negotiations;
- a statement describing the nature and extent of the broker's services to be provided and the fees that will be charged;

- a statement identifying any possibility that the broker may provide services to more than one consumer in a single transaction and if so, an explanation of the resulting relationship;
- a statement describing the purpose of the Real Estate Recovery Fund and the commission's telephone number; and
- a statement regarding any possible conflicts of interest. See 49 Pa. Code § 35.331 for additional detailed requirements regarding required terms to be included in written agreements between a broker and a consumer or principal.

Statutory section 455.606 amended 2000; § 455.608 amended 2006; § 455.608a enacted 1998; § 455.606a amended 2009. Regulations 35.292, 35.331, 35.337, and 35.339 adopted 2002; r. 35.284 amended 2007; r. 35.336 amended 2009.

[63 Pa. Stat. §§ 455.606; .606a\(f\), \(g\), \(i\); .608; .608a \(2019\)](#); see also [49 Pa. Code §§ 35.284, .292, .331, .336, .337, .339 \(2019\)](#)

Pennsylvania, General Applicability of Provisions

No provision was located generally restricting the applicability of the agency laws.

Pennsylvania, Other Relevant Provisions

No other relevant provisions were located.

Pennsylvania, Relationship with Buyers

A broker may act in a real estate transaction as a buyer or tenant agent.

BUYER'S AGENT'S DUTIES

In addition to the duties generally required of a licensee, a broker acting as a buyer's agent must

- be loyal to the buyer by taking actions consistent with the buyer's interest;
- make a continuous and good faith effort to find property for the buyer, unless the buyer is subject to an existing sale contract; and
- disclose at first contact to the listing broker or, if no listing broker, to the seller, that the broker has been engaged as a buyer's agent.

The fact that a licensee representing a buyer or tenant presents properties in which that buyer or tenant is interested to other prospective buyers or tenants does not constitute a breach of a duty owed to that buyer or tenant.

AGREEMENT REQUIREMENTS

The required written agreement between a broker and a buyer, must also contain

- a statement identifying whether the broker's compensation may be based upon a percentage of the purchase price;
- disclosure of the broker's "policies regarding cooperation with listing brokers willing to pay buyer's brokers";
- disclosure that, even if compensated by the listing broker or seller, the broker will represent the buyer's interests; and
- disclosure of any potential for the broker to act as a disclosed dual agent.

Statutory section 455.606 amended 2000; §§ 455.606c and 455.608a enacted 1998; regulation promulgated 2002.

[63 Pa. Stat. §§ 455.606; .606c; .608a \(2019\)](#); *see also* [49 Pa. Code § 35.313 \(2019\)](#)

Pennsylvania, Relationship with Sellers

A broker may act as a seller agent, and licensees employed by a broker generally bear the same relationship to the consumer as the broker. A broker may not extend or delegate the broker's agency relationship to another broker without the principal's written consent. However, a broker may compensate another broker who assists in marketing and selling a consumer's property, and the payment of compensation alone does not create an agency relationship between the consumer and the other broker.

SELLER'S AGENT'S DUTIES

In addition to the duties generally required of a licensee, a broker acting as an agent for the seller must

- be loyal to the seller and take actions that are consistent with the seller's interest; and
- make a good faith effort to find a buyer for the property, unless the property is subject to an existing sale agreement.

The fact that a licensee representing a seller also presents properties to prospective buyers does not constitute a breach of a duty or obligation to the seller.

AGREEMENT REQUIREMENTS

The required written agreement between a broker and a seller must contain

- a statement of the broker's policies regarding cooperation with subagents and buyer agents,
- a disclosure that a buyer agent, even if compensated by the broker or seller will represent the buyer's interests, and
- a disclosure of any potential for the broker to act as a disclosed dual agent.

Statutory section 455.606 amended 2000; §§ 455.606b and 455.608a enacted 1998; § 455.606a amended 2009. Regulation adopted 2002.

[63 Pa. Stat. §§ 455.606; .606a; .606b; .608a \(2019\); see also 49 Pa. Code § 35.312 \(2019\)](#)

Pennsylvania, Term of Relationship

The duration of a broker's employment and a listing agreement or contract are negotiable.

However, an exclusive listing agreement may not contain:

- a listing period exceeding one year;
- a cancellation notice requirement to terminate the agreement at the end of the listing period set forth in the agreement; or
- an automatic renewal clause.

Section amended 2006; regulation promulgated 2002.

[63 Pa. Stat. § 455.608\(a\)\(8\), \(10\) \(2019\); 49 Pa. Code § 35.332 \(2019\)](#)

Pennsylvania, Transaction Brokers

A broker may act in a real estate transaction as a transaction licensee, and licensees employed by a broker generally bear the same relationship to the consumer as the broker. A transaction licensee or subagent who is cooperating with the listing broker need not obtain a written agreement from the *seller* pursuant to § 455.606a(b).

TRANSACTION BROKER'S DUTIES

In addition to the duties generally required of a licensee, a transaction licensee must

- advise the consumer that the licensee is not acting as the consumer's agent or advocate and should not be provided with confidential information; and
- provide limited confidentiality.

REQUIRED DISCLOSURES

A subagent or transaction licensee who is cooperating with the listing broker for a fee paid by the listing broker or seller must provide the *buyer*, before performing any services, a written disclosure statement, signed by the buyer,

- describing the nature of the services to be performed by the subagent or transaction licensee, and
- containing the information required by § 455.608.

Sections 455.606 amended 2000; § 455.606f enacted 1998; § 455.606a amended 2009; regulation promulgated 2002.

[63 Pa. Stat. §§ 455.606; .606a\(b\); .606f \(2019\); 49 Pa. Code § 35.316 \(2019\)](#)

Puerto Rico

Puerto Rico, Definitions

Brokerage contract—the agreement whereby a person is bound to render services as an intermediary with a party in exchange for payment to perform a real estate transaction.

Buyer—any person who is the acquiring party in a real estate transaction.

Real estate broker—a natural person who holds a license to practice the real estate broker profession and acts as an intermediary, through the payment or promise of payment of any agreed upon compensation "previously and mutually agreed upon" between parties that contract to execute a "sales transaction, promise of sale, purchase or sales option, exchange, lease, auction, property management," or to offer, promote or negotiate the terms of the transaction. Any transaction related to real property owned by a broker who acts in his or her own interest, and not as an intermediary, is deemed to be practicing the real estate broker profession.

Real estate transaction—any "sales contract, promise to sell, option to buy or sell, exchange, leasing, auction, property management contract, or the offer, promotion or negotiation of the terms of a real estate sale, purchase-sale option, sales promise, lease, management or exchange" in which a real estate broker, salesperson or company serves as an intermediary.

Section amended 2005.

P.R. Laws Ann. tit. 20, § 3025 (LexisNexis 2019)

Puerto Rico, Designated Agents

No relevant provisions were located.

Puerto Rico, Dual Agents

A licensee may not represent more than one party in a transaction without all parties' express consent.

REQUIRED DISCLOSURES

A licensee may not charge a commission to more than one party in a transaction, unless the parties agree to it.

Section amended 2006.

P.R. Laws Ann. tit. 20, § 3054 (LexisNexis 2019)

[Puerto Rico, General Agency Relationship Requirements](#)

REQUIRED DISCLOSURES

A licensee may not execute an exclusive or semi-exclusive brokerage contract without explaining its terms and conditions and its expiration date.

Before granting a brokerage contract or net listing, a licensee must have advised the client adequately on

- the transaction's scope; and
- the convenience of using a professional appraiser's services.

RESTRICTIONS

Automatic renewal clauses are not permitted in brokerage contracts.

A licensee may not induce a party to rescind a valid contract to make a new one in order to benefit the broker, salesperson, or a real estate enterprise.

Section amended 2006.

P.R. Laws Ann. tit. 20, § 3054 (LexisNexis 2019)

[Puerto Rico, General Applicability of Provisions](#)

No relevant provisions were located.

[Puerto Rico, Other Relevant Provisions](#)

SELF-DEALING

A licensee may not use information obtained in the course of his or her efforts as a broker or salesperson to acquire a property without the consent of the parties that provided the information.

MISREPRESENTATIONS

A licensee may not deliberately conceal essential information regarding a property's condition, with the purpose of inducing a party to conclude the transaction in certain terms that, if he had been aware of the information, he would not have completed the transaction or would have paid a lower price.

Section amended 2006.

P.R. Laws Ann. tit. 20, § 3054 (LexisNexis 2019)

[Puerto Rico, Relationship with Buyers](#)

BUYER'S AGENT'S DUTIES

A licensee must present in a diligent manner and not retain or delay any offer in order to benefit another person, the broker, a salesperson, or a real estate enterprise.

REQUIRED DISCLOSURES

A licensee must notify and advise a prospective buyer, before the execution of a written purchase option or purchase and sale contract and as a part of the contract, on the "need and convenience of having an expert, duly certified by the Commonwealth of Puerto Rico, perform a physical inspection of the real property as a part of the real estate transaction." The prospective buyer must certify that he or she has received the broker's advice.

Section amended 2006.

P.R. Laws Ann. tit. 20, § 3054 (LexisNexis 2019)

[Puerto Rico, Relationship with Sellers](#)

REQUIRED DISCLOSURES

A licensee must notify and advise an owner, before he or she signs the brokerage contract and as a part of the contract, on the "need and convenience of having an expert, duly certified by the Commonwealth of Puerto Rico, perform a physical inspection of the real property as a part of the real estate transaction." The owner must certify that he or she has received the broker's advice.

Section amended 2006.

P.R. Laws Ann. tit. 20, § 3054 (LexisNexis 2019)

[Puerto Rico, Term of Relationship](#)

Brokerage contracts may not contain automatic renewal clauses.

Section amended 2006.

P.R. Laws Ann. tit. 20, § 3054 (LexisNexis 2019)

Puerto Rico, Transaction Brokers

No relevant provisions were located.

Rhode Island

Rhode Island, Definitions

Brokerage—a principal broker and his or her affiliated licensees.

Buyer—a "person who acquires or seeks to acquire an ownership interest in real estate."

Client—a buyer, seller, tenant or landlord

- who has agreed to be represented by a licensee in a real estate transaction, as evidenced by an executed mandatory relationship disclosure; and
- to whom a licensee owes the duties set forth in § 5-20.6-5.

Client representation contract—an "express, written contract between a principal broker or his or her affiliated licensees and a client who authorizes the principal broker or his or her affiliated licensees to act as a client representative for a buyer, seller, landlord, or tenant."

Confidential information—the following information:

- a buyer or tenant is willing to pay more than the offered price;
- a seller or landlord is willing to accept less than the asking price;

- previous offers made or received to purchase or lease real estate;
- any parties' motivating factors or willingness to agree to other financing terms;
- any "facts or suspicions regarding circumstances, other than known material defects of a property that a licensee must in all cases disclose, that may psychologically impact or stigmatize any real estate"; or
- information regarding "a party's assets, liabilities, income, or expenses."

Customer—a "buyer, seller, tenant, or landlord who has agreed to certain assistance by a licensee in a real estate transaction, evidenced by an executed mandatory relationship disclosure, to whom a licensee owes the duties set forth in § 5-20.6-4."

Designated client representative—an "affiliated licensee appointed by the principal broker or his or her designee to represent a buyer, seller, tenant, or landlord in a real estate transaction."

Dual facilitator—a single licensee who, with both parties' prior written consent, "assists a seller client and a buyer client in the same transaction subject."

Mandatory relationship disclosure—a form that

- describes the relationship between a consumer and a principal broker and his or her affiliated licensees; and
- that meets the requirements of § 5-20.6-8.

Ministerial acts—"acts of an administrative nature that licensees perform for client or customers, including, but not limited to,

- showing property;
- preparing offers or agreements to sell, purchase, exchange, rent, or lease;
- conveying offers or agreements; and
- providing information and assistance.

Real estate—vacant land or land on which a building is to be constructed for use as one or two dwellings or land "with physical improvements consisting of a house and/or structure comprised of four (4) or fewer residential units."

Sales agreement—an express written contract signed by the buyer and seller for a real estate purchase and sale.

Transaction coordinator—a "principal broker or his or her designee who supervises a real estate transaction in a capacity in which one affiliated licensee represents a buyer or tenant as a designated client representative and another affiliated licensee represents a seller or landlord as a designated client representative in the same transaction."

Transaction facilitator—a "licensee who provides assistance to a buyer, seller, tenant, or landlord, or both, in a real estate transaction."

Section amended 2014.

[R.I. Gen. Laws § 5-20.6-2 \(2018\)](#)

Rhode Island, Designated Agents

DUTIES OF A DESIGNATED CLIENT REPRESENTATIVE

If an affiliated licensee is appointed by the principal broker to represent a buyer, seller, tenant or landlord in a real estate transaction, and obtains that person's written consent with an executed mandatory relationship disclosure to represent him or her as a designated client representative, the licensee owes the following duties to his or her client:

- to perform the terms of any client representation contract "with reasonable skill and care";
- to "promote the client's best interest in good faith and honesty";
- to "protect the client's confidential information during the relationship and after its termination";
- to "perform agreed-upon ministerial acts timely and competently";
- to perform with "honesty, good faith, reasonable care and skill"; and
- to account for money or property placed in the principal broker's care and responsibility.

CONFIDENTIALITY OBLIGATIONS

No affiliated licensees of a principal broker, other than those specifically designated to represent the client as a designated client representative,

- may represent the client; or
- owe any other duties, except the duty to protect the client's confidential information.

A seller's or a landlord's designated client representative has no duty to protect the confidential information of a buyer or tenant customer involved in a transaction with his or her client. Similarly, a buyer's or tenant's designated client representative has no duty to protect the confidential information of a seller or landlord customer involved in a transaction with his or her client.

DISCLOSURE REQUIREMENTS

A licensee may not act as a designated client representative until he or she has complied with § 5-20.6-8 (regarding the mandatory relations disclosure). A principal broker must keep a receipt of the executed mandatory relationship disclosure in accordance with § 5-20.5-8(b).

BROKER LIABILITIES

A principal broker's appointment of a designated client representative to represent a client does not limit the principal broker's liability or responsibility for breach of any duty owed to a client by the designated client representative.

Section 5-20.6-9 amended 2007; § 5-20.6-5 amended 2014.

[R.I. Gen. Laws §§ 5-20.6-5, -9 \(2018\)](#)

Rhode Island, Dual Agents

A principal broker may appoint one or more affiliated licensees to act as a seller's (or a landlord's) designated client representative and one or more affiliated licensees to act as a buyer's (or a tenant's) designated client representative in the same transaction. However, all parties to the transaction must receive written notice that "an inherent conflict of interest may exist when designated client representatives are affiliated with the same principal broker."

TRANSACTION COORDINATORS

If one or more affiliated licensees represent a seller as a designated client representative and one or more affiliated licensees represent the buyer as a designated client representative in the same transaction, the principal broker must

- act in a capacity as the transaction coordinator;
- protect all parties' confidential information; and
- properly account for funds.

NEUTRAL DUAL FACILITATORS

A licensee may assist both a buyer client and a seller client (or a tenant client and landlord client) in the same transaction only as "a neutral dual facilitator."

A dual facilitator relationship exists only for a specific transaction. If that transaction is not completed or fails to close, the dual facilitator "remains the designated client representative for the respective buyer and the seller or tenant and landlord in all future, separate transactions where there is no relationship with the other party."

A licensee may be a neutral dual facilitator only after he or she has obtained the written consent of

- his or her principal broker; and
- all parties involved in the transaction.

The licensee must obtain the consent before presenting an offer to a seller or landlord client. The consent must "specifically inform" all parties that

- the dual facilitator is authorized to assist both parties in a transaction but must be neutral as to any conflicting interests between the parties;
- the dual facilitator owes a duty to protect all parties' confidential information and to account for funds;
- the dual facilitator may not disclose confidential information obtained from either party unless disclosure is expressly authorized, required by law, intended to prevent illegal conduct, or necessary to prosecute a claim against a person represented or to defend a claim against the licensee (the duty continues after the transaction is completed); and
- if a licensee prepared a comparative market analysis and a dual facilitation situation subsequently arises, the dual facilitator may provide the comparative market analysis to the other party only with the consent of the party for whom it was prepared. A dual facilitator may not prepare a comparative market analysis for either party after a dual facilitation situation arises because "it may adversely affect one party's bargaining position relative to the other party."

If either the seller or buyer client (or the landlord or tenant client) does not consent to dual facilitation, the principal broker may, with the consent of the party withholding consent, designate another licensee to represent one of the parties as a designated client representative.

Sections amended 2014.

[R.I. Gen. Laws §§ 5-20.6-5, -6 \(2018\)](#)

Rhode Island, General Agency Relationship Requirements

All licensees in a real estate transaction are presumed to be transaction facilitators unless the licensee obtains the buyer's, seller's, tenant's or landlord's informed, written consent with an "executed mandatory relationship disclosure to represent that person as a designated client representative." Statutory amendments that became effective on May 1, 2008, were "expressly intended to abrogate the common law of agency; no type of agency representation shall be assumed by a brokerage, principal broker, licensee, buyer, seller, tenant, or landlord nor shall agency representation be created by implication." Rhode Island now recognizes the following types of relationships:

- "assistance as a transaction facilitator to assist one or more customers"; and
- "representation of a buyer, seller, tenant or landlord as a designated client representative."

DUTIES

Unless otherwise required by written agreement, a licensee owes only those duties and obligations set forth in chapters 5-20.6 and 5-20.5 and related regulations. "A licensee does not owe a fiduciary duty under the common law of agency to his or her clients and is not subject to equitable remedies for breach of fiduciary duty." However, nothing prohibits a principal broker and his or her affiliated licensees from entering into a written representation contract that creates duties and obligations that are greater than those required by chapter 5-20.6.

See **Designated Agents** for specific duties that an affiliated licensee appointed by a principal broker as a designated client representative owes to the buyer, seller, tenant or landlord he or she represents.

CONFIDENTIALITY OBLIGATIONS

Generally, a licensee may not disclose, without the client's or customer's consent, the confidential information of

- a client, in the case of a designated client representative;
- a customer, in the case of a dual facilitator or transaction coordinator; or
- any represented party, in the case of an affiliated licensee who is not appointed a designated client representative.

A licensee may disclose confidential information that is

- a matter of "general knowledge or a part of a public record or file to which access is authorized";
- necessary to defend the licensee against a claim brought by the client; or
- "otherwise subject to disclosure by law."

A principal broker must implement "reasonable procedures to protect the confidential information of all clients of designated client representatives and, as required by . . . chapter [5-20.6], to protect the confidential information of customers of transaction facilitators."

A designated client representative has no duty to protect confidential information of a party who is not a client unless the licensee acquired the party's confidential information as a result of a prior client or transaction facilitator relationship with the party.

REQUIRED DISCLOSURES

A licensee must

- provide a prospective buyer, seller, tenant or landlord a copy of the mandatory relationship disclosure; and
- obtain a signed "acknowledgement of receipt" from the buyer, seller, tenant or landlord before disclosing any confidential information.

If a buyer, seller, tenant or landlord refuses to sign the receipt, the licensee must sign and date a "written declaration of the facts of the refusal."

The mandatory relationship disclosure must contain the following:

- a list of the types of representation or assistance available;
- a statement that a principal broker and his or her affiliated licensees must disclose their relationship as a designated client representative, transaction facilitator, or transaction coordinator;
- the legal duties and obligations owed to the buyer, seller, tenant or landlord in each type of relationship;
- a "conspicuous notice" that a licensee cannot act as a client representative for a prospective buyer, seller, tenant or landlord unless the licensee obtains the party's informed written consent with a signed mandatory relationship disclosure;
- a box for the client or customer to select the representation or assistance that he or she desires;
- a box to acknowledge the "type of representation or assistance that a real estate licensee is offering to the other party" in the transaction;
- a statement that a principal broker may "designate one or more affiliated licensees to act as the designated client representative(s) of a seller or landlord and one or more affiliated licensees to act as the designated client representative(s) of a buyer or tenant in the same transaction," provided the licensee obtains the client's consent;
- a statement that if a principal broker appoints designated client representatives to represent clients on different sides of a transaction, he or she must "(i) act in a neutral capacity as a

transaction coordinator; (ii) protect all parties' confidential information; and (iii) properly account for funds";

- a statement that "all affiliated licensees not appointed as a designated client representative for the client may represent another party in a transaction with conflicting interests";
- an explanation of the "potential conflicts of interest that exist if a licensee acts for more than one party in the same transaction";
- a statement that "a principal broker and his or her affiliated licensees must disclose their relationship as a designated client representative, transaction facilitator, or transaction coordinator to the buyer, seller, tenant, or landlord in any transaction";
- a statement that a licensee's failure to give a prospective buyer, seller, tenant or landlord the mandatory relationship disclosure in a timely manner or to obtain the required written consents is a violation of Rhode Island real estate license laws and may subject the licensee to disciplinary action;
- a statement that if a consumer wants to change from a customer relationship to a client relationship, "a licensee's relationship with a buyer, seller, tenant, or landlord as a designated client representative must be established no later than the preparation of a sales agreement, offer to purchase, or lease"; and
- each parties' written confirmation that he or she has received, read and understood the mandatory relationship disclosure and has consented to the confirmed relationship.

CLIENT REPRESENTATION CONTRACT REQUIREMENTS

A client representation contract must

- be an express, written contract;

- include compensation terms;
- describe all services and limitations on services that the principal broker and his or her affiliated licensees will perform;
- state that a principal broker may "appoint one or more affiliated licensees to act as the designated client representative(s) for a seller or landlord and one or more affiliated licensees to act as the designated client representative(s) for a buyer or tenant in the same transaction after a licensee has obtained consent from the client being represented"; and
- be signed by all parties.

Statutory sections 5-20.6-1, 5-20.6-2, and 5-20.6-7 amended 2007; §§ 5-20.6-9 and 5-20.6-10 enacted 2007; § 5-20.6-3, 5-20.6-5, and 5-20.6-8 amended 2014.

[R.I. Gen. Laws §§ 5-20.6-1, -3, -5, -7, -8, -9, -10 \(2018\)](#)

Rhode Island, General Applicability of Provisions

As of May 1, 2008, the Rhode Island General Assembly significantly revised the state's real estate agency laws. It noted that "[t]he way that consumers buy, sell, rent, exchange, and otherwise transfer real estate has changed over the years. The purpose of this legislation is to provide consumers with choice." The act was specifically intended to "abrogate the common law of agency relative to relationships in regulated real estate transactions" to the extent that they are inconsistent with the new law. Thus, unless otherwise specified by written agreement, a licensee owes only those duties and obligations set forth by statute or regulation. "A licensee does not owe a fiduciary duty under the common law of agency to his or her clients and is not subject to equitable remedies for breach of fiduciary duty." However, nothing prohibits a principal broker and his or her affiliated licensees from entering into a written representation contract that creates duties and obligations that are greater than those provided by statute.

Section amended 2007.

[R.I. Gen. Laws § 5-20.6-1 \(2018\)](#)

Rhode Island, Other Relevant Provisions

MISREPRESENTATIONS

Neither the seller nor the agent is liable for any error, inaccuracy, or omission of information if

- it was not known by the seller or agent,
- it was based on information timely provided pursuant to §§ 5-20.8-7 and 5-20.8-8, and
- ordinary care was exercised in obtaining and transmitting the information.

COMPENSATION

A payment or promise of a payment or compensation to a licensee does not create an agency relationship.

Section 5-20.8-9 amended 1992; § 5-20.6-11 enacted 2007.

[R. I. Gen. Laws §§ 5-20.8-9, -20.6-11 \(2018\)](#)

Rhode Island, Relationship with Buyers

No specifically relevant provisions were located. However, see **General Agency Relationship Requirements** for generally applicable provisions.

Rhode Island, Relationship with Sellers

AGREEMENT REQUIREMENTS

A listing agreement or contract for the sale of real property must:

- not contain a pre-printed fee or commission rate or amount;
- specify the complete name of the listing service, if the agreement includes a provision listing the property with a real estate multiple listing service operation;
- not contain a net listing provision; and
- if the agreement provides for the principal broker to retain any portion of the deposit upon buyer's default, specifically so state in large type or bold print.

Upon request, the principal broker must advise the seller of the rate or amount of any commission split or distribution.

See **General Agency Relationship Requirements** for additional, generally applicable provisions.

Regulatory chapter amended 2017.

[230-30-20 R.I. Code R. § 2.26 \(2019\)](#)

Rhode Island, Term of Relationship

The director may discipline a licensee who fails “to specify a definite termination date that is not subject to prior notice, in any listing contract.”

Section amended 2018.

[R.I. Gen. Laws § 5-20.5-14\(a\)\(10\) \(2018\)](#)

Rhode Island, Transaction Brokers

DUTIES OF TRANSACTION COORDINATOR

A transaction coordinator does not owe fiduciary duties to any party except:

- to protect the parties' confidential information; and
- to account properly for money placed in his or her care.

DUTIES OF A TRANSACTION FACILITATOR

A transaction facilitator does not owe fiduciary duties to any party or to a customer, but does owe the duties set forth in § 5-20.6-4, which include the following:

- to "perform agreed-upon ministerial acts timely and competently";
- to act with "honesty, good faith, reasonable skill and care";
- to account properly for money or property placed in the principal broker's "care and responsibility"; and
- to "protect confidential information when assisting customers as a dual facilitator".

Sections amended 2014.

[R.I. Gen. Laws §§ 5-20.6-2, -4 \(2018\)](#)

South Carolina

South Carolina, Definitions

Agent—"one authorized and empowered by a written agency agreement to perform actions for a client. A real estate brokerage firm is the agent of a buyer, seller, landlord, or tenant, and the real estate brokerage firm's 'associated licensees' are its subagents"

Associated licensee—a licensee who is “affiliated with and under the supervision of a broker-in-charge or property manager-in-charge.”

Broker—an individual who for consideration or with the intent or expectation of receiving compensation,

- “negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements to real estate”;
- auctions or offers to auction real estate;
- for a fee, solicits a referral;
- offers services as a real estate consultant, counselor, or transaction manager;
- offers to act as a subagent of a real estate brokerage firm representing a client in a real estate transaction; or
- advertises or holds himself out as being engaged in any of the above activities.

Broker-in-charge—the broker who is designated as being responsible for all associated licensees’ actions and control over the real estate trust accounts.

Client—a “person who enters a written agreement establishing an agency relationship with a real estate brokerage firm through its broker-in-charge, a property manager-in-charge, or an associated licensee.”

Customer—a “a buyer, seller, landlord, or tenant who uses the services of a real estate licensee but does not established an agency relationship through a written agency agreement with the licensee's real estate brokerage firm.”

Designated agency— a "form of agency in which two clients represented by a real estate brokerage firm in the same transaction may be given almost equivalent treatment as a single agency."

Dual agency— a "form of agency in which a real estate brokerage firm with two clients in the same transaction gives limited agency services."

Licensee—an individual currently licensed under chapter 40-57.

Real estate—all interests in land, buildings, and other appurtenances, whether or not located in South Carolina.

Real estate transaction—an activity involving the sale, purchase, exchange, or lease of real estate.

Subagent— an agent of an agent; an associated licensee is a subagent of the real estate brokerage firm if the firm is an agent of a buyer, seller, landlord, or tenant.

Substantive contact—"contact in which a discussion or dialogue between the consumer and the associated licensee moves from casual introductory talk to a meaningful conversation regarding the selling or buying motives or objectives of the seller or buyer, financial qualifications, and other confidential information that if disclosed could harm the consumer's bargaining position."

Transaction broker— a "real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party."

Section amended 2016.

[S.C. Code § 40-57-30 \(2018\)](#)

South Carolina, Designated Agents

A broker-in-charge may assign different affiliated licensees as designated agents to exclusively represent different clients in the same transaction. The company policy adopted to fulfill the statutory requirements must contain provisions reasonably calculated to ensure each client is represented as provided by the statutory requirements. The broker-in-charge may specifically designate in a written agency agreement one or more affiliated licensees who will act as a buyer's or a seller's agent. Buyers and sellers must consent to enter into designated agency relationships, which consent must be evidenced by a designated agency agreement, as promulgated by the commission and signed by the buyer before writing the offer and by the seller before signing the sales agreement. If a buyer of a designated agent wants to view property personally listed by the broker-in-charge or property owned by a seller of the same licensee, the broker or licensee must act as a dual agent with the written consent of the buyer and seller.

DUTIES

A seller's designated agent has the duties set forth in § 40-57-350(C) through (E). A buyer's designated agent has the duties set forth in § 40-57-350(E), (G) and (H). (See "Seller's Agent's Duties" in "Relationship with Sellers" and "Buyer's Agent's Duties" in "Relationship with Buyers.")

AGREEMENT REQUIREMENTS

The designated agency agreement must inform the buyer and the seller of the statutory and other obligations of the broker-in-charge and affiliated agents.

If both the buyer and the seller are represented by designated agents and the designated agents are supervised by the same broker-in-charge, the broker-in-charge acts as a dual agent. Although the broker-in-charge is not required to complete a dual agency agreement, the designated agency agreement must contain a consent to the arrangement.

CONFIDENTIALITY OBLIGATIONS

A designated agent may disclose to the agent's broker-in-charge, or the licensed representative appointed by the broker-in-charge, confidential information of a client for the purpose of seeking advice or assistance for the client's benefit in a transaction.

When designated agents are appointed, the broker-in-charge, the clients, and the designated agents are considered to possess only actual knowledge and information, with no imputation of knowledge among the broker-in-charge, the designated agents, and the clients. Designated agents may not disclose, except to the designated agent's broker-in-charge, information made confidential by written request or instruction of the

designated agent's client, except information allowed or required to be disclosed by statute. Unless the law requires disclosure, the broker-in-charge of a designated agent may not reveal confidential information received from either the designated agent or his or her client.

Also, the designation of one or more of a broker's affiliated licensees as designated agents does not permit the disclosure of any information made confidential by an express written request or instruction by a party before or after the creation of the designated agency. The broker and affiliated licensees must maintain the confidentiality of the information, unless the party permits disclosure in writing or the law requires disclosure.

Section renumbered and amended 2016.

[S.C. Code § 40-57-350 \(2018\)](#); see [S.C. Real Estate Comm'n, Designated Agency Agreement \(rev. Oct. 2004\)](#)

South Carolina, Dual Agents

A brokerage firm may act as a disclosed dual agent only upon all parties' prior informed and written consent. Consent is presumed to be informed if a party signs a dual agency agreement, in the form promulgated by the commission and signed at the latest

- by the buyer before writing an offer, and
- by the seller before signing the sales contract.

A broker-in-charge and his affiliated licensees may conduct business with a client in another of the brokerage's offices without creating a dual agency relationship, as long as the branch offices each have a separate broker-in-charge and do not share the same associated licensees.

"If a broker-in-charge appoints different associated licensees as designated agents, the broker-in-charge, all remaining affiliated licensees, and the real estate brokerage firm must be considered to be dual agents."

REQUIRED DISCLOSURES

A licensee must provide at the first practical opportunity to all potential buyers and sellers of real estate with whom the licensee has substantive contact:

- "a meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate brokerage firm, including an explanation of customer and client services;" and
- a Disclosure of Brokerage Relationships form promulgated by the commission.

AGREEMENT REQUIREMENTS

The agency disclosure form must specify the transaction in which a licensee will serve as dual agent and must state

- that a dual agent represents clients whose interest may be adverse and that agency duties are limited;
- that associated licensees of the brokerage may disclose any relevant information gained from one party to another party, unless the information concerns a seller's willingness to accept less than the asking price, a buyer's willingness to pay more than an offered price, confidential negotiating strategy, or a party's motivation;
- that the clients may choose to consent to or reject disclosed dual agency; and
- that the clients have read and understood the agency agreement and disclosure form, and acknowledge that their consent is voluntary.

Sections amended 2016.

[S.C. Code §§ 40-57-350, -370 \(2018\); see S.C. Real Estate Comm'n, Dual Agency Agreement \(rev. Oct. 2004\)](#)

South Carolina, General Agency Relationship Requirements

A real estate brokerage firm may establish a seller agency, a buyer agency, a disclosed dual agency, designated agency or transaction brokerage.

For all real estate transactions, no agency relationship between a buyer, seller, landlord, or tenant and a real estate brokerage firm and its associated licensees exists unless such parties agree, in writing, to the agency relationship. No type of agency relationship may be assumed or created orally or by implication. "A real estate brokerage firm may not be considered to have an agency relationship with a party or have agency obligations to a party but is responsible only for exercising reasonable care in the discharge of the real estate brokerage firm's specified duties, as provided [by law], and, in the case of a client, as specified in the agency agreement."

The payment or promise of payment of compensation to a real estate brokerage firm by a seller, buyer, landlord, or tenant does not determine whether an agency relationship has been created.

DUTIES

A real estate brokerage company providing services through an agency agreement is bound by the duties of

- loyalty,
- obedience,
- disclosure,
- confidentiality,
- reasonable care,
- diligence, and

- accounting.

The broker-in-charge of a real estate brokerage firm must adopt a written company policy that includes

- a description of the real estate brokerage agency relationship types in which associated licensees may engage;
- "the real estate brokerage firm's policy regarding cooperation with transaction brokers, or both buyer agents, and transaction brokers, and whether the broker offers compensation to these licensees;"
- the scope of services provided to the company's clients and customers;
- when and how licensees must disclose their agency relationships;
- when and how an associated licensee must explain the potential for the licensee to later act as a disclosed dual agent, designated agent, or transaction broker in specific transactions; and
- the company's policy on compliance with state and federal fair housing laws.

Associated licensees must prepare all offers and counteroffers in writing, have them dated and signed by the offerors, and promptly present them to the offerees or the offerees' representative and ensure that:

- changes or modifications made during negotiations are in writing and initialed and dated by both parties before proceeding with the transaction;
- all of the terms and conditions of the transaction are included in the offer to purchase; and

- if they obtain a written acceptance of an offer or counteroffer, executed copies will be promptly delivered to all parties.

If an offer is rejected without counter, an commission-promulgated offer rejection form, signed by the licensee affirming presentation of the offer must be provided to the offeror by the licensee, whether the agent of the buyer, the seller, or if acting as a transaction broker.

" An offer and counteroffer may be communicated by use of a fax or other secure electronic means including, but not limited to, the Internet, and the signatures, initials, and handwritten or typewritten modifications to the foregoing documents are considered valid and binding upon the parties as if the original signatures, initials, and handwritten, or typewritten modifications were present on the documents in the handwriting of each party."

REQUIRED DISCLOSURES

A licensee must provide at the "first practical opportunity" to all potential buyers and sellers with whom the licensee has substantive contact:

- "a meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate brokerage firm, including an explanation of customer and client services;" and
- a Disclosure of Brokerage Relationships form promulgated by the commission (see [S.C. Real Estate Comm'n, South Carolina Disclosure of Real Estate Relationships Form \(rev. Jan. 2017\)](#)).

"At the time of first substantive contact, it is presumed that the potential buyer or seller is to be a customer of the real estate brokerage firm and that the real estate brokerage firm will be acting as a transaction broker . . . and that the real estate brokerage firm shall offer services to a customer . . . only until the potential buyer or seller signs an agency representation agreement."

An "Acknowledgement of Receipt of the Disclosure of Brokerage Relationships" form must be included in an agency agreement and in a sales contract and a sales contract must require the buyer and the seller to acknowledge whether they received customer or client service in the transaction. If first substantive contact occurs over the telephone or other electronic means, including the Internet and electronic mail, the acknowledgement form may be sent by electronic means.

AGREEMENT REQUIREMENTS

A listing or buyer's representation agreement must be in writing and set forth all material terms of the agency relationship, including

- a description of the agent's duties or services to be performed, including an explanation of the office's policy regarding dual agency, designated agency, and transaction brokerage if offered by the firm;
- the compensation to be paid;
- an explanation of how and when the agent earns the compensation, and how compensation will be divided among any participating or cooperating brokers;
- the retainer fees, deposits, or other amounts collected before the agent's performance and an explanation of whether or not and under what conditions the amounts are refundable or payable to the principal;
- the relationship's duration, including specific dates for its beginning and end; and
- all parties' signatures.

Also, a listing or buyer's representation agreement must:

- clearly state that it terminates on the definite expiration date unless a written extension is signed;
- be clearly defined if intended to be exclusive;
- must clearly specify any exception or variation in the commission;

- must be delivered to the seller or buyer at the time of, or directly following, signing; and
- must provide a price or price range for property of interest to a buyer or state the price of the listed property for a seller.

Sections amended 2016.

[S.C. Code §§ 40-57-135; -350; -370 \(2018\)](#)

South Carolina, General Applicability of Provisions

No specifically applicable provisions were located, but the provisions of S.C. Code § 40-57-350 that are inconsistent with applicable principles of common law supersede the common law, but the common law may be used to aid in interpreting or clarifying the duties described.

Section renumbered and amended 2016.

[S.C. Code § 40-57-350\(M\) \(2018\)](#)

South Carolina, Other Relevant Provisions

SELF-DEALING

"No licensee either directly or indirectly may buy for his own account or for a corporation or another business in which he holds an interest or for a close relative, real estate listed with him or real estate for which he has been approached by the seller or prospective buyer to act as agent, without first making his true position clearly known in writing to all parties involved." A licensee's licensed status must be disclosed in bold underlined capital letters on the first page of a contract for the purchase, sale, exchange, rental, or lease of real property.

A real estate brokerage firm may claim a fee for the sale of a listed property to an associated licensee, only if a separate written agreement signed by the seller client acknowledges the

purchaser as a licensee affiliated with the firm and recognizes the right of the seller to not pay the brokerage fee.

MISREPRESENTATIONS

A buyer's agent is not liable to a seller for providing the seller with false or misleading information if

- the information was provided by the licensee's client, and
- the licensee did not know or have reason to suspect the information was false or incomplete.

Similarly, a seller's agent is not liable to a buyer for providing the buyer with false or misleading information if

- the information was provided by the licensee's client, and
- the licensee did not know or have reason to suspect the information was false or incomplete.

No cause of action may be brought against an agent that has truthfully disclosed any known material defect including, but not limited to, moisture or mold problems. No cause of action may be brought against a licensee for information contained in reports or opinions prepared by an engineer, land surveyor, geologist, inspector or other similar party. A seller's agent is not obligated to discover latent defects in property or to advise on matters outside the scope of his or her expertise.

Sections amended 2016.

[S.C. Code §§ 40-57-135\(G\), \(K\)\(8\); -350 \(2018\)](#)

South Carolina, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's agent must

- perform the terms of the written brokerage agreement with the buyer;
- promote the buyer's interests;
- seek property at the price and terms stated in the brokerage agreement or acceptable to the buyer, except that the licensee generally need not seek additional properties once the buyer becomes a party to a sale contract;
- present in a timely manner all offers and counteroffers;
- generally, disclose to the buyer all adverse material facts that the licensee knows or reasonably should know;
- advise the buyer to obtain expert advice on material matters beyond the licensee's expertise;
- account in a timely manner for all money and property received;
- exercise reasonable skill and care;
- comply with all relevant laws;
- preserve confidential information provided by the buyer during or following the agency relationship, unless the buyer consents to disclosure, disclosure is required by law, disclosure is necessary to defend the licensee against a wrongful conduct claim, or the information becomes public from a source other than the licensee;
- treat prospective sellers honestly; and

- not knowingly give sellers false or misleading information about the buyer's ability to perform.

A buyer's agent may offer properties that interest his client to other potential buyers, but if there are two competing buyer clients in a single transaction, the agent must give written notice to each buyer client that neither will receive the other's confidential information.

INSPECTION DUTIES

A buyer's agent need not discover latent defects.

REQUIRED DISCLOSURES

A licensee must provide at the first practical opportunity to all potential buyers and sellers of real estate with whom the licensee has substantive contact:

- "a meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate brokerage firm, including an explanation of customer and client services;" and
- a Disclosure of Brokerage Relationships form promulgated by the commission.

Sections amended 2016.

[S.C. Code §§ 40-57-135; -350; -370 \(2018\)](#)

South Carolina, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's agent must

- perform the terms of his agreement with the seller;
- promote the seller's interests;
- seek a sale at the price and terms set forth in the brokerage agreement or as acceptable to the seller, except that generally the licensee need not seek additional offers while the property is subject to a sale contract;
- present in a timely manner all offers and counteroffers to and from the seller, even if the property is subject to a sale contract;
- generally, disclose to the seller all relevant facts that the licensee knows or should know;
- advise the seller to obtain expert advice on matters beyond the licensee's expertise;
- account in a timely manner for all money and property received;
- exercise reasonable skill and care;
- comply with all relevant laws;
- preserve confidential information provided by the seller during and following the agency relationship;
- treat all prospective buyers honestly; and

- not knowingly give buyers false or misleading information that the licensee knows or should know about the property's condition.

A seller's agent may offer alternative properties to prospective buyers and list competing properties for sale.

INSPECTION DUTY

A seller's agent need not discover latent defects.

CONFIDENTIALITY OBLIGATIONS

A seller's agent must preserve seller's confidential information during the course of and following the agency relationship, unless

- the seller consents to disclosing the information;
- disclosure is required by law;
- disclosure is necessary to defend the licensee against a wrongful conduct claim; or
- the information becomes public from a source other than the broker.

REQUIRED DISCLOSURES

A licensee must provide at the first practical opportunity to all potential buyers and sellers of real estate with whom the licensee has substantive contact:

- "a meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate brokerage firm, including an explanation of customer and client services;" and
- a Disclosure of Brokerage Relationships form promulgated by the commission.

AGREEMENT REQUIREMENTS

In addition to the general agency agreement requirements, a listing agreement must:

- state the listed property's price;
- a legal description of the listed property or a description sufficient to identify the listed property; and
- clearly state, if applicable, that it is either an "exclusive agency" listing or "exclusive right to represent" listing contract.

Sections amended 2016.

[S.C. Code §§ 40-57-135, -350, -370 \(2018\)](#)

South Carolina, Term of Relationship

A real estate broker and associated licensees owe no duty or obligation to a client following the earlier of (a) termination, expiration, completion, or performance of an agency agreement or (b) closing of the transaction, except

- timely accounting for all money and property received; and
- keeping confidential all information received during the course of the engagement, unless the client permits the disclosure in writing, the disclosure is required by law, or the information becomes public from a source other than the broker, or disclosure is necessary to defend the licensee against an

accusation of wrongful conduct in a proceeding before the commission or a professional association or standards committee.

If a conflict arises between a broker's duty to keep the confidence of a client and the duty not to give customers false information, the broker's duty not to give false information prevails.

Section amended 2016.

[S.C. Code § 40-57-380 \(2018\)](#)

South Carolina, Transaction Brokers

TRANSACTION BROKERS

A real estate brokerage firm may offer transaction brokerage to potential buyers and sellers. A transaction broker may be a single agent of a party, giving the other party customer service or he or she may facilitate the transaction without representing either party.

Transaction brokers must disclose to buyers and sellers their role and duties in offering customer services to the consumer that must include:

- honesty and fair dealing;
- accounting for all funds;
- using skill, care and diligence;
- "disclosing material adverse facts that affect the transaction, or the value or condition of the real property and that are not readily ascertainable;"
- promptly presenting all written offers and counteroffers;

- limited confidentiality, unless waived in writing by a party, which prohibits disclosing: (a) information concerning a buyer's motivation or willingness to make a higher offer than the price submitted in a written offer; (b) factors motivating a seller or the seller's willingness to accept an offer less than the list price; (c) that a seller or buyer will agree to financing terms other than those offered; and (d) information requested by a party to remain confidential, except that which must be disclosed pursuant to law;
- any additional duties that are entered into by separate agreement.

If there are no clients involved in the transaction, a brokerage firm acting as a transaction broker must complete a compensation agreement to be signed by the agent and the compensating party. The agreement must contain the amount of the compensation and identify the party responsible for payment.

MINISTERIAL ACTS

South Carolina statutes also generally provide:

- that a licensee who represents one party may provide assistance to other parties to the transaction by performing ministerial acts, such as writing offers, conveying offers, and providing information and aid regarding other professional services not related to the brokerage services being performed for the client; and
- that performing ministerial acts does not create an agency relationship.

CUSTOMER SERVICES

"Prospective buyers and sellers who do not choose to establish an agency relationship with a real estate brokerage firm but who use the services of the firm are considered customers. A licensee may offer the following services to a customer as a single agent or as a transaction broker including, but not limited to:"

- identifying and showing property for sale, lease, or exchange;

- providing real estate statistics and property information;
- providing preprinted real estate forms, contracts, leases, and related exhibits and addenda;
- acting as a scribe in the preparation of documents;
- providing a list of architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys, and other professionals; and
- identifying schools, shopping facilities, places of worship, and other similar facilities on behalf of the parties.

A licensee offering services to a customer must:

- timely present all written offers to and from the parties, even when the property is subject to a contract of sale;
- timely account for all money and property received by the broker on behalf of a party;
- provide a meaningful explanation of brokerage relationships;
- provide an explanation of the scope of services to be provided by the licensee;
- be fair and honest and provide accurate information;
- keep information confidential as requested in writing by the customer; and

- disclose known material facts regarding the property or the transaction.

Sections amended 2016.

[S.C. Code § 40-57-135, -350 \(2018\)](#); see [S.C. Real Estate Comm'n, *Transaction Broker Agreement \(Non-Agency Agreement\)*](#) (sample agreement template)

South Dakota

South Dakota, Definitions

Agency—a relationship “by which one person acts for or on behalf of a client subject to the client's reasonable direction and control.”

Agency agreement—a written agreement between a broker and a client that creates a fiduciary relationship between the parties.

Broker—a person who,

- for another and for compensation, “lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase, lease or rental of an interest in real property”, or a registered mobile or manufactured home (unless licensed under chapter 32-7A), or “advertises or holds himself out as engaged in such activities”;
- for another and for compensation, negotiates or attempts to negotiate a loan secured by a real property encumbrance;
- for another and for compensation, “lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase, lease or rental of any business opportunity or business, or its goodwill, inventory or fixtures, or any interest therein”;
- for another and for compensation, offers, sells or attempts to negotiate the sale of property subject to the registration of subdivided land;

- charges a fee for promoting the sale or lease of real property by listing it in a publication primarily for such purpose;
- engages in the business of selling real property so that a pattern of selling real property is established;
- is employed by or on behalf of an owner of lots to sell the property;
- appraises real property, unless licensed or certified to appraise under other provisions of South Dakota law;
- for another and for compensation, prepares or offers to prepare a broker price opinion or a comparative market analysis;
- auctions real estate, unless licensed to auction real property under other provisions of South Dakota law; or
- deals in options to buy real property.

Brokerage—the business or occupation of a real estate broker, including licensees associated with the broker who have been assigned management duties.

Client—a person who has entered into an agency relationship with a real estate licensee.

Confidential information—for purposes of chapter 36-21A, any information given to the licensee in confidence or that the licensee knows a reasonable individual would want to keep confidential, unless

- disclosure is authorized in writing by the client,

- disclosure is required by law, or
- the information becomes public knowledge.

The term does not include material facts about the property's physical condition.

Consumer—a person “seeking or receiving services from a real estate broker.”

Customer—a “party to a real estate transaction who does not have an agency relationship with a licensee.”

Designated broker—a broker designated by a responsible broker to act for the company.

Limited agent—a licensee with “a written agency relationship with both the seller and the buyer in the same in-company transaction.”

Person—an individual or entity.

Purchaser—a “person who acquires or attempts to acquire or succeeds to an interest in real property.”

Real estate—an interest or estate in real property or improvements or fixtures, whether the real property is situated in South Dakota or elsewhere, including leaseholds, condominiums, and air and mineral rights.

Responsible broker—a broker who is “responsible for the real estate activities conducted by those licensees acting in association with or under the auspices of the responsible broker.”

Single agent—a “licensee who represents only one party to a transaction.”

Substantive contact—any performance beyond the initial acts set forth in § 36-21A-128.

Transaction broker—a “broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to the transaction,” including the licensees associated with the broker.

Transaction broker agreement—a “written agreement in which the broker does not represent either the seller or the buyer in a fiduciary capacity.”

Section 36-21A-11 enacted 1992; §§ 36-21A-126, 36-21A-127, 36-21A-129, and 36-21A-143 enacted 1998; §§ 36-21A-1 amended 2019; § 36-21A-6 amended 2013.

[S.D. Codified Laws §§ 36-21A-1, -6, -11, -126, -127, -129, -143 \(2019\)](#)

South Dakota, Designated Agents

A real estate brokerage entering into an agency agreement may appoint affiliated licensees to act as that client's appointed agents to the exclusion of all other affiliated licensees. The appointment must be in writing.

"If a buyer or tenant represented by an agent of the responsible broker becomes interested in a property listing that was procured by the responsible broker or designated broker, the relationship between the appointed agent and the buyer or tenant is deemed that of disclosed limited agency."

CONFIDENTIALITY AGREEMENT

The commission will promulgate rules to establish appointed-agent procedures regarding confidentiality.

DISCLOSURES

The commission will promulgate rules to establish appointed-agent procedures regarding disclosures. South Dakota regulations provide that before entering into a listing or agency agreement, a real estate licensee must notify a client in writing of

- the real estate brokerage's appointed agent policy; and
- the affiliated licensees within the brokerage that will act as the client's appointed agents to the exclusion of all other affiliated licensees in the brokerage.

More specifically, the appointed agent disclosure must include at least the following:

- the appointed agent's name;

- a statement that the appointed agent will be the client's agent and will owe the client the duties set forth in §§ 36-21A-132 and -133;
- a statement that the brokerage may represent both parties;
- a statement that another affiliated licensee may be appointed if the appointed agent cannot fulfill the agency agreement's terms or if the responsible broker and the client agree; and
- a provision for the client to consent or not consent in writing.

IMPUTED KNOWLEDGE

The client, the real estate brokerage, and any appointed licensees are considered to possess only actual knowledge and information. No knowledge or information is imputed among or between the client, the brokerage and the appointed agent.

An appointed agent may disclose to the brokerage's responsible or designated broker a client's confidential information to seek advice or assistance for the client's benefit or to comply with the broker's supervisory duties. Confidential information

- must be treated as confidential by the responsible or designated broker; and
- may not be disclosed unless otherwise required by statute or rule or requested or permitted in writing by the client.

RESTRICTIONS

A brokerage may not, without the client's written consent, appoint an affiliated licensee to act as an appointed agent in any transaction involving a written exclusive single agency or limited agency agreement that was in effect before the broker implemented the appointed agent relationship.

"If a responsible broker or designated broker appoints a licensee who performs real estate transactions within a team of licensees associated with the same responsible broker, the responsible broker or designated broker must appoint every licensee within the team to exclusively represent the same client. If any licensee within the team represents both parties to the same transaction, a limited agency relationship exists."

If an appointed agent's client is interested in property on which the responsible broker has an existing exclusive single-agent or limited-agent agreement, the broker may not permit the appointed agent's use without first obtaining the seller's written consent. If the client does not give written consent to allow the appointed agent relationship, the broker must refer the client to another broker for representation for that property.

Statutory section enacted 2005. Regulations promulgated 2005.

[S.D. Codified Laws § 36-21A-141.1 \(2019\)](#); [S.D. Admin. R. 20:69:16:03, :04, :05, :09; :10 \(2019\)](#)

South Dakota, Dual Agents

A licensee may act as a limited agent only with all parties' informed written consent. A limited agent is agent for both the seller and the buyer. Any licensee who personally represents both the seller and buyer in the same transaction is a limited agent and must comply with the provisions governing limited agents.

DUAL AGENT'S DUTIES

A limited agent must

- perform the terms of any written agreement with the client;
- exercise reasonable skill and care;
- present all written offers in a timely manner, whether or not the client is already a party to a purchase or lease contract;
- disclose to the client known adverse material facts;
- advise the client to obtain expert advice on matters beyond the licensee's expertise;
- account in a timely manner for all money and property received; and
- comply with all applicable laws.

CONFIDENTIALITY OBLIGATIONS

A limited agent may not disclose the following information without the informed written consent of the client to whom the information pertains:

- that a buyer is willing to pay more than the asking price;
- that a seller is willing to accept less than the asking price;
- the client's motivating factors; and
- that a client will agree to other financing terms.

Without a client's express written authority, a limited agent may not disclose to one client any confidential information about the other client unless disclosure is required by law or failure to disclose would constitute misrepresentation.

Section 36-21A-141.1 enacted 2005; §§ 36-21A-140, 36-21A-141 and 36-21A-142 enacted 1998.

[S.D. Codified Laws §§ 36-21A-140, -141, -141.1, -142 \(2019\)](#)

South Dakota, General Agency Relationship Requirements

A licensee performing real estate services may enter into only the following relationships:

- a single agent;
- a seller or landlord agent;
- a buyer or tenant agent;

- a limited agent;
- a subagent; or
- a transaction broker.

A licensee's initial acts that are informative in nature and do not rise to the level of representing a consumer include

- responding to consumer's phone inquiries regarding the availability and pricing of real estate services or the price or location of real property;
- attending an open house and responding to a consumer's questions about the property;
- setting an appointment to view property;
- responding to walk-in consumer's questions concerning particular properties;
- describing a property or the property's condition in response to a consumer's questions;
- accompanying an appraiser, inspector, contractor, or similar third party on a property visit;
- referring a person to another broker; or
- providing a one-time showing of only one property to a potential buyer or lessee.

AGREEMENT REQUIREMENTS

"Agreements to perform real estate brokerage services must be on forms substantially the same as the forms prescribed by the commission." The forms must comply with S.D. Codified Laws § 36-21A-130 and regulation 20:69:17:01.

REQUIRED DISCLOSURES

A responsible broker must maintain a written office policy that specifically sets forth the relationships that the broker may establish. At the first substantive contact with a seller or buyer who has not entered into a written agreement with a broker, the licensee must

- disclose in writing the relationship types that the broker is offering; and
- provide a written copy of a disclosure on a form prescribed by the commission.

The written disclosure must contain a signature block for the client or customer to acknowledge its receipt, but a customer's acknowledgment does not constitute a contract with the licensee. If a customer fails or refuses to sign the disclosure, the licensee must note that fact on a copy of the disclosure and retain the copy. After a party has entered into a written agency or brokerage agreement, no other licensee need make these disclosures.

Appendix A to S.D. Admin. R. ch. 20:69:16, which formerly contained a written disclosure form, was repealed effective October 11, 2005. As of that date, disclosures must be made on "a form substantially the same as the real estate relationships disclosure form prescribed by the commission." The form must contain the following:

- the requirements set forth in § 36-21A-147;
- the agency and brokerage relationships the broker offers;
- an acknowledgment that the consumer has received a "real estate consumer guide for the sale and purchase of residential real property"; and

- an acknowledgment of any consumer not represented in the transaction.

The disclosure must be in italics or bold print and include the following statement: "I, (name), a real estate licensee, am representing the owner in this transaction. All agents of (name of company) represent the owner in this and any other transaction."

RESTRICTIONS

An agency agreement may not provide for automatic renewal at expiration, except that a property management agreement may include an automatic renewal if it provides for written cancellation on terms agreeable to all parties.

Statutory sections enacted 1998. Regulations amended 2005.

[S.D. Codified Laws §§ 36-21A-128, -130, -131, -147 \(2019\); S.D. Admin. R. 20:69:16:01; :17:01 \(2019\)](#)

South Dakota, General Applicability of Provisions

Section 36-21A-149 supersedes the duties of the parties under the common law only to the extent common law is inconsistent with chapter 36-21A. Common law applies to the parties in all other respects.

Section enacted 1998.

[S.D. Codified Laws § 36-21A-149 \(2019\)](#)

South Dakota, Other Relevant Provisions

MISREPRESENTATIONS

A client or customer is not liable for licensee's misrepresentations, unless the client or customer knew of the misrepresentation. Similarly, a licensee is not liable for his client's misrepresentation unless the licensee knew of the misrepresentation.

In any agency or brokerage relationship, the licensee, client, customer, and brokerage possess only actual knowledge, and no knowledge is imputed among or between the clients or customers, the real estate brokerage, and its licensees.

Section enacted 1998.

[S.D. Codified Laws § 36-21A-148 \(2019\)](#)

South Dakota, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's agent must

- perform the terms of client's written agreement;
- exercise reasonable skill and care;
- promote the client's interests with "utmost good faith, loyalty, and fidelity";
- seek a price and terms acceptable to the client, except that the licensee need not seek other properties if the client is a party to a purchase or lease contract;
- present all written offers to and from the client in a timely manner, whether or not the client is party to a purchase or lease contract;
- disclose to the client known adverse material facts;
- advise the client to obtain expert advice as to material matters beyond the licensee's expertise;
- account in a timely manner for all money and property received; and

- comply with all applicable laws.

A buyer's or tenant's agent owes no fiduciary duty or obligation to a customer, except that a licensee must disclose all known adverse material facts to any customer. A licensee may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client.

INVESTIGATION DUTY

A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition.

CONFIDENTIALITY OBLIGATIONS

Without the buyer's or tenant's express written authority, a buyer's or tenant's agent may not disclose confidential information about the client unless

- disclosure is required by law; or
- failure to disclose would constitute misrepresentation.

AGREEMENT REQUIREMENTS

A buyer's or tenant's agency agreement must be in writing and must contain

- a description of the type and geographical area of property the client seeks,
- the agency relationship established,

- the compensation to be paid,
- the authorization and expiration date, and
- all parties' signatures.

The licensee must give the buyer or tenant a copy of the signed agreement.

Sections enacted 1998.

[S.D. Codified Laws §§ 36-21A-130, -136, -137, -138, -139 \(2019\)](#)

South Dakota, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's or landlord's agent must:

- perform the terms of the client's written agreement;
- exercise reasonable skill and care;
- promote the client's interests with "utmost good faith, loyalty, and fidelity";
- seek a price and terms that are acceptable to the client, except that the licensee need not seek additional offers while the property is subject to a sale or lease contract;

- present all written offers to and from the client in a timely manner, whether or not the property is subject to a sale or lease contract;
- disclose to the client all known adverse material facts;
- advise the client to obtain expert advice as to material matters beyond the licensee's expertise;
- account in a timely manner for all money and property received; and
- comply with all applicable laws.

A seller's or landlord's agent owes no fiduciary duty to a customer, but the licensee must disclose all known adverse material facts to any customer.

A licensee may show properties not owned by the client to prospective buyers and may list competing properties for sale without breaching any duty or obligation to the client.

INSPECTION DUTY

A seller's or landlord's agent owes no duty to conduct an independent inspection of the property. However, upon taking a listing, a licensee must "substantiate that the information taken in the listing agreement is accurate," but the licensee may disclose to the buyer that the listing information is solely the seller's representation.

CONFIDENTIALITY OBLIGATIONS

Without the seller's or landlord's express written authority, a licensee acting as a seller's or landlord's agent may not disclose confidential information about the client unless

- disclosure is required by law; or

- failure to disclose would constitute misrepresentation.

AGREEMENT REQUIREMENTS

An agency agreement in which a broker represents a seller or lessor must be in writing and contain the following:

- the legal description,
- the price and terms,
- the authorization and expiration dates,
- the agency relationship type,
- compensation,
- authorization to cooperate with or compensate other brokers,
- all parties' signatures, and
- if the broker represents more than one party in the transaction, a statement of how the representation may be altered, and all parties' authorization before the broker initiates a transaction in which the broker would represent all parties.

The licensee must give the seller or lessor a copy of the agreement.

Section 36-21A-78 enacted 1992; §§ 36-21A-130, 36-21A-132, 36-21A-134, and 36-21A-135 enacted 1998; § 36-21A-133 amended 2013.

[S.D. Codified Laws §§ 36-21A-78, -130, -132, -133, -134, -135 \(2019\)](#)

South Dakota, Term of Relationship

An agency agreement in which a broker represents a seller, lessor, buyer or tenant must contain authorization and expiration dates. Unless otherwise provided, a broker and the associated licensee owes no duty to a client or customer after termination, expiration, completion, or performance of the agency or brokerage agreement, except

- to account for all money and property received; and
- to keep confidential all information received during the engagement.

Sections enacted 1998.

[S.D. Codified Laws §§ 36-21A-130, -150 \(2019\)](#)

South Dakota, Transaction Brokers

TRANSACTION BROKER'S DUTIES

A transaction broker must:

- perform the terms of the customer's written agreement;
- exercise reasonable skill and care;
- present all offers in a timely manner;
- account in a timely manner for all money and property received;

- comply with all applicable laws; and
- disclose to the customer all known adverse material facts.

A transaction broker may not advise one party to the detriment of another party to the transaction.

INSPECTION DUTY

A transaction broker has no duty:

- to conduct an independent inspection of the property for any party's benefit;
- to verify the accuracy or completeness of a party's qualified third-party inspector's statements; or
- to conduct an independent investigation of a party's financial condition.

CONFIDENTIALITY OBLIGATIONS

A transaction broker may not, without the customer's informed written consent, disclose:

- that a buyer is willing to pay more than the asking price;
- that a seller is willing to accept less than the asking price;
- the customer's motivating factors;

- that a customer will agree to other financing terms; and
- any confidential information about a party, unless the disclosure is required by law or failure to disclose would constitute misrepresentation.

Sections enacted 1998.

[S.D. Codified Laws §§ 36-21A-144, -145 \(2019\)](#)

Tennessee

Tennessee, Definitions

Broker—generally, a person, who for consideration or with the intent of receiving consideration,

- “solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange” any real estate;
- collects rents or attempts to collect rents;
- auctions or offers to auction; or
- advertises or holds himself out as being engaged as a broker.

Client—a “party to a transaction with whom the broker has entered into a specific written agency agreement to provide services.”

Customer—a party, other than a client, “for whom or to whom a licensee provides services.”

Designated agent—a licensee who has been chosen by his managing broker to serve as a party’s agent, to the exclusion of other licensees employed by or affiliated with the broker.

Dual agency—a situation in which the licensee has agreements to provide agency services to more than one party in a transaction and in which the parties’ interests are adverse.

Facilitator—a licensee

- who assists one or more parties to a transaction, but who has not entered into a specific written agency agreement representing one or more of the parties; or
- whose agency agreement provides that if the licensee also represents another party to the same transaction, the licensee must be deemed to be a facilitator and not a dual agent.

Person—includes “individuals, corporations, partnerships or associations.”

Real estate—includes leaseholds and any other interest or estate in land, whether or not the real estate is situated in Tennessee.

Transaction—the “purchase, sale, rental, or option of an interest in real estate or business opportunity.”

Section amended 2002.

Tenn. Code § 62-13-102 (LexisNexis 2019)

Tennessee, Designated Agents

A licensee’s managing broker may appoint a licensee to represent a party in a real estate transaction to the exclusion of all other licensees employed by or affiliated with the managing broker. A managing broker is not considered a dual agent if “any individual licensee so appointed as designated agent in a transaction, by specific appointment or by written company policy, does not represent interests of any other party to the same transaction.”

DESIGNATED AGENT'S DUTIES

Using a designated agency does not

- “abolish or diminish the managing broker's contractual rights to any listing or advertising agreement between the firm and a property owner,” or
- lessen the managing broker's responsibilities to ensure that all licensees affiliated with the broker conduct business according to applicable laws.

CONFIDENTIALITY OBLIGATIONS

No knowledge is imputed among or between clients, the managing broker and any designated agents in a designated agency situation.

Section enacted 1995.

Tenn. Code § 62-13-406 (LexisNexis 2019)

Tennessee, Dual Agents

No provisions specifically applicable to dual agents were located.

Tennessee, General Agency Relationship Requirements

Until a licensee enters into a written agreement to establish an agency relationship with a party, the licensee is considered a facilitator and not deemed to be an agent or advocate of any party to the transaction. An agency or subagency relationship is not assumed, implied or created without a written agreement establishing the terms and conditions of the relationship.

Negotiating and executing an exclusive agency listing agreement or an exclusive right to sell listing agreement with a prospective seller establishes an agency relationship with the seller.

DUTIES

A licensee must

- exercise reasonable skill and care in providing services to all parties;
- disclose to each party any known adverse facts;
- maintain for each party the confidentiality of any information obtained by a licensee before “disclosure to all parties of a written agency or subagency agreement entered into by the licensee to represent either or both of the parties in a transaction”;
- provide services to each party with honesty and good faith;
- disclose to each party timely and accurate information regarding market conditions that might affect the transaction if the information is requested and available through public records;
- timely account for all funds and property received;
- not engage in self-dealing or act on behalf of licensee's immediate family or any other individual, organization or business entity in which the licensee has a personal interest without first disclosing the interest and obtaining all parties' written consent; and
- promptly tender written offers until all parties sign a sale contract.

Upon obtaining an acceptance to an offer, a broker or affiliate broker must promptly deliver an executed copy to both the purchaser and the seller. Brokers and affiliate brokers must also be certain that all of the transaction's terms and conditions are included in the purchase contract. Brokers and affiliate brokers must make certain that all of the transaction's terms and conditions are

included in the purchase contract. If an offer is rejected, the broker or affiliate broker must ask the seller to note the rejection on the offer and return it to the offeror.

A licensee owes the following duties to his client:

- to obey the client's lawful instructions if within the scope of the agency agreement; and
- to be loyal to the client's interests, by placing the client's interests before all others in negotiations unless it would violate licensee's duties to a customer under § 62-13-402 or duties to another client in a dual agency.

Unless a client specifically and individually waives the following duties in writing, a licensee must assist the client by

- "scheduling all property showings on behalf of the client";
- receiving and promptly forwarding all offers and counteroffers to the client;
- answering the client's questions in negotiating "a successful purchase agreement within the scope of the licensee's expertise"; and
- advising the client what forms, procedures and steps are needed for a successful closing.

Upon waiver of any of these required duties, the consumer's agent must advise the consumer in writing that the consumer "may not expect or seek assistance from any other licensees in the transaction" to perform the duties.

RESTRICTIONS

A licensee may not counsel another licensee's client on how to terminate or amend an existing agency contract. Also, a broker may not accept or enter into a net-price listing.

INSPECTION DUTY

A licensee is not obligated to discover or disclose latent defects in property.

CONFIDENTIALITY OBLIGATIONS

A licensee's duty of confidentiality extends to any information that the party would reasonably expect to be held in confidence, except for information

- that the party has authorized for disclosure, or
- is required to be disclosed by law.

The confidentiality duty survives the "subsequent establishment of an agency relationship" and closing.

REQUIRED DISCLOSURES

If a licensee assists an unrepresented party, the licensee must verbally disclose to the party the licensee's agent status before providing any real estate services. A licensee must also disclose known adverse facts about a property.

Upon initial contact with any other licensee involved in the same transaction, the licensee must immediately disclose his role in the transaction, including any agency relationship, to the other licensee.

The agency status disclosure must be confirmed in writing

- with an unrepresented buyer, before preparing an offer; and
- with an unrepresented seller, before the earlier of executing a listing agreement or presenting a purchase offer.

The signed receipt must acknowledge that the buyer or seller, as applicable, was informed that any complaints alleging a violation of § 62-13-312 must be filed within the applicable statute of limitations, as set forth in § 62-13-313(e). The acknowledgment must also include the commission's address and telephone number.

Section 62-13-403 amended 1996; §§ 62-13-401, 62-13-404 and 62-13-405 amended 2006; § 62-13-402 enacted 1995; § 62-13-604 amended 1999. Regulation 1260-02-.07 refiled 1980; r. 1260-02-.08 amended 2006.

Tenn. Code §§ 62-13-401, -402, -403, -404, -405, -604 (LexisNexis 2019); [Tenn. Comp. R. & Regs. 1260-02-.07, .08 \(2019\)](#)

Tennessee, General Applicability of Provisions

The duties set forth in §§ 62-13-403 and 62-13-404 supersede any fiduciary or common law duties owed by a licensee on January 1, 1996. Part 4 of chapter 62-13 supersedes common law to the extent common law is inconsistent with the provisions contained in Part 4.

The following transactions are not subject to the statutory disclosure requirements:

- the transfer or lease of commercial properties,
- public auctions,
- the transfer of residential properties of more than four units, or
- the lease or rental of residential properties.

Sections enacted 1995.

Tenn. Code §§ 62-13-402(c), -408 (LexisNexis 2019)

Tennessee, Other Relevant Provisions

SELF-DEALING

A broker may not purchase for himself property he has listed or property for which he or his company has been approached by the owner to act as broker, without first fully disclosing his position to the owner or any prospective purchaser. Also, a licensee must

- identify himself as a licensee when buying or selling property for himself;
- not engage in self-dealing, act on behalf of his immediate family, or act on behalf of any other individual or entity in which the licensee has a personal interest without first disclosing his interest and obtaining all parties' timely written consent; and
- not recommend to any party the use of services of another individual or entity in which the licensee has an interest or from whom the licensee may receive compensation for the referral (except referrals to other licensees), without timely disclosing the licensee's interest in such referral or the fact that he may receive a referral fee.

DISCLOSURE UPDATES

If the licensee's role changes, he must immediately notify any other licensees and parties to the transaction of his status change.

MISREPRESENTATIONS

A client is not liable for a licensee's misrepresentations unless the client or party knew, or had reason to know, of the misrepresentation.

Statutory sections amended 1996. Regulation amended 1998.

Tenn. Code §§ 62-13-403(7), -407 (LexisNexis 2019); [Tenn. Comp. R. & Regs. 1260-02-.11 \(2019\)](#)

Tennessee, Relationship with Buyers

A licensee entering into an exclusive buyer representation agreement must advise and confirm in writing the following to the buyer:

- that the buyer should make all arrangements to view or inspect a property through the licensee;
- that the buyer should not directly contact other licensees;
- that the buyer should immediately inform any other licensee the buyer may come into contact with that he or she is represented by the licensee; and
- whether the buyer will owe a commission if he or she purchases property without the licensee's assistance through another licensee or directly from an owner.

A licensee preparing an offer must include in the offer and make the buyer aware that a septic system inspection letter is available through the Tennessee Department of Environment and Conservation, Division of Ground Water Protection for a fee.

Regulation 1260-2-.36 adopted 2006; r. 1260-2-.37 adopted 2007.

[Tenn. Comp. R. & Regs. 1260-02-.36, -.37 \(2019\)](#)

Tennessee, Relationship with Sellers

No provisions specifically applicable to seller's agents were located.

Tennessee, Term of Relationship

No relevant provisions were located.

Tennessee, Transaction Brokers

TRANSACTION BROKER'S DUTIES

A facilitator may advise either or both parties to a transaction but cannot be a representative or advocate of either party.

REQUIRED DISCLOSURES

The statutory definition of “facilitator” provides that the facilitator must provide a “notice of assumption of facilitator status” to the buyer and seller immediately upon assumption of facilitator status. The disclosure must be confirmed in writing before executing the contract. "Transaction broker" may be used synonymously with "facilitator" as used in any disclosures, forms or agreements.

Section amended 2002.

Tenn. Code § 62-13-102 (LexisNexis 2019)

Texas

Texas, Definitions

Broker—a person, who for valuable consideration,

- “sells, exchanges, purchases, or leases real estate”;
- “offers to sell, exchange, purchase, or lease real estate”;
- negotiates or attempts to negotiate a real estate listing, sale, exchange, purchase, or lease;
- lists or attempts to list real estate;
- auctions real estate;
- deals in real estate options;
- aids, offers, or attempts to aid in locating or obtaining real estate;

- procures or assists in procuring a prospect or property for a real estate transaction;
- controls the acceptance or deposit of rent for a single-family residential unit and provides "written analysis, opinion, or conclusion relating to the estimated price of real property," if certain conditions are met;
- provides a written price analysis, opinion, or conclusion, provided specified conditions are met; or
- advises or offers advice to a real estate owner concerning the negotiation or completion of a short sale.

The term includes a person:

- employed by a real estate owner to sell any portion of his real estate; or
- engaged "in the business of charging an advance fee or contracting to collect a fee under a contract that requires the person primarily to promote the sale of real estate" by listing the real estate in a publication primarily used for such purpose or referring information about the real estate to brokers.

Intermediary—as used in § 1101.551 *et seq.*, a broker who

- is employed to negotiate a transaction between parties; and
- may act as the parties' agent.

Net listing—a listing agreement in which the broker's commission is the difference between the sales proceeds and the amount the owner desires.

Real estate—a real party interest, including a leasehold, whether or not located in Texas, but not including a security interest.

Sales agent—effective January 1, 2016, a person who is sponsored by a licensed broker to perform an act set forth in the statutory definition of "broker."

Subagent—a licensee who

- represents a principal through cooperation with and the consent of a broker; and
- is not associated with the principal's broker.

Statutory section 1101.551 amended 2001; § 1101.002 amended 2015. Regulation amended 2014.

[Tex. Occ. Code §§ 1101.002, .551 \(2017\); 22 Tex. Admin. Code § 535.16 \(2019\)](#)

Texas, Designated Agents

A broker who complies with the written consent requirements of Tex. Occ. Code § 1101.559 may appoint one associated licensee to communicate with and carry out one party's instructions, and another associated licensee to communicate with and carry out the instructions of another party to the transaction.

DESIGNATED AGENT'S DUTIES

An appointed licensee may provide opinions and advice to the party to whom the licensee has been appointed.

CONFIDENTIALITY OBLIGATIONS

An appointed licensee who acts as an intermediary may not:

- disclose to the buyer or tenant that the seller or landlord will accept less than the asking price, unless the seller or landlord instructs otherwise in writing;
- disclose to the seller or landlord that the buyer or tenant will pay more than the offered price, unless otherwise instructed in writing;
- disclose any confidential information or information a party instructs the broker or salesperson not to disclose, unless otherwise instructed in writing, disclosure is required by law or court order, or the information materially relates to the property's condition;
- treat a party to a transaction dishonestly; or
- violate chapter 1101.

REQUIRED DISCLOSURES

A licensee may be appointed as an intermediary only if:

- the parties' written consent authorizes the broker to make the appointment; and
- the broker provides written notice of the appointment to all parties.

Statutory section added 2001.

[Tex. Occ. Code § 1101.560 \(2017\)](#)

Texas, Dual Agents

Although no provisions were located specifically applicable to dual agency, see **Transaction Brokers** for provisions that are applicable to brokers acting as an intermediary between both parties to a real estate transaction.

Texas, General Agency Relationship Requirements

DUTIES

A broker who represents a party in a real estate transaction or who lists real estate for sale under an exclusive agreement is the party's agent. A licensee acting as an agent is a fiduciary and must:

- represent the client's interests;
- ensure that the agent's position is clear to all parties;
- treat other parties to a transaction fairly;
- be "faithful and observant to trust placed in the agent";
- be scrupulous and meticulous in performing his or her functions;
- place no personal interest above a client's interests;
- exercise integrity in discharging his or her responsibilities, including "employment of prudence and caution so as to avoid misrepresentation";
- be knowledgeable as a real estate brokerage practitioner, including being informed on market conditions, continuing education, and issues and developments in the real estate industry; and
- exercise judgment and skill in performing his or her work.

Although a licensee may not attempt to negotiate a sale, exchange, lease, or rental of property under an exclusive listing with another broker, he or she may solicit a listing from the owner while the owner's property is subject to an exclusive listing with another broker.

A broker must also:

- inform a party if he or she receives material information related to a transaction, including the receipt of an offer; and
- at a minimum, answer a party's questions and present any offer to or from the party.

REQUIRED DISCLOSURES

The form providing disclosures regarding a licensee's duties that was previously set forth at § 1101.558(d) was repealed in 2015, and a new form was adopted later that year. The commission's [new notice form](#) includes a description of a broker's representation and the basic duties and obligations that a broker has to a party that the broker represents.

Effective January 1, 2016, a license holder who represents a party in a proposed real estate transaction must disclose, orally or in writing, his or her representation at the time of the licensee's first contact with:

- another party to the transaction; or
- another license holder who represents another party to the transaction.

At a license holder's first substantive communication with a party relating to a proposed transaction regarding specific real property, the license holder must provide to the party a written notice in at least a 10-point font that:

- describes "the ways in which a broker can represent a party to a real estate transaction";

- describes the basic duties and obligations a broker has to a party that the broker represents; and
- provides the name, license number, and contact information for the license holder and his or her supervisor and broker, if applicable.

A licensee is not required to provide this notice if:

- the proposed transaction is for a residential lease for less than one year and a sale is not being considered;
- the licensee meets with a party the licensee knows is represented by another licensee; or
- the communication occurs at a property that is held open for any prospective buyer or tenant, and the communication concerns that property.

RESTRICTIONS

A broker may not take a net listing unless:

- the principal requires a net listing, and
- the principal "appears to be familiar with current market values of real property."

If a broker uses a net listing, the listing agreement must:

- assure the principal of receiving no less than the principal's desired price; and

- limit the broker to a specified maximum commission.

A broker may not instruct another broker to violate Tex. Occ. Code § 1101.652(b)(22), which prohibits negotiating with an owner, landlord, buyer, or tenant knowing that that person is a party to an outstanding written contract that grants exclusive agency to another broker for that transaction.

Statutory section 1101.557 amended 2005; § 1101.558 amended 2015. Regulation 531.1 amended 2014; § 531.3 amended 1998; rr. 531.2, 535.153, and 535.16 amended 2014.

[Tex. Occ. Code §§ 1101.557, .558 \(2017\); 22 Tex. Admin. Code §§ 531.1, .2, .3; 535.16, .153 \(2019\)](#)

Texas, General Applicability of Provisions

The duties of a licensee acting as an intermediary under subchapter N of chapter 1101 supersede a licensee's duties established under any other law, including common law.

A broker must agree to act as an intermediary if he or she agrees to represent a buyer or tenant and a seller or landlord.

Statutory section amended 2005.

[Tex. Occ. Code § 1101.561 \(2017\)](#)

Texas, Other Relevant Provisions

SELF-DEALING

A licensee engaging in a real estate transaction on his or her own behalf or in the capacity of a "license holder" must disclose in writing in any sale contract or rental agreement (or in any other writing given before entering into any contract of sale or rental agreement) that he or she is a licensee acting on his or her own behalf or as a "license holder." In this context, "license holder" includes a licensee acting on behalf of:

- his or her spouse, parent, or child;

- a business entity in which the licensee is more than a 10-percent owner; or
- a trust for which the licensee acts as trustee or of which the licensee or his or her spouse, parent, or child is a beneficiary.

A licensee may not:

- use his or her expertise to the other party's disadvantage; or
- act in a dual capacity as broker and undisclosed principal in a real estate transaction.

A licensee must provide a broker price opinion or comparative market analysis on a property when negotiating a listing or offering to purchase property for the licensee's own account as a result of contact made while acting as a real estate agent.

MISREPRESENTATIONS

A licensee has a "special obligation to exercise integrity in the discharge of the license holder's responsibilities, including employment of prudence and caution so as to avoid misrepresentation, in any wise, by acts of commission or omission."

Effective January 1, 2016, a party is not liable for misrepresenting or concealing a material fact made by a licensee in a real estate transaction unless the party:

- knew the misrepresentation or concealment was false; and
- failed to disclose the party's knowledge of the falsity.

A licensee is not liable for misrepresenting or concealing a material fact made by a party unless the licensee:

- knew the misrepresentation or concealment was false; and
- failed to disclose the license holder's knowledge of the falsity.

A party or a licensee is not liable for a misrepresentation or a concealment of a material fact made by a subagent unless the party or licensee:

- knew the misrepresentation or concealment was false; and
- failed to disclose the party's or licensee's knowledge of the falsity.

Statutory section 1101.652 amended 2017; § 1101.805 amended 2015. Regulations 531.2 and 535.16 amended 2014; r. 535.144 amended 2015.

[Tex. Occ. Code §§ 1101.652\(b\)\(16\), .805 \(2017\); 22 Tex. Admin. Code §§ 531.2; 535.144, .16 \(2019\)](#)

Texas, Relationship with Buyers

BUYER'S AGENT'S DUTIES

The form addressing a licensee's duties that was previously set forth at Tex. Occ. Code § 1101.558(d) was repealed in 2015, and a new form adopted later that year. The [new notice form](#) includes a description of a broker's representation and the basic duties and obligations that a broker has to a party that the broker represents.

Section amended 2015.

[Tex. Occ. Code § 1101.558 \(2017\)](#)

Texas, Relationship with Sellers

SELLER'S AGENT'S DUTIES

The form addressing a licensee's duties that was previously set forth at Tex. Occ. Code § 1101.558(d) was repealed in 2015, and a new form adopted later that year. The [new notice form](#) includes a description of a broker's representation and the basic duties and obligations that a broker has to a party the broker represents.

A broker is obligated under a listing contract to negotiate the best possible transaction for the principal the broker has agreed to represent.

Statutory section amended 2015. Regulation amended 2014.

[Tex. Occ. Code § 1101.558 \(2017\); 22 Tex. Admin. Code § 535.16 \(2019\)](#)

Texas, Term of Relationship

No relevant provisions were located.

Texas, Transaction Brokers

Although no provisions were located specifically applicable to transaction brokers, the provisions related to intermediaries are applicable.

DUTIES

The form that addressed an intermediary's duties, which was previously set forth at § 1101.558(d), was repealed in 2015 and a new form issued later that year. The commission's [new notice form](#) includes a description of a broker's representation as an intermediary and the basic duties and obligation that a broker has to a party the broker represents.

With the parties' consent, an intermediary may appoint an associated licensee to communicate with and carry out one party's instructions and another associated licensee to communicate with and carry out the other party's instructions.

An intermediary must act fairly and impartially.

REQUIRED DISCLOSURES

A broker may act as an intermediary between parties to a transaction if:

- the broker obtains each parties' written consent for the broker to act as an intermediary; and
- the parties' written consent states the source of any expected compensation to the broker.

AGREEMENT REQUIREMENTS

A written listing agreement that authorizes a broker to act as an intermediary in a real estate transaction is "sufficient to establish written consent of the party to the transaction if the written agreement specifies in conspicuous bold or underlined print the conduct that is prohibited under Section 1101.651(d)."

RESTRICTIONS

A licensee who acts as an intermediary may not:

- disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price, unless the seller or landlord instructs otherwise in a separate writing;
- disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord, unless the buyer or tenant instructs otherwise in a separate writing;
- disclose any confidential information or any information a party specifically instructs the broker or sales agent in writing not to disclose, unless (a) the party instructs otherwise in a separate writing, (b) a statute or court order requires the licensee to disclose the information, or (c) the information materially relates to the property's condition;
- treat a party dishonestly; or
- violate chapter 1101.

Statutory section 1101.559 enacted 2001 and effective 2003; §§ 1101.558 and 1101.651 amended 2015.

[Tex. Occ. Code § 1101.559, .651 \(2017\)](#); *see also* [Tex. Occ. Code § 1101.558 \(2017\)](#)

Utah

Utah, Definitions

Brokerage agreement—a written agreement between a client and a principal broker

- to list for sale, lease, or exchange real estate, a real estate option, or a real estate improvement, or for representation in the purchase, lease, or exchange of that real estate; and
- that gives the principal broker the expectation of receiving valuable consideration in exchange for the services.

Exclusive brokerage agreement—a brokerage agreement that gives the principal broker the sole right to act as the client's agent or representative for the purchase, sale, lease, or exchange of real estate, a real estate option, or a real estate improvement.

Net listing—a listing in which the commission amount is the difference between the property's selling price and a minimum price set by the seller.

Principal broker—an individual who is licensed as a principal broker and who

- sells or lists real estate, including real estate being sold as part of a foreclosure rescue, or a business opportunity with the expectation of receiving valuable consideration;
- buys, exchanges, or auctions real estate, an option on real estate, a business opportunity, or improvements on real estate with the expectation of receiving valuable consideration;
- advertises or otherwise holds himself or herself out to be engaged in the brokerage business;
- is employed by an owner or prospective purchaser of real estate to perform brokerage acts;

- manages property owned by another or who advertises or otherwise holds himself or herself out to be engaged in property management;
- generally, assists or directs in the procuring prospects for or negotiates real estate transactions for consideration;
- generally, assists or directs the closing of a real estate transaction for consideration (except for a mortgage lender or title insurance producer, or its employees).

Real estate—includes “leaseholds and business opportunities involving real property.”

Residential property—real property containing a single-family one- to four-unit dwelling.

Statutory section 61-2f-102 amended 2017; § 61-2f-308 amended 2014. Regulation amended 2014.

[Utah Code §§ 61-2f-102, -308 \(2019\); Utah Admin. Code r. 162-2f-102 \(2019\)](#)

Utah, Designated Agents

A party who engages a principal broker’s services may designate which sales agents or associate brokers affiliated with the principal broker will also represent that party in the transaction.

Section amended and renumbered 2010.

[Utah Code § 61-2f-302\(5\) \(2019\)](#)

Utah, Dual Agents

A principal broker and a licensee who act as agent for both seller and buyer or lessor and lessee in a transaction are limited agents. A licensee may act for more than one party in a transaction only with the parties’ informed consent.

"Limited agency" means the "representation of all principals in the same transaction to negotiate a mutually acceptable agreement," subject to the terms of a limited agency agreement and with all principals' informed consent.

DUAL AGENT'S DUTIES

An individual licensee acting under a limited agency agreement must be a neutral third party and uphold the following fiduciary duties to both parties:

- obedience, which means the limited agent must obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;
- reasonable care and diligence;
- holding safe all money or property entrusted to the limited agent; and
- any additional duties contained in the agency agreement.

CONFIDENTIALITY

An individual licensee acting as a limited agent may not disclose any information given to the agent by either principal that would "likely weaken that party's bargaining position if it were known," unless the licensee has the principal's permission.

REQUIRED DISCLOSURES

In order to represent both principals in a transaction as a limited agent, an individual licensee must obtain informed consent by:

- clearly explaining in writing to both parties that each is entitled to be represented by a separate agent, the type of information that will be held confidential, the type of information that will be disclosed, and the "circumstances under which the withholding of information would constitute a material misrepresentation" regarding the property or a party's ability to fulfill its obligation;
- obtaining a written acknowledgment from each party affirming that the party waives the right to undivided loyalty, absolute confidentiality, and full disclosure; and
- obtaining a written acknowledgment from each party affirming that the party understands that the licensee will "act in a neutral capacity" to advance each party's interests.

AGREEMENT REQUIREMENTS

An individual licensee must, for the purpose of defining the agency's scope, execute a written agency agreement that identifies the buyer and the seller the individual represents as a limited agent.

RESTRICTIONS:

A licensee may not act as a limited agent in any transaction in which:

- the licensee is a principal; or
- an entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal.

Statutory section amended 2019. Regulations 162-2f-102 and 162-2f-401b amended 2013; r. 162-2f-401a amended 2016.

[Utah Admin. Code r. 162-2f-102, -401a, -401b \(2019\)](#); see also [Utah Code § 61-2f-401\(2\) \(2019\)](#)

Utah, General Agency Relationship Requirements

DUTIES

A principal broker subject to an exclusive brokerage agreement must

- accept delivery of and present offers and counteroffers to buy, lease, or exchange the client's real estate;
- help the client develop, communicate, and present offers, counteroffers, and notices; and
- answer the client's questions regarding any offer, counteroffer, notice, and contingency.

REQUIRED DISCLOSURES

An individual licensee, before executing a binding agreement, must disclose in writing to clients, agents for other parties, and unrepresented parties:

- the licensee's position as a principal in any transaction where "the licensee operates either directly or indirectly to buy, sell, lease, or rent real property";
- the fact that the licensee holds a license with the division, if the licensee is a principal in an agreement to buy, sell, lease, or rent real property;
- the licensee's agency relationships;
- the existence or possible existence of a due-on-sale clause in an underlying encumbrance; and

- the "potential consequences" of selling or purchasing property without obtaining the holder's authorization.

Also, an individual licensee must:

- upon initial contact with another agent, disclose the licensee's agency relationship;
- when executing a binding agreement in a sales transaction, confirm the prior agency disclosure, in either the approved Real Estate Purchase Contract or in a "separate provision with substantially similar language incorporated in or attached to the binding agreement";
- when executing a lease or rental agreement, confirm the prior agency disclosure by incorporating it into the agreement or attaching it as a separate document;
- comply with statutory notice and written authorization requirements when offering an inducement to a buyer who will not pay a real estate commission in a transaction or when the licensee wants to act as a subagent for the purpose of showing property owned by a seller who is under contract with another brokerage;
- disclose in writing to all parties any compensation in addition to the real estate commission that the licensee will receive in connection with a real estate transaction; and
- as to a guaranteed sales agreement, provide full disclosure regarding the guarantee.

AGREEMENT REQUIREMENTS

An individual licensee must, for the purpose of defining the scope of the individual's agency, execute a written agency agreement that identifies the party the individual represents.

Statutory section amended 2014; regulation amended 2016.

[Utah Code § 61-2f-308 \(2019\); Utah Admin. Code r. 162-2f-401a \(2019\)](#)

Utah, General Applicability of Provisions

No relevant provisions were located.

Utah, Other Relevant Provisions

SELF-DEALING

A licensee generally must disclose in writing whether a purchase, sale, or rental transaction is "made for that person or for an undisclosed principal."

Before executing a binding agreement, an individual licensee must disclose the following in writing to clients, other parties' agents, and unrepresented parties:

- the "licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property";
- the fact that the licensee holds a license if the licensee is a principal in an agreement to buy, sell, lease, or rent real property; and
- the licensee's agency relationships.

An advertising group or other marketing entity that is not registered as a brokerage may not advertise as an "owner-agent" or "owner-broker."

A licensee may not act as a limited agent in a transaction in which

- he or she is a principal; or

- an "entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal."

SUBAGENCY

An individual licensee who wants to act as a subagent for the purpose of showing property owned by a seller who is under contract with another brokerage, must, before showing the seller's property:

- notify the listing brokerage that subagency is requested; and
- enter into a written agreement with the listing brokerage consenting to the sub-agency, defining the scope of the agency, obtaining all available information about the property from the listing broker, and upholding the same fiduciary duties as required by R162-2f-401a(1).

A licensee who acts as a subagent owes the same fiduciary duty to a principal as the brokerage retained by the principal.

Statutory section amended 2018. Regulation 162-2f-401h adopted 2010; r. 162-2f-401b amended 2013; r. 162-2f-401a amended 2016.

[Utah Code § 61-2f-401\(10\) \(2019\)](#); [Utah Admin. Code r. 162-2f-401a, -401b, -401h \(2019\)](#)

Utah, Relationship with Buyers

BUYER'S AGENT'S DUTIES

An individual licensee owes the principal the following fiduciary duties:

- loyalty, obligating the agent to place the principal's best interests above all other interests, including the agent's own;
- obedience, obligating the agent to obey the principal's lawful instructions;
- full disclosure, obligating the agent to tell the principal all known material information about the other party or the transaction;

- confidentiality, prohibiting the agent from disclosing, without permission, information given by the principal that would likely weaken the principal's bargaining position, except knowledge regarding a defect in the property or the client's ability to perform the contract;
- reasonable care and diligence;
- "holding safe and accounting for all money or property" received; and
- any additional duties created by agreement.

AGREEMENT REQUIREMENTS

A licensee must have a written agency agreement with his or her principal that defines the scope of the agency relationship.

Regulation amended 2016.

[Utah Admin. Code r. 162-2f-401a \(2019\)](#)

[Utah, Relationship with Sellers](#)

SELLER'S AGENT'S DUTIES

An individual licensee owes his or her principal the following fiduciary duties:

- loyalty, obligating the agent to place the principal's best interests above all other interests, including the agent's own;
- obedience, obligating the agent to obey the principal's lawful instructions;
- full disclosure, obligating the agent to disclose to the principal all known material information about the other party or the transaction;
- confidentiality, prohibiting the agent from disclosing, without permission, information given by the principal that would likely weaken the principal's bargaining position, except knowledge regarding a defect in the property or the client's ability to perform the contract;
- reasonable care and diligence;

- "holding safe and accounting for all money or property" received; and
- any additional duties created by agreement.

INSPECTION DUTY

A licensee offering any property for sale or lease must "make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property." A licensee offering a residential property for sale must disclose as follows the source on which the licensee relies for any square footage data that will be used when marketing of the property:

- in the executed written agreement through which the licensee acquires the right to offer the property for sale; and
- in a written disclosure provided to the buyer at or before the deadline for the seller's disclosure as set forth in the sale contract.

AGREEMENT REQUIREMENTS

A licensee must have a written agency agreement with his or her principal defining the agency's scope.

RESTRICTIONS

Net listings are prohibited.

An individual licensee may not subject a principal to paying a double commission without his or her principal's informed consent. Also, a licensee may not enter into a concurrent agency representation agreement if the licensee knows or should know that the principal has an existing agency representation agreement with another licensee.

Regulation 162-2f-401b amended 2013; r. 162-2f-401a amended 2016.

[Utah Admin. Code r. 162-2f-401a, -401b \(2019\)](#)

Utah, Term of Relationship

A principal broker subject to an exclusive brokerage agreement need not comply with the duties set forth in § 61-2f-308(2)(a) after

- an agreement for the sale, lease, or exchange is signed; the contingencies are satisfied or waived; and the sale, lease, or exchange is closed; or
- the agreement expires or terminates.

Statutory section amended 2014.

[Utah Code § 61-2f-308\(2\)\(b\) \(2019\)](#)

Utah, Transaction Brokers

No provisions were located specifically applicable to transaction brokers.

Vermont

Vermont, Definitions

Brokerage firm—a business entity that is engaged in brokerage services.

Brokerage services—activities requiring a license, as specifically listed in 26 VSA § 2211(a)(4).

Buyer—a “person who buys, offers to buy, intends to buy, or is interested in buying real estate.”

Client—as of December 1, 2015, the person with whom a brokerage firm and its licensees, or designated licensees, has an agency relationship related to the negotiation, sale, purchase, or exchange of real estate. Licensees owe a fiduciary duty to their clients.

Designated Agency—as of December 1, 2015, the "practice by which one or more licensees affiliated with a brokerage firm is appointed to act as an agent of the brokerage firm's buyer or seller client." Designated agents owe their clients fiduciary duties.

Exclusive Agency Marketing Agreement—a seller service agreement that “expressly reserves to the owner the right to sell or market the property himself or herself without liability to the brokerage firm for a commission or fee, and which grants the brokerage firm the right to market the property, but which prohibits the owner from listing the property with any other brokerage firm” for the agreement's term.

Exclusive Buyer Agency Agreement—a buyer service agreement "by which a buyer engages a single brokerage firm to provide brokerage services, and by which the buyer agrees not to obtain services from any other broker, but which expressly reserves to the buyer the right to purchase property himself or herself without liability to the brokerage firm for a commission or fee."

Exclusive Right to Market Agreement—a seller service agreement that grants the brokerage firm "the exclusive right to market the property, and which recognizes a liability on the part of the owner for a commission or fee to the brokerage firm, even if the property is sold by the owner."

Exclusive Right to Represent Buyer Agreement—a buyer service agreement that grants to the brokerage firm the exclusive right to act on the buyer's behalf in a real estate purchase, and that "recognizes a liability on the part of the buyer for a commission or fee to the brokerage firm, even if a property is purchased" without the brokerage firm's assistance.

Licensee—a person holding a license issued by the Commission.

Net listing—a brokerage service agreement pursuant to which the “benefit of negotiating a higher price for the seller or a lower price for the buyer accrues only to the agent or brokerage firm and not to the client.”

Non-Designated Agency—as of December 1, 2015, the practice by which all licensees affiliated with a brokerage firm act as the brokerage firm's clients' agent. All licensees affiliated with the brokerage firm owe their clients fiduciary duties.

Person—includes “individuals, corporations, partnerships, trusts, associations, cooperatives, or other firms or entities.”

Principal broker—the “individual broker responsible for the brokerage firm and all associated branch offices”

Real estate—an interest or estate in land, except leaseholds, whether or not situated in Vermont or elsewhere, but not including oil, gas, or mineral leases, or other mineral leaseholds, mineral estates, or mineral interests.

Real estate broker—a person who, for another and for consideration, “engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct,” any of the following:

- lists, offers, attempts or agrees to list real estate for sale or exchange;
- “sells, exchanges or purchases real estate”;
- “offers to sell, exchange or purchase real estate”;
- negotiates or attempts to negotiate the sale, exchange or purchase of real estate;
- buys, sells, or otherwise deals in options on real estate;
- advertises or holds himself out as being engaged in the real estate business;
- assists or directs in the procuring of prospects intended to result in the sale or exchange of real estate;
- provided that a nonlicensed employee must be allowed to respond to inquiries from members of the public, as long as the employee makes it clear that he is not licensed and that any information should be confirmed by a licensed person.

Statutory section amended 2017. Regulation amended 2015.

[Vt. Stat. Ann. tit. 26, § 2211 \(2018\); 04-030-290 Vt. Code R. § 1.8 \(2019\)](#)

Vermont, Designated Agents

As of December 1, 2015, if a brokerage firm has more than two licensees, the brokerage firm may elect to practice designated agency. Such brokerage firm is known as a "designated agency firm," and its status must be disclosed in seller and buyer service agreements.

DESIGNATED AGENT'S DUTIES

A designated agency firm must delegate to its individual licensees all brokerage firm agency and fiduciary responsibilities for specific clients of the firm pursuant to written agreements. These responsibilities may be delegated to a single licensee or to multiple licensees associated with the brokerage firm. Only designated agents owe the client fiduciary duties.

A designated agency firm and the designated agent with respect to a specific client must:

- obtain the client's written consent to the appointment of the initial and any subsequent designated agent at the time the seller or buyer service agreement is executed or amended;
- take ordinary and necessary care to protect all client confidences from disclosure to third parties and to other licensees of the firm who are not designated agents for the client, unless all affected clients authorize disclosure;
- until closing, submit all offers to or from the client; and
- if true, disclose the fact that the firm provides brokerage services to both buyers and sellers.

CONFIDENTIALITY OBLIGATIONS

A designated agency firm and the designated agent for a specific client must take ordinary and necessary care to protect all client confidences from disclosure to third parties and to other

licensees of the firm who are not designated agents for the client, unless all affected clients authorize disclosure.

A client's confidential information may not go beyond the designated agents or his or her supervising licensee, except with the client's prior authorization. A designated agent may reveal a client's confidential information "to the extent reasonably necessary to obtain proper guidance from the supervisor in charge of such agent, as long as that supervisor is not acting as an agent for another party" in the transaction. The supervisor must protect confidential information received in a supervisory capacity from further disclosure. All seller and buyer service agreements must contain clear language that notifies the client that this can occur.

When a designated agent is appointed, information the designated agent knows or acquires is not imputed to the brokerage firm or to other licensees within the same brokerage firm.

REQUIRED DISCLOSURES

If true, a designated agency firm and the designated agent for a specific client must disclose the fact that the firm provides brokerage services to both buyers and sellers in the market. The fact that the firm provides brokerage services to both buyers and sellers in the market must be part of any seller or buyer service agreement executed on the firm's behalf.

AGREEMENT REQUIREMENTS

Seller or buyer service agreements must contain:

- disclosure of status as a designated agency firm;
- if true, disclose the fact that the firm provides brokerage services to both buyers and sellers in the market;

- clear language that notifies the client that confidential information may be disclosed to a supervisor; and
- if true, the fact that the firm provides brokerage services to both buyers and sellers in the market.

RESTRICTIONS

A designated agency firm and its designated agent for a particular client may not:

- practice dual or limited agency by acting as an agent for both a buyer and a seller in the same transaction, although a designated agent may act as an agent for one party in a transaction if the other party is an unrepresented customer;
- practice non-designated agency; or
- provide or offer to provide services as an intermediary, a transactional broker, a facilitator, or "any other form of representation not involving an agency relationship for which fiduciary duties are owed." (This provision does not preclude the right to make referrals.)

A designated agency firm must ensure that there is a supervising licensee within the firm to provide guidance to a designated agent in the event of a conflict if the principal broker or broker in charge is acting as a designated agent for one of the parties to the transaction. Also, if a principal broker or broker in charge who is the designated licensee for a client has the opportunity to create a conflict of interest if their client enters into a transaction with another client of the brokerage firm, the principal broker or broker in charge must "delegate their supervisory responsibilities, for the other licensee in the transaction, to a qualified supervising licensee."

Regulations amended 2015.

Vermont, Dual Agents

Effective December 1, 2015, neither a non-designated agency firm nor a designated agency firm and their licensees may practice dual or limited agency by acting as agent for both a buyer and seller in the same transaction.

AGREEMENT REQUIREMENTS

A seller service agreement must contain a provision for avoiding dual agency and other conflicts with respect to the brokerage firm's buyer service agreements. Similarly,

- a buyer service agreement must contain a provision for avoiding dual agency and other conflicts with respect to the brokerage firm's seller service agreements; and
- a cooperation agreement between brokerage firms must contain a provision for avoiding dual agency conflicts with respect to each brokerage firm's other brokerage service agreements.

Regulations amended 2015.

[04-030-290 Vt. Code R. § 4.3, .9, .10, .11 \(2019\)](#)

Vermont, General Agency Relationship Requirements

Effective December 1, 2015, all brokerage firms that are not under an election to practice designated agency are non-designated agencies. Non-designated agency firms must disclose their status in seller and buyer service agreements. A non-designated agency firm is the agent of each of the firm's clients and "on its behalf all licensees of the firm represent all clients of the firm pursuant to written agreements for brokerage services."

A non-designated agency firm may retain and compensate another brokerage firm to assist it in providing services to its clients without creating an agency relationship between the client and the other firm. This practice is known as broker agency.

DUTIES

A non-designated agency firm and all its licensees owe their clients fiduciary duties.

A non-designated agency firm and its licensees must:

- take "ordinary and necessary care to protect all client confidences from disclosure to third parties," except upon all affected clients' prior authorization;
- until closing, submit all offers to or from the client; and
- if true, disclose the fact that the brokerage firm provides brokerage services to both buyers and sellers in the market. (This disclosure must be part of any seller or buyer service agreement executed on the brokerage firm's behalf.)

CONFIDENTIALITY OBLIGATIONS

Unless otherwise agreed, the duty to protect a principal's confidences continues after the agreement has terminated.

REQUIRED DISCLOSURES

A brokerage firm and its licensees must provide to any unrepresented person with whom a licensee of the brokerage firm has substantial contact, including contact by electronic communication, a true copy of the Commission's most recent consumer disclosure form. The disclosure must occur at the first reasonable opportunity, and it must occur before:

- entering into a brokerage service agreement; or
- showing a property.

If it has been more than 12 months since the consumer received a disclosure form, the firm must give the consumer a new consumer disclosure form. The current consumer disclosure form adopted by the Commission can be accessed through the [Commission's website](#).

Note that in this context, an "unrepresented person" is a person who:

- "is under a brokerage service agreement for representation with, but is not at the time in the presence of their agent," or
- is not under contract with a brokerage firm.

If a person required to receive a written disclosure form refuses to sign the form, the licensee must:

- note that information on the form;
- sign and date the form; and
- provide a copy to the person.

The licensee's signature constitutes a certification that the licensee provided the form to the person with the recommendation to read the disclosure.

The disclosure form is not required for unrepresented persons in the following situations:

- for an open house, if the host brokerage firm conspicuously displays a poster containing a replica of the disclosure form, with copies available on request;
- for "any Vermont broker or salesperson licensee;" or
- for a customer of "a cooperating firm brought to a principal firm pursuant to a cooperation agreement between brokerage firms," if the customer has already received the disclosure form from the cooperating firm.

A licensee, before a showing, must disclose any known significant limitations on the seller's ability to convey a fee simple interest.

AGREEMENT REQUIREMENTS

Before rendering any brokerage services, a firm must have:

- a written seller service agreement;
- a written buyer service agreement; or
- a written cooperation agreement between brokerage firms.

Seller and buyer service agreements must include the following provisions:

- non-designated agencies must disclose their status as such;
- if true, disclosure of the fact that the brokerage firm provides brokerage services to both buyers and sellers; and
- a provision indicating that a designated agent may reveal the client's confidential information to the extent reasonably necessary to obtain proper guidance from any supervising licensee in charge of the agent, as long as that supervising licensee is not an agent for another party in a transaction.

Copies of all agreements for brokerage services must be given to all parties at the time of execution, or as soon as possible thereafter.

RESTRICTIONS

A non-designated agency firm and its licensees may not:

- practice dual or limited agency by acting as agent for both a buyer and seller in the same transaction, although the firm may act as an agent for one party in a transaction if the other party is an unrepresented customer;
- practice designated agency; or
- provide or offer to provide services as an intermediary, a transactional broker, a facilitator, or any other form of representation not involving an agency relationship for which fiduciary duties are owed. (This provision does not preclude the right to make referrals.)

See regulation 4.11 for the required contents of a cooperation agreement between brokerage firms.

Statutory section amended 2019. Regulations amended 2015.

[Vt. Stat. Ann. tit. 26, § 2296\(a\)\(4\), \(5\) \(2018\); 04-030-290 Vt. Code R. §§ 1.8; 4.3, .4, .5, .6; .8; .11 \(2019\)](#)

Vermont, General Applicability of Provisions

No relevant provisions were located.

Vermont, Other Relevant Provisions

SELF-DEALING

General requirements

A licensee who buys property from his principal must show affirmatively that he or she “acted in good faith in the transaction.” A licensee buying or selling for his own account must disclose the following on initial contact with the seller or buyer:

- his real estate license; and
- that the property belongs to the licensee or will be purchased for the licensee's use.

Designated agency firms

Effective December 1, 2015, a designated agency firm must terminate a seller service agreement before "a designated agent associated with the brokerage firm enter[s] into negotiations on his or her own behalf to purchase a property in which he/she is a designated agent for the property listed by the brokerage firm." Also, the brokerage firm must:

- provide the client with an opportunity to seek outside representation; and
- disclose in writing that a conflict of interest is automatically created due to the client's and the licensee's competing interests.

Similarly, before entering into negotiations for "the sale of property owned by a licensee of the brokerage firm who is the designated agent of the buyer under a buyer service agreement with the brokerage firm," the designated agency firm must terminate the buyer service agreement. Also, the brokerage firm must:

- provide the client with an opportunity to seek outside representation; and
- disclose in writing that a conflict of interest is automatically created due to the client's and the licensee's competing interests.

In these cases, a designated agency firm may not advance the client's interests and provide undivided loyalty while negotiating with a licensee associated with the brokerage firm. The client may elect to remain an unrepresented customer of the brokerage firm, and not seek outside representation, if the client provides informed written consent.

A designated agency firm and its associated licensees must show affirmatively that they acted in good faith in the transaction.

Non-designated agency firms

Effective December 1, 2015, a non-designated agency firm must terminate a seller service agreement before a licensee associated with the brokerage firm enters into negotiations on his or her own behalf to purchase a property listed by the brokerage firm. Also, the brokerage firm must:

- provide an opportunity for the client to seek outside representation; and
- disclose in writing that a conflict of interest is automatically created due to the client's and the licensee's competing interests.

Before entering into negotiations for the sale of property owned by a licensee of the non-designated agency firm to a buyer under a buyer service agreement with the brokerage firm, the brokerage firm must:

- terminate the buyer service agreement to provide the client an opportunity to seek outside representation; and
- disclose in writing that a conflict of interest is automatically created due to the client's and the licensee's competing interests.

In these cases, a non-designated agency firm cannot advance the client's interests and provide undivided loyalty while negotiating with a licensee associated with the brokerage firm. The client may elect to remain an unrepresented customer of the non-designated agency firm, and not seek outside representation, if the client provides informed written consent.

A non-designated agency firm and its associated licensees must show affirmatively that they acted in good faith.

Regulations amended 2015.

[04-030-290 Vt. Code R. §§ 4.3, .5, .6 \(2019\)](#)
Vermont, Relationship with Buyers

AGREEMENT REQUIREMENTS

A buyer service agreement must contain:

- an identification of the agreement in boldface type at the top, stating either “NONEXCLUSIVE (Open) BUYER AGENCY AGREEMENT,” “EXCLUSIVE BUYER AGENCY AGREEMENT,” or “EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT”;
- the agreement’s date;
- a specific expiration date and effective date;
- all authorized terms of the agency;
- a description of the services the firm will perform under the contract, including any limitations on services;
- a provision for avoiding dual agency and other conflicts with respect to the firm's seller service agreements;
- a statement of the transaction fee or other compensation to be paid the brokerage firm, its computation method, and the person who will pay it;
- all parties’ signatures; and
- a "clear description of whether, and how, cooperating and/or buyer broker agents will be compensated."

A buyer service agreement may contain a clause that provides for compensation following expiration or termination if:

- a purchase and sale agreement is signed, a closing is held, or the property is otherwise purchased, within a specific number of months (not to exceed 12) following the agreement's expiration or termination date;
- the firm, during the agreement's term, "was procuring cause of the sale";
- the firm "provided the name of the seller and identification of the property to the buyer in writing not later than 10 days" after the agreement's expiration or termination date; and
- the buyer has not retained another firm under an exclusive right to represent buyer agreement with terms and conditions similar to those contained in the expired or terminated agreement.

No other provision for compensation following expiration is permitted.

Regulations amended 2015.

[04-030-290 Vt. Code R. §§ 4.10, .11 \(2019\)](#)

Vermont, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee working for a brokerage firm employed by a seller must fully and promptly disclose to a prospective buyer all material facts within the licensee's knowledge concerning the property being sold, which obligation continues until the sale is closed or has been cancelled. If the client refuses to consent to disclosure after being informed that the licensee considers disclosure to be necessary, then the licensee must withdraw from the agency relationship.

AGREEMENT REQUIREMENTS

A seller service agreement must contain:

- an identification of the type of seller service agreement in boldface type at the top stating either "NONEXCLUSIVE (Open) AGENCY MARKETING AGREEMENT," "EXCLUSIVE AGENCY MARKETING AGREEMENT," or "EXCLUSIVE RIGHT TO MARKET AGREEMENT," and each

type of agreement must be on a separate form and identified with only one of the headings in boldface type;

- a clear description of the property and its location;
- the “price, terms and conditions upon which the brokerage firm is authorized has authorization to market the property”;
- the specific brokerage services the firm will provide;
- the agreement’s date;
- a specific expiration date and effective date;
- a provision for avoiding dual agency and other conflicts with respect to the brokerage firm's buyer service agreements;
- a statement of the compensation to be paid, the method of computing the compensation, and the person who will pay it;
- the owners’ and licensee’s signatures; and
- a "clear description of whether, and how, cooperating brokerage firms will be compensated."

A seller service agreement may contain a clause providing for compensation following expiration or termination if:

- a sale agreement is signed, a closing is held, or the property is otherwise sold, within a specified number of months (but no more than 12) following the agreement’s expiration or termination;
- the brokerage firm, during the agreement’s term, was the “procuring cause of the sale”;
- the firm “provided the name of the purchaser to the seller in writing not later than 10 days after” the agreement expired or terminated; and
- the property has not been listed with another firm under an exclusive agreement with terms and conditions similar to those contained in the expired or terminated agreement.

No other provision for compensation after expiration or termination is permitted.

Regulations amended 2015.

[04-030-290 Vt. Code R. §§ 4.5, .9 \(2019\)](#)

Vermont, Term of Relationship

A brokerage services agreement must contain a specific expiration date no more than one year from the agreement's effective date. The contract may not contain a provision for automatic extension or renewal.

Regulation amended 2015.

[04-030-290 Vt. Code R. § 4.8\(b\) \(2019\)](#)

Vermont, Transaction Brokers

No provisions were located specifically applicable to transaction brokers.

Virgin Islands

Virgin Islands, Definitions

Real estate—leaseholds and other land interests or estates, whether the real estate is located in the Virgin Islands or elsewhere.

Real estate broker—any person who acts as an agent for any principal involved in “the sale, purchase, lease or rental of real property, or who solicits listings of real estate for the same purpose, or who advertises or holds himself out as engaged in any of the foregoing activities,” and includes any person who charges an advance fee for promoting the sale of real estate through its listing in a publication issued primarily for such purpose or for referring information to brokers.

Section amended 1986.

V.I. Code Ann. tit. 27, § 421 (LexisNexis 2019)

Virgin Islands, Designated Agents

No relevant provisions were located.

Virgin Islands, Dual Agents

REQUIRED DISCLOSURES

A licensee may be disciplined for receiving compensation from more than one party without the full knowledge of all parties.

Section amended 1986.

Virgin Islands, General Agency Relationship Requirements

DUTIES

A broker must deliver to the seller and the buyer at the time a transaction is consummated, a complete, detailed closing statement, showing all receipts and disbursements the broker handled. The broker must retain a copy of the statement.

The Virgin Islands Code of Ethics contains the following affirmative duties, among others:

- to be "informed as to movements affecting real estate in his community, territory and the nation";
- to be well informed on current market conditions;
- to protect the public against fraud, misrepresentation, or unethical practices;
- to "ascertain all pertinent facts concerning every property for which he accepts the agency";
- to keep in a separate bank account all funds coming into the broker's possession in trust for others;
- to assure that final obligations and commitments regarding real estate transactions are in writing and express the parties' exact agreement;
- to assure that all parties receive copies of the agreements at the time they are executed;
- to protect and promote their client's interests, while dealing fairly with all parties;

- to stay informed regarding relevant laws, proposed legislation, governmental orders, and other essential information and public policies; and
- if more than one formal written offer is made before the owner has accepted an offer, to transmit to the owner any other formal written offer presented to the broker.

REQUIRED DISCLOSURES

A licensee may be disciplined for "failing to make known for which party he is acting."

RESTRICTIONS

Negotiations concerning property that is listed exclusively with one broker must be carried on with the listing broker, not the owner. A licensee may not attempt to obtain an exclusive listing or sales contract from an owner if the licensee knows or has reason to believe that another broker has an exclusive listing on the property, unless the broker has written permission from the broker with the first exclusive listing.

Pursuant to the Virgin Islands Code of Ethics, a broker may not:

- name false consideration in any document;
- engage in activities that constitute the practice of law;
- accept compensation from more than one party without the all parties' full knowledge; or

- make an appraisal that is outside his or her field of experience, unless the broker obtains the assistance of an authority on such types of property or unless he or she fully discloses that fact to the client.

Also, a broker cooperating with a listing broker "should not invite the cooperation of a third broker" without the listing broker's consent.

Statutory section amended 1986. Regulatory history unknown.

V.I. Code Ann. tit. 27, § 429 (LexisNexis 2019); 27 V.I. Code R. §§ 422-1, -14, -51 (West 2019)

Virgin Islands, General Applicability of Provisions

No relevant provisions were located.

Virgin Islands, Other Relevant Provisions

SELF-DEALING

A licensee may be disciplined for failing to disclose to an owner the licensee's intention or true position if "he directly or indirectly purchases for himself, or acquires or intends to acquire any interest in, or options to purchase property which he or his associates have been employed to sell."

Virgin Islands regulations further provide that a broker may not advertise to sell, buy, exchange, rent, or lease property in a manner indicating that the offer is being made by a private party not engaged in the real estate business. The broker must "affirmatively unmistakably" indicate that he or she is a licensed real estate broker. A salesman may not advertise under his own name to purchase or offer for sale or lease any property.

A licensee may not buy for himself property listed with him or on which he has been approached by the owner to act as a broker. Also, a licensee may not acquire any interest in such property without first making his "true position" clearly known to the listing owner.

A licensee may not buy or lease, or take an option to buy or lease, property listed with him or on which he has been requested to act as a broker, unless the licensee:

- clearly discloses to the seller his position as a buyer rather than a broker; and
- inserts a clause to that effect in the contract.

A licensee may not sell, lease, or otherwise convey property he or she owns, unless the licensee:

- clearly discloses to the buyer his position as a seller rather than a broker; and
- inserts a clause to that effect in the contract.

MISREPRESENTATIONS

A licensee may be disciplined for pursuing "a continued and flagrant course of misrepresentation."

Statutory section amended 1986. Regulatory history unknown, but changes since 2014 are apparent.

V.I. Code Ann. tit. 27, § 429 (LexisNexis 2019); 27 V.I. Code R. §§ 422-11, -16, -17 (West 2019)

[Virgin Islands, Relationship with Buyers](#)

BUYER'S AGENT'S DUTIES

A licensee "should recommend to each purchaser that an attorney be retained by such purchaser to pass upon the marketability of the title of the property and the other legal questions involved."

Regulatory history unknown.

27 V.I. Code R. § 422-12 (West 2019)

Virgin Islands, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A licensee must promptly tender to the seller any signed purchase offers. If accepted and signed by the seller, copies must be promptly distributed to the seller, the purchaser, and the broker.

AGREEMENT REQUIREMENTS

Exclusive listings must be in writing. A listing agreement must:

- fully set forth its terms; and
- have a definite expiration date.

Each person signing the agreement must be furnished a copy at "the time of securing a listing."

The Virgin Islands Real Estate Commission "urgently recommends that the broker, when securing ...[a net] listing, add the customary commission and closing costs thereby notifying the seller listing the property the gross listed price thereon."

RESTRICTIONS

The Virgin Islands Real Estate Commission discourages brokers from accepting net listings.

Regulatory history unknown.

27 V.I. Code R. §§ 422-1, -2, -12 (West 2019)

Virgin Islands, Term of Relationship

Exclusive listings must have a definite expiration date.

Regulatory history unknown.

27 V.I. Code R. § 422-1 (West 2019)

Virgin Islands, Transaction Brokers

No relevant provisions were located.

Virginia

Virginia, Definitions

Agency—a relationship in which a licensee "acts for or represents a person by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement." A licensee who acts for or represents a client in an agency relationship must represent the client as either a standard agent or a limited service agent.

Agent—"a real estate licensee who is acting as (i) a standard agent in a residential real estate transaction, (ii) a limited service agent in a residential real estate transaction, or (iii) an agent in a commercial real estate transaction."

Brokerage agreement—the written agreement "creating a brokerage relationship between a client and a licensee." The brokerage agreement must state whether the licensee will represent the client as an agent or an independent contractor.

Brokerage relationship—the contractual relationship between "a client and a licensee who has been engaged by the client to procure a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client."

Client—a person "who has entered into a brokerage relationship with a licensee."

Customer—a “person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction.”

Designated agent or designated representative—a “licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction.” A designated representative may act only as an independent contractor.

Dual agent or dual representative—a “licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction.” A dual agent has an agency relationship with clients, and a dual representative has an independent contractor relationship with clients. A dual representative may act only as an independent contractor.

Licensee—“real estate brokers and salespersons.”

Limited service representative agent—“a licensee in a residential real estate transaction pursuant to a brokerage agreement that provides that the limited service representative agent will not provide one or more of the duties set forth in subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134.”

Ministerial acts—routine acts that “a licensee can perform for a person which do not involve discretion or the exercise of the licensee's own judgment.”

Real estate broker—any person or entity, who, for consideration

- “sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including condominiums, cooperative interests, or timeshares; or
- “leases or offers to lease, or rents or offers for rent,” any real estate.

Residential real estate—real property with one to four residential dwelling units and the sale of lots containing one to four residential dwelling units.

Standard agent—a licensee who

- acts for or represents a client in an agency relationship; and
- has the obligations provided in article 54.1 and any additional obligations the parties agreed to in the brokerage agreement.

Supervising broker—a real estate broker "who has been designated by a principal broker to supervise the provision of real estate brokerage services by associate brokers and salespersons assigned to a branch office or a real estate team."

Section 54.1-2100 amended 2018; § 54.1-2101 amended 2018; § 54.1-2130 amended 2016.

[Va. Code §§ 54.1-2100, -2101, -2130 \(2019\)](#)

Virginia, Designated Agents

OVERVIEW

Designated standard agents

A principal or supervising broker may assign different licensees affiliated with the broker as designated agents or representatives to represent different clients in the same transaction to the exclusion of all the firm's other licensees. Use of designated agents or representatives does not constitute dual agency or representation if a designated agent or representative is not representing more than one client in a particular real estate transaction. However, the principal or broker who is supervising the transaction is considered a dual agent or representative.

CONFIDENTIALITY OBLIGATIONS

Designated standard agents

Designated agents or representatives may not disclose the following, except to the licensee's broker:

- any personal or financial information received from the clients during the brokerage relationship; and
- any other information that the client requests be kept confidential, unless otherwise provided for by law or unless the client consents in writing to its release.

REQUIRED DISCLOSURES

Designated agents and representatives

The use of designated agents or representatives in a real estate transaction must be disclosed. The disclosure may be given in combination with other disclosures or provided with other information. However, if it is provided with other information, the disclosure must be "conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box." A disclosure that complies substantially with the form set forth in § 54.1-2139.1 is deemed in compliance with the disclosure requirement.

The obligation to make these disclosures does not relieve the licensee of his or her obligation to set out all brokerage relationships in a written agreement.

In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed designated agency or representation agreement. That withdrawal does not:

- prejudice the licensee's ability to continue to represent the other client in the transaction; or
- limit the licensee from representing the client who refused in other transactions not involving designated representation.

Section 54.1-2139 amended 2012; § 54.1-2139.1 amended 2016.

[Va. Code §§ 54.1-2139, -2139.1 \(2019\)](#)

Virginia, Dual Agents

OVERVIEW

In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual agency or dual representation. That withdrawal does not prejudice the licensee's ability to continue to represent the other client in the transaction or prevent the licensee from representing that client in other transactions not involving dual agency or representation.

REQUIRED DISCLOSURES

Dual agent and dual representation

A licensee may not act as a dual agent or a dual representative in a residential real estate transaction, unless he has first obtained the written consent of all parties to the transaction given after written disclosure of the consequences of dual agency or dual representation. A dual agent has an agency relationship with the client, and a dual representative has an independent contractor relationship with the client. The disclosure must:

- be in writing; and

- be given to both parties before the beginning of dual agency or dual representation.

The disclosure must identify the agent's role and state that:

- the licensee will not be able to advise either party as to terms, offers or counteroffers, except under certain limited circumstances in which the licensee may have previously discussed the terms with one party before the dual agency or representation began;
- the licensee cannot advise a buyer client as to (a) the property's suitability, (b) the property's condition (other than to make any disclosures required by law), and (c) repairs to make or request;
- the licensee cannot advise either party in dispute that might arise related to the transaction;
- the licensee may be acting without knowledge of the client's needs, experience in the market, or experience in handling real estate transactions; and
- either party may engage another licensee if he or she requires additional representation.

The disclosures must be signed by the client or given in a purchase agreement, lease, or other document related to a transaction.

The obligation to make the disclosures set forth in § 54.1-2139 does not relieve the licensee of his or her obligation to set out all brokerage relationships in a written agreement between the licensee and the client.

See [Va. Code § 54.1-2139.01](#) for disclosure requirements related to commercial real estate transactions.

Regulatory requirements

A licensee acting as a dual or designated agent or representative must obtain all clients' written consent at the earliest practical time. The disclosure and consent must be given to and obtained from:

- the buyer no later than the time a purchase offer is presented to the licensee; and
- the seller no later than the time the offer is presented to the seller.

Statutory section amended 2012. Regulation amended 2015.

[Va. Code §§ 54.1-2139 \(2019\); 18 Va. Admin. Code § 135-20-220\(A\)\(3\) \(2019\)](#)

Virginia, General Agency Relationship Requirements

REQUIRED DISCLOSURES

Before entering into a brokerage relationship, a licensee must advise the prospective client of

- the proposed type of brokerage relationship;
- the broker's compensation; and
- whether the broker will share his compensation with another broker who may have a brokerage relationship with another party to the transaction.

Upon having a substantive discussion about a specific property with a buyer or seller who is not the licensee's client and not represented by another licensee, the licensee must the person the licensee represents pursuant to a brokerage agreement. The disclosure generally:

- must be made in writing at the “earliest practical time,” but in no event later than the time specific real estate assistance is first provided; and
- may be given in combination with other disclosures or provided with other information, but must be conspicuous and printed in bold lettering, all capitals, underlined, or within a separate box.

A disclosure that substantially complies with the language set forth in Va. Code § 54.1-2138(A) is deemed to comply with the disclosure requirement.

A licensee must maintain a copy of any disclosures relative to fully executed purchase contracts for three years, whether or not the disclosure is acknowledged.

At the earliest practical time (but no later than the time specific assistance is provided), a licensee must disclose which party the licensee represents to any buyer or seller

- who is not licensee’s client,
- who is not represented by another licensee, and
- with whom the licensee has substantive discussions about property.

A limited service agent must also make the disclosures required by § 54.1-2138.1.

See 18 Va. Admin. Code § 135-20-220(B) for disclosure provisions that relate only to certain lease transactions.

AGREEMENT REQUIREMENTS

Brokerage agreements must be in writing and:

- have a definite termination date;
- state the brokerage fee amount;
- state how and when the fees are to be paid;
- state the services the licensee is to render;
- include other terms of the brokerage relationship agreed to by the client and the licensee; and
- if in conjunction with the client's consent to a dual representation, the disclosures set forth in § 54.1-2139(A).

Statutory section 54.1-2136 enacted 1995; § 54.1-2138 amended 2016; § 54.1-2137 amended 2018. Regulation amended 2015.

[Va. Code §§ 54.1-2136, -2137, -2138 \(2019\); 18 Va. Admin. Code § 135-20-220\(A\)\(1\), \(2\), \(4\) \(2019\)](#)

Virginia, General Applicability of Provisions

The common law of agency related to brokerage relationships is expressly abrogated to the extent it is inconsistent with article 54.1.

The lease-transaction disclosure requirement does not apply to lessors or lessees in single- or multi-family residential units for lease terms of less than two months.

Section enacted 1995. Regulation amended 2015.

[Va. Code Ann. § 54.1-2144 \(2019\); 18 Va. Admin Code § 135-20-220\(B\)\(2\) \(2019\)](#)

Virginia, Other Relevant Provisions

SELF-DEALING

If a licensee knows or should know that he, a member of his family, his firm, a member of his firm, or any entity in which he has an ownership interest is acquiring (or attempting to acquire), selling, or leasing real property, and the licensee is a party to the transaction, the licensee must disclose in writing the following information to the other parties to the transaction:

- that he is a licensee; and
- that the licensee, any member of his or her family or firm, or any entity in which the licensee has an ownership interest has or will have an ownership interest.

The licensee must make this disclosure "upon having substantive discussions about specific real property."

DISCLOSURE UPDATES

If a licensee's relationship changes, he must disclose the change in writing to all parties involved in the transaction.

MISREPRESENTATIONS

A client is not liable for

- a licensee's misrepresentation made in connection with a brokerage relationship, unless the client knew or should have known of the misrepresentation and failed to take timely, reasonable steps to correct the misrepresentation; or

- a licensee's negligence, gross negligence or intentional acts.

A broker who engages another broker to assist in providing brokerage services to his client is not be liable for

- a misrepresentation by the other broker, unless the broker knew or should have known of the misrepresentation and failed to take timely, reasonable steps to correct the misrepresentation; or
- the assisting licensee's negligence, gross negligence or intentional acts.

Clients and licensees are deemed to possess actual knowledge and information only, and knowledge and information is not imputed among or between clients and licensees.

Statutory section amended 2016. Regulation amended 2015.

[Va. Code § 54.1-2142 \(2018\)](#); [18 Va. Admin. Code § 135-20-210 \(2019\)](#)

Virginia, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's agent must

- perform according to the brokerage agreement's terms;
- promote the buyer's interests;
- seek a property of a type, at a price and on terms acceptable to the buyer, except that a licensee need not seek other properties for the buyer if the buyer is a party to a purchase contract, unless otherwise agreed;

- assist in drafting and negotiating offers and counteroffers, amendments, and addenda to the real estate contract and in "establishing strategies for accomplishing the buyer's objectives";
- receive and timely present all written offers or counteroffers to and from the buyer and the seller, even if the buyer is already a party to a purchase contract;
- provide reasonable assistance to the buyer in satisfying his or her contract obligations and to "facilitate settlement of the purchase contract";
- maintain confidentiality of all personal and financial information and any other information that the client requests be maintained confidential, unless otherwise provided by law or the buyer consents in writing to disclosure;
- exercise ordinary care;
- account in a timely manner for all money and property received;
- disclose to the buyer known material facts related to the property or concerning the transaction; and
- comply with all applicable laws.

A licensee must treat all prospective sellers honestly and not knowingly give false information. In the case of a residential transaction, a buyer's licensee must disclose to a seller whether or not the buyer intends to occupy the property as a principal residence, but the buyer's expression of intent in the sale contract satisfies this requirement.

If a licensee engaged by a buyer has actual knowledge of the existence of defective drywall in a property, the licensee must disclose that information to the buyer.

A licensee is not liable for providing false information if the information was:

- provided to the licensee by the licensee's client;
- obtained from a governmental entity;
- obtained from a nongovernmental person or entity that obtained the information from a governmental entity; or
- obtained from "a person licensed, certified, or registered to provide professional services in the Commonwealth,"

provided the licensee (a) relied on the information and (b) did not have actual knowledge that the information was false or act in reckless disregard of the truth.

Unless prohibited by law or by the brokerage agreement, a buyer's agent may assist the seller by performing ministerial acts.

A buyer's agent does not breach any duty to the buyer by showing properties in which the buyer is interested to other prospective buyers, by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties. A written agreement between a licensee and a prospective buyer need not be executed prior to the licensee's showing properties to the prospective buyer.

See § 54.1-2134 for similar provisions that relate to a licensee engaged by a tenant.

Sections amended 2016.

[Va. Code §§ 54.1-2132, -2134, -2142 \(2019\)](#)

Virginia, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's agent must

- perform according to the brokerage agreement's terms;
- promote the seller's interests;
- conduct marketing activities on behalf of the seller according to the brokerage agreement, and in so doing, seek a sale at the price and terms agreed upon in the brokerage agreement or acceptable to the seller, provided that the licensee need not seek additional offers if the property is subject to a sale contract, unless otherwise agreed;
- assist in drafting and negotiating offers and counteroffers, amendments, and addenda to the real estate contract and in "establishing strategies for accomplishing the seller's objectives";
- receive and present in a timely manner written offers and counteroffers to and from seller and purchasers, even if the property is already subject to a sale contract;
- provide "reasonable assistance to the seller to satisfy the seller's contract obligations and to facilitate settlement of the purchase contract";
- maintain confidentiality of all personal and financial information and any other information that the client requests, unless otherwise provided by law or by the seller in writing;
- exercise ordinary care;
- account in a timely manner for all money and property received;
- disclose to the seller known material facts related to the property or concerning the transaction; and

- comply with all applicable laws.

A licensee must treat all prospective buyers honestly and not knowingly give them false information. A seller's agent must disclose to prospective buyers all known material adverse facts pertaining to the property's physical condition, including the existence of defective drywall. The term "physical condition of the property" in this context refers to the land's and any improvement's physical condition. It does not refer to matters:

- outside the land's boundaries;
- relating to adjacent property or other properties in the same proximity;
- relating to governmental land use regulations; and
- relating to highways or public streets.

The above required disclosure must be in writing.

A licensee is not liable for providing false information if the information was:

- provided to the licensee by the licensee's client;
- obtained from a governmental entity;
- obtained from a nongovernmental person or entity that obtained the information from a governmental entity; or

- obtained from "a person licensed, certified, or registered to provide professional services in the Commonwealth,"

provided the licensee (a) relied on the information and (b) did not have actual knowledge that the information was false or act in reckless disregard of the truth.

Unless prohibited by law or by the brokerage agreement, a seller's agent may assist a buyer by performing ministerial acts. Also, a seller's agent does not breach any duty owed to the seller by showing alternative properties to prospective buyers or by representing other sellers who have properties for sale.

See § 54.1-2133 for similar provisions that apply to a licensee engaged by a landlord.

Sections amended 2016.

[Va. Code §§ 54.1-2131, -2133, -2142 \(2019\)](#)

Virginia, Term of Relationship

A brokerage relationship begins when a client engages a licensee and continues until completion of performance, or the earlier of

- any expiration date agreed upon by the parties;
- any mutually agreed upon termination of the brokerage agreement;
- a default by any party; or
- a termination.

A brokerage agreement must have a definite termination date, but if the brokerage agreement does not specify a definite termination day, the agreement terminates 90 days after the agreement's date.

Except as otherwise agreed in writing, a licensee owes no duties to a client after termination, expiration, or completion of performance of the brokerage agreement, except

- to account for all money and property related to the brokerage relationship; and
- to keep confidential all personal and financial information received during the course of the brokerage relationship and any other information that the client requests be maintained confidential, unless otherwise provided by law or the client consents to its release.

Section amended 2018.

[Va. Code § 54.1-2137 \(2019\)](#)

Virginia, Transaction Brokers

No provisions were located specifically applicable to transaction brokers. However, the provisions described below apply to limited service representatives and agents in residential real estate transactions.

DUTIES

A limited service agent in a residential real estate transaction has the obligations set forth in the brokerage agreement, except that a limited service agent must provide the client, at the time of entering the brokerage agreement, copies of

- all disclosures required by federal or state law;
- local disclosures expressly authorized by state law; and
- the disclosures required by Va. Code § 54.1-2138.1.

A licensee who is engaged by a client dealing with an unrepresented party or with a party represented by a limited service representative and who, without compensation, provides that other party information related to the transaction or assists the other party in securing a contract or with obligations under the contract, does not incur liability for his or her actions except in the case of gross negligence or willful misconduct. A licensee does not create a brokerage relationship by providing such assistance or information to the other party.

A licensee dealing with a limited service representative's client may enter into an agreement with that party for payment of a fee for services performed or information provided. The payment does

not create a brokerage relationship, but the licensee is "held to the ordinary standard of care in the provision of such services or information."

AGREEMENT REQUIREMENTS

A licensee may act as a limited service agent only pursuant to a written brokerage agreement that:

- discloses that the licensee is acting as a limited service agent;
- provides a list of the specific services the licensee will provide; and
- includes a list of the specific duties of a standard agent, as set forth in §§ 54.1-2131(A)(2), -2132(A)(2), -2133 (A)(2), or -2134 (A)(2), as applicable, that the limited service agent will not provide.

REQUIRED DISCLOSURES

A limited service agent in a residential real estate transaction must disclose the following to the client in writing:

- the client's rights and obligations under the Virginia Residential Property Disclosure Act (§ 55-517 *et seq.*);
- if the client is selling a condominium, the client's rights and obligations to deliver or receive the condominium resale certificate required by § 55-79.97; and
- if the client is selling a property subject to the Property Owners' Association Act (§ 55-508 *et seq.*), the client's rights and obligations to deliver or receive the association disclosure packet required by § 55-509.5.

As discussed above, a licensee may act as a limited service representative only pursuant to a written brokerage agreement in which the limited service representative discloses that the licensee is acting as a limited service representative, among other requirements. The disclosure must be conspicuous, printed in bold lettering or all capitals, and underlined or contained in a separate box.

A disclosure that contains language that complies substantially with the following is deemed to comply with the disclosure requirement:

By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service representation by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service representative.

A limited service agent must also disclose dual agency.

Sections amended 2016.

Washington

Washington, Definitions

Agent—a "broker who has entered into an agency relationship with a buyer or seller."

Buyer—includes a purchaser or a tenant.

Buyer's agent—a broker who has entered into an agency relationship with only the buyer in a transaction.

Confidential information—information from or concerning a broker's principal that:

- the broker acquired during an agency relationship with the principal;
- the principal reasonably expects to be kept confidential;
- the principal has not disclosed or authorized it to be disclosed to third parties;
- if disclosed, it would be to the principal's detriment; and
- the principal is personally not obligated to disclose it.

Dual agent—a "broker who has entered into an agency relationship with both the buyer and seller in the same transaction."

Principal—a "buyer or a seller who has entered into an agency relationship with a broker."

Real estate transaction—an “actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property.”

Seller—an actual or prospective seller in a real estate transaction landlord in a rental or lease transaction.

Seller's agent—a broker who has entered into an agency relationship with only the seller in a real estate transaction.

Subagent—a broker engaged by the principal's agent to act on behalf of a principal.

Section amended 2013.

[Wash. Rev. Code Ann. § 18.86.010 \(2019\)](#)

Washington, Designated Agents

No provisions specifically applicable to a designated agent's relationship with a buyer or a seller were located.

Washington, Dual Agents

If different brokers affiliated with the same firm represent different parties in a transaction, the "firm's designated broker and any managing broker responsible for the supervision of both brokers" is a dual agent, who must obtain both parties' written consent to the representation. Each of the brokers must "solely represent the party with whom the broker has an agency relationship, unless all parties agree in writing that the broker is a dual agent."

DUAL AGENT'S DUTIES

A broker may act as a dual agent only with the written consent of both parties to the transaction, which consent must state the compensation terms. Unless additional duties are agreed to in writing, the duties of a dual agent are limited to those set forth in § 8.86.030 and the following:

- to take no action that is adverse or detrimental to either party's interests;
- to disclose to both parties any conflicts of interest;

- to advise both parties to seek expert advice on matters beyond the dual agent's expertise;
- not to disclose any confidential information from or about either party, except under subpoena or court order;
- unless otherwise agreed in writing, to make a “good faith and continuous effort” to find a buyer for the property, except that a dual agent need not seek additional offers while the property is subject to an existing sale contract; and
- unless otherwise agreed to in writing, to make a “good faith and continuous effort” to find a property for the buyer; except that a dual agent need not either seek additional properties if the buyer is party to a purchase contract or show properties for which there is no written agreement providing for compensation to the dual agent.

The following do not constitute actions that are adverse or detrimental to a seller:

- showing properties not owned by the seller to prospective buyers;
- listing competing properties for sale by a dual agent; or
- representing "more than one seller by different brokers licensed to the same firm in competing transactions involving the same seller."

The following do not constitute actions that are adverse or detrimental to a buyer:

- showing property in which a buyer is interested to other prospective buyers,
- presenting additional offers while a property is subject to a transaction by a dual agent; or

- representing “more than one buyer by different brokers license to the same firm in competing transactions involving the same property.”

Sections amended 2013.

[Wash. Rev. Code Ann. §§ 18.86.020\(2\), .060 \(2019\)](#)

Washington, General Agency Relationship Requirements

DUTIES

A broker, whether or not an agent, owes to all parties to whom the broker renders real estate brokerage services the following duties:

- to exercise reasonable skill and care;
- to deal honestly and in good faith;
- to present timely all written offers and communications to and from either party, regardless of whether the property or buyer is subject to an existing contract;
- to disclose all known material facts that are not apparent or readily ascertainable;
- to account timely for all money and property received;
- to provide a pamphlet on real estate agency law in the form set forth in RCW 18.86.120 to all parties to whom the broker renders real estate brokerage services, before the earliest of the party signing an agency agreement or offer, consenting to dual agency, or waiving any rights; and
- to make the required disclosures in writing to all parties before the party signs an offer, which disclosures must be set forth in a separate paragraph or document entitled "Agency Disclosure."

A real estate licensee must furnish (or cause to be furnished) at closing a complete detailed closing statement to each buyer and each seller in every real estate or business opportunity transaction for which the licensee provides brokerage services. A real estate licensee must perform as expeditiously as possible all acts his or her real estate agreement requires.

The required pamphlet must also include the following disclosure:

When the seller of owner-occupied residential real property enters into a listing agreement with a real estate firm where the proceeds from the sale may be insufficient to cover the costs at closing, it is the responsibility of the real estate firm to disclose to the seller in writing that the decision by any beneficiary or mortgagee, or its assignees, to release its interest in the real property, for less than the amount the borrower owes, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including fees such as the real estate firm's commission.

INSPECTION DUTY

Unless otherwise agreed, a broker owes no duty:

- to conduct an independent inspection of the property or either party's financial condition, and
- to verify the accuracy or completeness of the statements of either party or a source the broker believes to be reliable.

REQUIRED DISCLOSURES

The pamphlet required by § 18.86.030(1)(f) must:

- contain the entire text of §§ 18.86.010—.030 and §§ 18.86.040—.110, with a separate cover page;
- be 8 1/2 by 11 inches, with text no smaller than 10-point type and a cover page in print no smaller than 12-point type; and

- have a cover page entitled, "The Law of Real Estate Agency" in print no smaller than 18-point type.

Statutory sections amended 2013; regulations adopted 2010.

[Wash. Rev. Code Ann. §§ 18.86.030, .100, .120 \(2019\)](#); [Wash. Admin. Code 308-124D-205, -210 \(2019\)](#)

Washington, General Applicability of Provisions

The duties provided by chapter 18.86 are statutory, not fiduciary, duties. Chapter 18.86 supersedes an agent's fiduciary duties to a principal under common law. Common law applies to the parties in all other respects.

Section amended 2013.

[Wash. Rev. Code Ann. § 18.86.110 \(2019\)](#)

Washington, Other Relevant Provisions

SELF-DEALING

A licensee advertising personally owned real property must disclose that he or she holds a real estate license. Also, a licensee may not buy, sell, or lease any real property interest without disclosing in writing that he or she is a real estate licensee.

MISREPRESENTATIONS

Unless otherwise agreed to in writing,

- a principal does not have knowledge of facts that are known by his agent or subagent, but that the principal does not actually know; and
- a broker does not have knowledge of facts that are known by a subagent, but that the broker does not actually know.

Section 18.86.100 amended 2013; § 18.85.361 amended 2008 and renumbered 2008.

[Wash. Rev. Code Ann. §§ 18.85.361; .86.100 \(2019\)](#)

Washington, Relationship with Buyers

A broker performing real estate brokerage services for a buyer is a buyer's agent unless:

- the broker's firm has appointed the broker to represent the seller pursuant to a written agency agreement between the firm and the seller;
- the broker has entered into a subagency agreement with the seller's agent's firm;
- the "[b]roker's firm has appointed the broker to represent the seller pursuant to a written agency agreement between the firm and the seller, and the broker's firm has appointed the broker to represent the buyer pursuant to a written agency agreement between the firm and the buyer";
- the broker is one of the sellers; or
- the parties agree otherwise in writing.

BUYER'S AGENT'S DUTIES

Unless additional duties are agreed to in writing, the duties of a buyer's agent are limited to those set forth in § 18.86.030 and the following:

- to be loyal to the buyer;
- to disclose to the buyer any conflicts of interest;

- to advise the buyer to seek expert advice on matters beyond the agent's expertise;
- not to disclose any confidential information from or about the buyer, except under subpoena or court order; and
- unless otherwise agreed in writing, to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent need not seek additional properties if the buyer is party to an existing purchase contract or show properties for which there is no written agreement to pay compensation to the buyer's agent.

Showing property in which a buyer is interested to other prospective buyers is not a breach of the duty of loyalty to the buyer. Also, having different brokers affiliated with the same firm represent more than one buyer in competing transactions involving the same property is not a breach of the duty of loyalty to the buyer.

Sections amended 2013.

[Wash. Rev. Code Ann. §§ 18.86.020\(1\), .050 \(2019\)](#)

Washington, Relationship with Sellers

SELLER'S AGENT'S DUTIES

Unless additional duties are agreed to in writing, a seller's agent's duties are limited to those set forth in § 18.86.030 and the following:

- to be loyal to the seller by taking no action that is adverse or detrimental to the seller's interests;
- to disclose timely to the seller any conflicts of interest;
- to advise the seller to seek expert advice on matters beyond the agent's expertise;

- not to disclose confidential information from or about the seller, except under subpoena or court order; and
- unless otherwise agreed in writing, to make a good faith and continuous effort to find a buyer for the property, except that a seller's agent need not seek additional offers if the property is subject to an existing sale contract.

Showing properties not owned by the seller to prospective buyers or listing competing properties does not breach the seller's agent's duty of loyalty to the seller or create a conflict of interest. Having more than one seller represented by different brokers affiliated with the same firm in competing transactions does not breach the duty of loyalty or create a conflict of interest.

Section amended 2013.

[Wash. Rev. Code Ann. § 18.86.040 \(2019\)](#)

Washington, Term of Relationship

The agency relationship begins at the time the broker undertakes to provide real estate brokerage services and continues until the earliest of:

- the completion of broker's performance;
- the term's expiration;
- the relationship's termination by the parties': mutual agreement or by notice from either party to the other.

Except as otherwise agreed in writing, a broker owes no duty after the relationship terminates, except:

- to account for all money and property received; and
- not to disclose confidential information.

Section amended 2013.

[Wash. Rev. Code Ann. § 18.86.070 \(2019\)](#)

Washington, Transaction Brokers

No provisions were located specifically applicable to transaction brokers.

West Virginia

West Virginia, Definitions

Broker—a person who for compensation

- “lists, sells, purchases, exchanges, options, rents, manages, leases or auctions” any real estate interest;
- directs or assists in procuring a prospect; or
- advertises or holds himself out as engaged in or offers to engage in any broker activity.

Licensee—a “person holding a license.”

Real estate—an interest or estate in land and anything permanently affixed to it.

Section enacted 2002.

[W. Va. Code § 30-40-4 \(2018\)](#)

West Virginia, Designated Agents

No provisions were located specifically applicable to designated agents.

West Virginia, Dual Agents

A licensee may not act as for more than one party in a transaction without obtaining both parties’ written consent.

Section enacted 2002.

[W. Va. Code § 30-40-19\(a\)\(7\) \(2019\)](#)

West Virginia, General Agency Relationship Requirements

DUTIES

A licensee owes duties to the consumer, which include, but are not limited to,

- supplying a copy of the contract to each person signing the contract;
- promptly delivering every written offer received; and
- ensuring that all the terms and conditions of a transaction are contained in any contract the licensee prepares.

REQUIRED DISCLOSURES

A licensee must provide to all parties a written notice disclosing which party he or she represents as an agent. The required notice must be

- signed by all parties, and
- maintained by the broker.

The licensee must execute the notice before any person signs a representation contract, offer, or sale or exchange contract.

AGREEMENT REQUIREMENTS

An agency contract must contain a definite expiration date.

RESTRICTIONS

An agency contract may not contain a provision that obligates the person signing the contract to pay consideration to the broker after the contract's expiration date, if the person subsequently enters into a contract for representation with a different broker.

The commission may discipline a licensee who

- fails to disclose, on the “notice of agency relationship form” promulgated by the commission, which party the licensee represents;
- fails to voluntarily furnish copies of the “notice of agency relationship” or any contract to each party;
- pays or receives compensation to or from any person other than the licensee's principal, except that licensed brokers may share compensation;
- induces a person with a contract to break his contract in order to substitute a new contract with a third party; or
- breaches a fiduciary duty a licensee owes to his or her principal in a real estate transaction.

Statutory sections enacted 2002. Regulations amended 2018.

[W. Va. Code §§ 30-40-19\(a\)\(12\), \(13\), \(14\), \(15\), -26 \(2018\); W. Va. Code R. §§ 174-1-16 \(2019\)](#)

West Virginia, General Applicability of Provisions

No relevant provisions were located.

West Virginia, Other Relevant Provisions

SELF-DEALING

The commission may penalize a licensee for failing to disclose to an owner the licensee's true position if he purchases for himself or intends to acquire any interest or option in the property.

DISCLOSURE UPDATES

If a licensee's agency status changes, the licensee must prepare a revised disclosure form and immediately present it to all parties. The revised form must be dated and acknowledged in writing by all parties.

Section enacted 2002.

[W. Va. Code § 30-40-19\(a\)\(34\) \(2018\)](#)

West Virginia, Relationship with Buyers

REQUIRED DISCLOSURES

A buyer's agent must disclose his or her agency relationship to the seller or the seller's broker before initiating negotiations.

Regulation amended 2018.

[W. Va. Code R. § 174-1-16 \(2019\)](#)

West Virginia, Relationship with Sellers

SELLER'S AGENT'S DUTIES

The commission may penalize a licensee who advertises or displays a "for sale", "for rent" sign on property without an established agency relationship or the owner's knowledge and written consent.

Section enacted 2002.

[W. Va. Code § 30-40-19\(a\)\(10\) \(2018\)](#)

West Virginia, Term of Relationship

Any contract in which a broker is obligated to represent a principal to a real estate transaction must contain a definite expiration date. The contract may not require the principal to notify the broker of his or her intention to cancel the contract after the definite expiration date.

Enacted 2002.

[W. Va. Code § 30-40-26 \(2018\)](#)

West Virginia, Transaction Brokers

No provisions were located specifically applicable to transaction brokers.

Wisconsin

Wisconsin, Definitions

Agency agreement—a "written agreement between a firm and a client in which the client authorizes the firm to provide brokerage services to the client."

Broker—except as specifically excluded by § 452.01(3), any person who:

- for another and for compensation, "negotiates or offers or attempts to negotiate, whether directly or indirectly, a sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent," a real estate interest or estate, a time share, or a business or its goodwill, inventory or fixtures;

- is engaged in the business of selling or exchanging real estate interests or estates or businesses to the extent that a pattern is established, and five sales or exchanges in one year or 10 sales or exchanges in five years is presumptive evidence of a pattern;
- for another person and for compensation, shows real estate or a business, except property offered exclusively for rent;
- for another person and for compensation, promotes the "sale, exchange, purchase, option, rental, or leasing of real estate, a time share, or a business or its goodwill, inventory, or fixtures", except a person who only "publishes or disseminates verbatim information provided by another person;" or
- issues a written report of property value that is prepared for another person and that is not an appraisal.

Brokerage service—a service listed under § 452.01(2) that is provided to a person by a firm and any licensees associated with the firm.

Client—means a party to a transaction who has an agency agreement with a firm for brokerage services.

Customer—means a party to a transaction who is provided brokerage services by a firm and any licensees associated with the firm but who is not a client.

Designated agency—a multiple representation relationship in which each of the firm's clients in the relationship "receives negotiation services from the firm only from licensees associated with the firm who are not providing negotiation services to any other client of the firm in the transaction."

Firm—a licensed individual broker acting as a sole proprietorship or a licensed broker business entity.

Listing firm—a firm that has entered into an agency agreement with a seller or landlord pursuant to which the firm lists property for sale or lease.

Multiple representation relationship—a relationship between a firm and two or more of the firm's clients who are parties in the same transaction.

Negotiate—to provide assistance, within the scope of the knowledge, skills, and training required by chapter 452, to a party developing a proposal or agreement related to a transaction, including

- acting as an intermediary by "facilitating or participating in communications" between parties related to a transaction, except that providing advice or opinions on material matters "in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary";
- completing, upon a party's instruction, appropriate forms or other writings to document the party's proposal; or
- presenting to a party another party's proposal and giving that party a general explanation of its provisions.

Party—a person seeking to engage in a transaction.

Principal firm—a firm that engages a subagent to provide brokerage services.

Salesperson—an individual, other than a broker, who is associated with a firm.

Subagent—a firm engaged by another principal firm to provide brokerage services, but that is not associated with the principal firm.

Transaction—the "sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent" a real estate interest, a business or a business opportunity."

Section amended 2017.

[Wis. Stat. Ann. § 452.01 \(2019\)](#)

Wisconsin, Designated Agents

A firm in a multiple representation relationship may not use a designated agency unless all the firm's clients in the relationship consent in writing to the designated agency. A client may withdraw his or her consent by written notice at any time.

DUTIES

A firm's associated licensee who is negotiating on behalf of the firm's client as a designated agent may provide the client with "information, opinions, and advice to assist the client in the negotiations, whether or not the information, opinions, and advice place the interests of one of the firm's clients ahead of the interests of another client of the firm." However, if a client in a multiple representation relationship does not consent to designated agency or withdraws his or her consent, the firm and any of its associated licensees may not place any client's interests ahead of any other's interests in the negotiations.

Section amended 2017.

[Wis. Stat. Ann. § 452.134\(3\), \(4\) \(2019\)](#)

Wisconsin, Dual Agents

A firm and licensees associated with the firm may not provide brokerage services in a multiple representation relationship unless all of the firm's clients in the relationship have consented in writing. (See **Designated Agents** for related provisions.)

Section amended 2017.

[Wis. Stat. Ann. § 452.134\(2\) \(2019\)](#)

Wisconsin, General Agency Relationship Requirements

OVERVIEW

A broker generally may provide brokerage services to any person, whether or not the broker has entered into an agency agreement with a party or has been engaged to provide brokerage services

as a subagent. However, a broker may not negotiate on behalf of a party unless the party is either the broker's client or the client of a principal broker who has engaged the broker as a subagent.

A broker may provide brokerage services to more than one party in *different* transactions unless "the broker agrees with a client that the broker is to provide brokerage services only to that client."

DUTIES

Licensees must represent their clients' interests and owe all parties the duties owed by a firm set forth in § 452.133(1). Therefore, a firm providing brokerage services to a party in a transaction owes all of the following duties to that party:

- to provide services "honestly and fairly";
- to "provide brokerage services with reasonable skill and care";
- to disclose timely in writing all known material adverse facts that the party does not know or "cannot discover through reasonably vigilant observation," unless disclosure is prohibited by law;
- to keep confidential any information given in confidence or information that the firm knows a reasonable party would want to be kept confidential, unless the information must be disclosed by law or the party authorizes disclosure;
- within a reasonable time after a party's request, to provide accurate information about market conditions that affect the transaction, unless disclosure is prohibited by law;
- to "safeguard" trust funds and other property held as provided by board rules; and
- when negotiating, to present contract proposals in an objective and unbiased manner and to disclose the proposals' advantages and disadvantages.

A firm providing services to a client owes the client the duties listed above and all of the following additional duties, as listed in § 452.133(2):

- to represent the client's interests "loyally" by placing them ahead of the other party's interests and ahead of the interests of persons in the transaction who are not the firm's clients;
- to provide, upon the client's request, information and advice to the client on material matters that are within the scope of the knowledge, skills, and training required by chapter 452;
- to disclose to the client all known material information the client does not know or cannot discover through "reasonably vigilant observation," except for confidential information and other information the disclosure of which is prohibited by law;
- to fulfill any obligation required by the agency agreement or the client's order; and
- to negotiate on the client's behalf.

A subagent owes all parties to whom a subagent is providing brokerage services the duties specified in § 452.133(1) (the first list above), but does not owe the principal firm's clients the duties listed in § 452.133(2) (the second list above).

If a firm is providing brokerage services to a person who is a party or a prospective party to a current or prospective transaction, and the firm does not have an agency agreement with that person and is not a subagent in the transaction, the firm and any of its associated licensee owe the person the duties under § 452.133(1) (the first list above). The firm may not, unless required by law, "provide advice or opinions relating to the transaction in which the person is receiving brokerage services if providing the advice or opinions is contrary to the interests of a party to a current or prospective transaction with the person receiving the brokerage services."

The duties imposed by § 452.133(1), (2)(a), (2)(am), (2)(b), (2)(c), (4) and (5) may not be waived. A client may waive the broker's duty under § 452.133(2)(d) if the firm or a licensee associated with the

firm provides to the client a written disclosure containing the statutory requirements set forth in § 452.133(6) (as described below in "Disclosure Requirements.")

INSPECTION DUTY

A licensee, when dealing with real estate involving

- a structure, must “conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the property to detect observable, material adverse facts”; and
- vacant land, must, if the land is accessible, conduct a “reasonably competent and diligent inspection of the vacant land to detect observable material adverse facts.”

A licensee other than a listing broker must so inspect the real estate before or while showing the property, unless the licensee does not have access for a showing. When listing real estate and prior to execution of the listing contract, a licensee must so inspect the real estate and make inquiries of the seller on the condition of the structure, mechanical systems and other relevant applicable property aspects

If a licensee or a party engages a qualified third party to conduct an inspection, the licensee may rely on the inspection's results, provided the licensee obtains a written report of the inspection and delivers a copy of the report to all interested parties.

If a licensee's inspection reveals materially inconsistent or contradictory facts to the seller's statements or a third-party inspection or investigation report, the licensee must disclose the inconsistency in writing to the parties.

CONFIDENTIALITY OBLIGATIONS

Generally, a licensee acting as a principal or an agent may not disclose the terms of one prospective buyer's offer to any other prospective buyer. A licensee may, but is not required to, disclose known information regarding the following:

- the existence of other offers on the property; or
- the "fact that a seller has accepted an offer, that the offer is subject to contingencies and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance or conditional acceptance of another offer."

REQUIRED DISCLOSURES

A licensee must explain the responsibilities of seller's agents, buyer's agents, and subagents before entering into an agency agreement. A licensee may not permit other brokers to act as subagents unless the broker's client has authorized the use of a subagent in the agency agreement.

A broker generally must provide to a client a written disclosure statement no later than the time the broker enters into an agency agreement with the client. This "Broker Disclosure to Clients" must contain the text set forth in § 452.135(2)(a). If a client enters into an agency agreement to receive brokerage services related to residential real estate containing one to four dwelling units, and this required written disclosure statement is not incorporated into the agency agreement, the broker must request the client's signed acknowledgment that he or she has received a copy of the statement.

A broker may not negotiate on behalf of a party who is not the broker's client unless the broker provides the party with a written disclosure statement entitled "Broker Disclosure to Customers," which must contain the text set forth in § 452.135(1)(a). A principal broker is not required to provide a broker disclosure statement to a customer of his or her subagent. A subagent must provide a broker disclosure statement to a customer with whom he or she is working, but not to the principal broker's client. If the services are related to real estate "primarily intended for use as a residential property containing one to 4 dwelling units," the broker must ask for the party's signed acknowledgement that the party has received a copy of the written disclosure statement.

A licensee acting as a buyer's agent for real estate to be used principally for one- to four-family residential purposes, who is negotiating directly with the seller or who is aware that the owner has granted another licensee the exclusive right to sell, must notify the seller or the listing broker of the licensee's buyer agency relationship at the earliest of

- the first contact with the seller or the listing broker where information regarding the seller or the transaction is being exchanged;
- a showing of the property; or
- any other negotiations with the seller or listing broker.

A client may waive a licensee's duty to negotiate only if the firm and any licensees associated with the firm provide the client with a written disclosure containing all of the following:

- a copy of the text of §§ 452.133(2)(d) and 452.01(5m);
- a statement that, because of the client's waiver, the firm and any licensees associated with the firm have no legal duty to perform the duty to negotiate imposed by § 452.133(2)(d); and
- a statement that, because of the client's waiver, the client may need the help of an attorney or other service provider to fulfill the client's goals and contractual duties.

A listing firm must provide a customer's disclosure statement to the buyer if negotiations are being conducted directly with the buyer, and not through a buyer's licensee. A buyer's licensee must provide a customer's disclosure statement to a seller if negotiations are being conducted directly with the seller, and not through a seller's licensee

AGREEMENT REQUIREMENTS

All “listing contracts, guaranteed sales agreements, buyer agency agreements, offers to purchase, property management agreements, option contracts, financial obligations and any other commitments regarding transactions” must:

- be in writing; and
- generally, express the parties' exact agreement.

RESTRICTIONS

A licensee

- acting as an agent, may not act on his own behalf, on behalf of his firm, on behalf of any member of the licensee's immediate family or any combination of immediate family members, or on behalf of any entity in which he has an interest, unless the licensee obtains all parties' written consent or obtains consent in the offer or other transaction contract;
- may not negotiate the sale, exchange, purchase, or rental of personal property unless related to the transaction;
- acting as an agent, may not recommend to a party another individual or entity from which the licensee may receive compensation for a referral or in which the licensee has an interest, unless the licensee discloses in writing the fact that he or she may receive compensation for the referral or that he or she has an interest in the individual or entity providing the services (this provision does not apply to a licensee referring certain real estate services to another licensee); and
- acting as a principal, must disclose his license status and intent to act as a principal at the earliest of: (a) first contact with the other party where information regarding the other party or the transaction is being exchanged, (b) a property showing, or (c) any other negotiation with the seller or the listing broker.

A licensee may not:

- discriminate in any unlawful manner;

- provide services that the licensee is not competent to provide;
- condition the sale of real estate owned by the licensee upon the buyer's agreement to purchase another parcel of real estate or to list with the licensee real estate owned by the buyer;
- condition the sale of licensee's vacant land upon the buyer's agreement to employ a specific builder, unless:
 - the builder owns an interest in the real estate and discloses his interest;
 - the builder and the licensee/owner are the same person or are commonly controlled corporations "and whose business is selling improved property" and there is full disclosure; or
 - the agreement is an effort to maintain development quality or architectural uniformity and no consideration passes from contractor to licensee; or
- obtain a listing contract providing for a stipulated net price to the owner with the excess over the net price to be received by the broker as commission.

A subagent may not:

- place the subagent's interests ahead of the principal firm's client's interests in a transaction; or
- provide advice or opinions to parties in a transaction if contrary to the principal firm's client's interests, unless required by law.

Statutory sections 452.133, 452.134, 452.135 amended 2017; § 452.138 amended 2015. Regulation 24.12 amended 2001; r. 24.08 amended 2011; r. 24.075 amended 2012; other rules amended 2017.

[Wis. Stat. Ann. §§ 452.133, .134\(1\), .135, .138 \(2019\); Wis. Admin. Code §§ REEB 24.03, .07, .075, .08, .10, .12, .13 \(2019\)](#)

Wisconsin, General Applicability of Provisions

A firm's duties, as specified in chapter 452 and the related rules, supersede any common law duties or obligations to the extent they are inconsistent with the specified duties.

Section amended 2018.

[Wis. Stat. Ann. § 452.139\(1\) \(2019\)](#)

Wisconsin, Other Relevant Provisions

SELF-DEALING

A licensee

- acting as an agent, may not act on his own behalf, on behalf of his firm, on behalf of any member of the licensee's immediate family or any combination of immediate family members, or on behalf of any entity in which he has an interest, unless the licensee obtains all parties' written consent or obtains consent in the offer or other transaction contract;
- acting as an agent, may not recommend to a party another individual or entity from which the licensee may receive compensation for a referral or in which the licensee has an interest, unless the licensee discloses in writing the fact that he or she may receive compensation for the referral or that he or she has an interest in the individual or entity providing the services (this provision does not apply to a licensee referring certain real estate services to another licensee); and
- acting as a principal, must disclose his license status and intent to act as a principal at the earliest of:
(a) first contact with the other party where information regarding the other party or the transaction is being exchanged, (b) a property showing, or (c) any other negotiation with the seller or the listing broker.

DISCLOSURE UPDATES

If a licensee's representation changes so that the initial disclosure is incomplete, misleading or inaccurate, the licensee must give a new disclosure.

MISREPRESENTATIONS

A client is not liable for a misrepresentation made by a firm or its associated licensees in connection with provision of brokerage services, unless the client knows or should have known of the misrepresentation or the firm or licensee is repeating a misrepresentation made by the client. A firm that retains another firm to provide subagent services to a client is not liable for a misrepresentation made by the subagent or a licensee associated with the subagent, unless the firm knew or should have known of the misrepresentation or the subagent or licensee is repeating a misrepresentation made by the firm or a licensee associated with the firm.

Statutory section amended 2018. Regulations amended 2017.

[Wis. Stat. Ann. § 452.139\(2\) \(2019\); Wis. Admin. Code §§ REEB 24.05; .07 \(2019\)](#)

Wisconsin, Relationship with Buyers

There are no provisions specifically applicable only to buyer's agents.

Wisconsin, Relationship with Sellers

INSPECTION DUTIES

When listing real estate and before executing the listing contract, a licensee must:

- inspect the real estate as required by REEB 24.07(1); and
- "make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property as applicable" and "shall request that the seller provide a written response to the licensee's inquiry."

AGREEMENT REQUIREMENTS

A licensee must reconfirm in the purchase offer or option contract, which party he represents as an agent in a transaction.

Regulation amended 2017.

[Wis. Admin. Code § REEB 24.07 \(2019\)](#)

Wisconsin, Term of Relationship

A firm must continue to keep information confidential after the transaction is complete and the firm is no longer providing services to the person.

Section amended 2017.

[Wis. Stat. Ann. § 452.133\(1\)\(d\) \(2019\)](#)

Wisconsin, Transaction Brokers

No provisions were located specifically applicable to transaction brokers. However, a firm and its associated licenses generally may provide brokerage services to any party, whether or not the firm has entered into an agency agreement or been engaged to provide brokerage services as a subagent. A firm and its associated licensees may not negotiate on behalf of a party unless the party is either the firm's client or the client of a principal firm that has engaged the firm as a subagent.

DISCLOSURE REQUIREMENTS

A firm and licensees associated with the firm may not negotiate on behalf of a party who is not the firm's client unless the firm or an associated licensee provides the party with a written disclosure statement, entitled "Disclosure to Customers," which must contain the text provided in § 452.135(1)(a).

Sections amended 2017.

[Wis. Stat. Ann. §§ 452.134\(1\), .135\(1\)\(a\) \(2019\)](#)

Wyoming

Wyoming, Definitions

Buyer—a person attempting to acquire real property, including tenants.

Buyer's agent—a licensee authorized to represent and act on a buyer's behalf in a real estate transaction.

Customer—a "party to a real estate transaction who has established no intermediary or agency relationship with any licensee in that transaction."

Designated licensee—"a licensee who is designated in writing by a responsible broker to serve as an agent for a seller or a buyer or as an intermediary in a real estate transaction."

In-house real estate transaction—"a real estate transaction in which the buyer and the seller have an agency, intermediary or customer relationship with licensees from the same real estate company."

Intermediary—a licensee who assists one or more parties throughout a contemplated real estate transaction "without acting as an agent or advocate for any party to the transaction."

Real estate transaction—includes the sale, lease, auction, and management of real property.

Responsible broker—"an individual who has an active responsible broker's license and who is responsible for the supervision of the activities of licensees associated with the real estate company or a responsible broker who operates a single license office or sole proprietorship."

Seller—a person who is attempting to sell or exchange real estate, including landlords.

Seller's agent—a licensee authorized to "represent and act for the seller in a real estate transaction."

Subagent—"a licensee authorized to represent and act on behalf of a real estate company in performing real estate activity for a principal." A subagent owes the same obligations and responsibilities to the principal as the principal's broker.

Transaction manager—a licensee the responsible broker designates in writing to supervise a transaction. The transaction manager:

- may not be involved in the transaction; and
- has the duties of an intermediary while supervising the transaction.

Section amended 2017.

Wyo. Stat. Ann. § 33-28-102(b) (LexisNexis 2019)

Wyoming, Designated Agents

If a real estate brokerage company has more than one licensee, the responsible broker and an associated licensee may be designated to work with a seller or a buyer as a designated agent. For an in-house real estate transaction, the designated licensee must be:

- a responsible broker;
- an associate broker;
- a salesman under a responsible broker's direct supervision, if the broker is not a party to the transaction; or
- a salesman under a transaction manager's direct supervision.

Licenses employed or engaged by the same responsible broker or across any companies the same responsible broker supervises may be designated licenses for different buyers or sellers in the same transaction. A designated licensee may work with a buyer or seller in a transaction even if he or she was precluded from representing that person in an earlier real estate transaction.

DESIGNATED AGENT'S DUTIES

If the responsible broker is representing a buyer or a seller in an in-house transaction, the responsible broker must appoint a transaction manager, unless the other licensee is an associate broker. If the responsible broker is representing a buyer or seller in a transaction involving two or more companies the responsible broker manages, the responsible broker must immediately appoint a transaction manager for each real estate company unless the other licensee is an associate broker. A responsible broker or transaction manager has access to all necessary information, but he or she is prohibited from sharing confidential information acquired in the process of supervising the licenses or during the transaction.

REQUIRED DISCLOSURES

A designated relationship must be disclosed in writing to the seller and buyer at the earliest reasonable opportunity.

A responsible broker must disclose in every real estate transaction to all parties involved the names of all real estate companies the responsible broker supervises.

AGREEMENT REQUIREMENTS

No specifically relevant provisions were located.

Section amended 2017.

Wyo. Stat. Ann. § 33-28-302(h), (j), (k) (LexisNexis 2019)

Wyoming, Dual Agents

A licensee may *not* "establish dual agency with any seller or buyer." However, a licensee may:

- work as a seller's agent and treat the buyer as a customer;
- work as a buyer's agent and treat the seller as a customer; or
- work as an intermediary for both the seller and the buyer in the same transaction.

The commission may discipline a licensee who acts for more than one party to a transaction without the written acknowledgement of all parties for whom the licensee acts.

Section 33-28-302 amended 2017; § 33-28-111 amended 2018.

Wyo. Stat. Ann. §§ 33-28-111(a)(xviii); -302(k), (o) (LexisNexis 2019)

Wyoming, General Agency Relationship Requirements

OVERVIEW

A broker need not offer more than one of the brokerage relationships enumerated in Article 33 of Wyoming Statutes. Generally, a licensee may:

- act in any real estate transaction as an agent or an intermediary; or
- may work with the seller or buyer as a customer.

The licensee must obtain his or her responsible broker's permission.

A customer relationship exists between a licensee and a party to a real estate transaction unless a single agency or intermediary relationship is established through written agreement. If a party has a written listing agreement with a licensee, "another licensee may work with the other buyer or seller as a customer, having no written agreement, agency or intermediary relationship with any party."

A broker's compensation may be paid by any party or by sharing or splitting compensation between brokers.

A licensee is deemed to be working with:

- a landlord "as an agent or intermediary pursuant to a written agreement"; and
- a tenant "who is a customer unless otherwise provided for in writing between the parties."

DUTIES

All relationships

Every contract or relationship, including an intermediary or customer relationship, imposes an obligation of good faith and fair dealing.

Licensees working with buyers and sellers as customers

A licensee owes a buyer or seller who is a customer the duty and obligation to exercise reasonable skill and care, including:

- presenting all offers and counteroffers in a timely manner, regardless of whether the property is subject to a sale contract;
- advising the parties to obtain expert advice on material matters beyond the licensee's expertise;
- accounting in a timely manner;
- keeping the parties fully informed;
- assisting the parties in complying with any contract's terms and conditions, which may include closing the transaction;
- disclosing to all prospective buyers any known adverse material facts, including those related to the property's title, physical condition, defects, and environmental hazards required by law to be disclosed; and
- disclosing to any prospective seller all known adverse material facts, including those related to the buyer's financial ability to perform.

A licensee working with a buyer or seller who is a customer must provide the customer an agency disclosure and must comply with all applicable laws, rules, regulations, or ordinances.

A licensee has *no* duty to

- conduct an independent inspection of the property for the buyer's benefit;
- verify independently the accuracy or completeness of a seller's or an independent inspector's statements;

- conduct an independent investigation of the buyer's financial condition; or
- verify the buyer's statements' accuracy or completeness.

Also, a licensee owes no confidentiality duty to a customer.

A licensee may act as follows without breaching any obligation or responsibility:

- show a prospective buyer alternative properties not owned by the seller;
- list competing properties for sale or lease;
- show properties in which the buyer is interested to other parties; and
- serve as an agent, subagent, or intermediary for the same or different parties in other real estate transactions.

Other relevant duties

A licensee must prepare the purchase offer and acceptance form or "other inducement document form for the voluntary transfer of freehold or non-freehold real estate."

REQUIRED DISCLOSURES

Before engaging in any discussions regarding the sale, purchase, exchange or lease of real estate and before entering into any written agreement, a licensee must disclose in writing the applicable agency, customer, or intermediary relationships, which disclosure must contain:

- a description of the different agency, intermediary, and customer relationships allowed;
- a statement that the compensation for different relationships is negotiable;
- an explanation of the duties and obligations owed under each relationship;
- a conspicuous statement of duties and obligations that are owed by an agent, but not an intermediary;
- a statement that any established relationship cannot be modified without the buyer's or seller's written consent and that the buyer or seller may negotiate different compensation as a condition of consenting to a change in a relationship;
- a statement that an intermediary is not an agent or advocate for any party and has only the obligations set forth in § 33-28-305;
- a statement that the "seller or buyer may be vicariously liable for acts of the agent, subagent or intermediary if the seller or buyer approves, directs or ratifies the acts";
- a statement that a customer is not afforded confidentiality in any communication with the licensee; and
- a signature line for the buyer or seller to acknowledge receipt of the disclosure.

If a buyer or seller refuses to sign the disclosure after presentation by the licensee:

- the licensee may document the refusal with a signed acknowledgement by the licensee and continue with the transaction; and
- the disclosure and acknowledgement must be attached to and may become incorporated into any written agreements with the buyer or seller as required by Wyo. Stat. Ann. § 33-28-302(b) and (c).

"Open house showings, preliminary conversations and requests for factual information do not constitute discussions or arrangements incidental to a sale, purchase, exchange or lease."

A licensee who has established an agency, subagency, or intermediary relationship with a seller or buyer must provide notice of the relationship to any other party to the transaction at the earliest reasonable opportunity. Also, before the responsible broker enters into a written agreement with a party or a party executes a purchase contract, he or she must disclose in writing to the seller and the buyer the brokerage relationship of all parties paying compensation to the responsible broker.

Any disclosure required under § 33-28-306 must be in at least 12-point font.

A responsible broker may be compensated by more than one party for services in a transaction, if those parties have consented in writing to the shared payment before the parties enter into a purchase contract.

AGREEMENT REQUIREMENTS

A licensee may act as an agent only pursuant to a written agreement with the seller or buyer that discloses the duties set forth in § 33-28-303 or § 33-28-304. A licensee may use standard forms, and must explain the disclosure to the parties. An agreement authorizing a broker to act as an intermediary must provide that the party is not liable for any commission greater than the compensation the party would have been liable to pay under the initial agreement.

A licensee may work with one party in separate transactions with different relationships, such as selling one property as a seller's agent and working with that seller in buying another property as an intermediary or buyer's agent, if the licensee establishes a separate relationship in writing for each transaction.

A responsible broker or licensee acting on the broker's behalf must, at the time of signing, deliver to the executing parties a hard or electronic copy of any document prepared by the broker or the broker's licensee, including, but not limited to, instruments related to:

- the employment of the responsible broker, or a licensee acting on his or her behalf;
- a real estate listing;
- a lease consummation;
- a property purchase, sale, or exchange; or
- any other type of real estate transaction in which the person participates as a responsible broker or licensee acting on the responsible broker's behalf.

The responsible broker or licensee is responsible for preparing sufficient copies of the instrument.

For in-house transactions, a licensee acting as an agent to a party with respect to a particular real estate transaction may act as an intermediary to the parties if both parties execute a written consent at "the earliest reasonable opportunity after the events creating the potential conflict in agency relationships develops." The consent must contain a "conspicuous statement" of the duties and obligations that would no longer be owed to the parties if the licensee becomes an intermediary, rather than an agent.

CONFIDENTIALITY OBLIGATIONS

A licensee does not owe a duty of confidentiality to a customer.

Statutory section 33-28-309 enacted 1997; § 33-28-307 amended 2009; § 33-28-311 amended 2018; §§ 33-28-302, 33-28-306, 33-28-308 and 33-28-310 amended 2017. Regulations amended 2015.

Wyo. Stat. Ann. §§ 33-28-302(a), (b), (e), (f), (g), (p); -306; -307; -308; -309; -310; -311 (LexisNexis 2019); [9824 Wyo. Real Estate Comm'n ch. 3, § 1 \(2019\)](#)

Wyoming, General Applicability of Provisions

No relevant provisions were located.

Wyoming, Other Relevant Provisions

SELF-DEALING

The commission may discipline a licensee for failing to disclose an interest in the transaction.

SUBAGENCY

A licensee may act as a subagent only pursuant to a written agreement between the seller and the seller's agent authorizing a subagency offer to other responsible brokers.

Section 33-28-303 amended 2011; § 33-28-111 amended 2018; § 33-28-302 amended 2017.

Wyo. Stat. Ann. §§ 33-28-111(a)(iii), -302(c), -303(f) (LexisNexis 2019)

Wyoming, Relationship with Buyers

BUYER'S AGENT'S DUTIES

A buyer's agent must:

- perform the terms of the written agreement with the buyer;
- exercise reasonable skill and care;
- promote the buyer's interests with good faith, loyalty and fidelity;
- seek a price and terms that are acceptable to the buyer, except that the licensee need not seek additional properties if the buyer is party to a purchase contract;
- timely present all offers to and from the buyer;
- disclose to the buyer known adverse material facts;
- counsel the buyer as to known material benefits or risks of a transaction;
- advise the buyer to obtain expert advice as to material matters beyond the licensee's expertise;
- account in a timely manner for all money and property received;
- inform the buyer that he or she buyer may be vicariously liable for the acts of the buyer's agent that the buyer approved, directed, or ratified; and
- comply with all applicable laws.

A buyer's agent owes no duty to the seller, except that a licensee acting as a buyer's agent may not make any material or fraudulent misrepresentation regarding a known adverse material fact. A buyer's agent may show properties in which the buyer is interested to other prospective buyers, show competing buyers the same property, and assist competing buyers in attempting to purchase or lease a particular property without breaching any duty to the buyer.

INVESTIGATION DUTY

A buyer's agent owes no duty to conduct an independent investigation of the buyer's financial condition or to verify the accuracy or completeness of statements made by the buyer or an independent inspector.

CONFIDENTIALITY OBLIGATIONS

Without the buyer's informed consent, a buyer's agent may not disclose:

- that the buyer is willing to pay more than the purchase price;
- the buyer's motivating factors;
- that the buyer will agree to other financing terms; or
- any material information about the buyer, unless disclosure is required by law or failure to disclose would constitute fraud or dishonest dealing.

Section amended 2009.

Wyo. Stat. Ann. § 33-28-304 (LexisNexis 2019)

Wyoming, Relationship with Sellers

SELLER'S AGENT'S DUTIES

A seller's agent must:

- perform the terms of the written agreement with the seller;
- exercise reasonable skill and care;
- promote the seller's interests with good faith, loyalty and fidelity;
- seek a price and terms that are acceptable to the seller, except that the licensee need not seek additional offers if the property is subject to a sale contract;
- timely present all offers to and from the seller regardless of whether the property is subject to a sale contract;
- disclose to the seller known adverse material facts;
- counsel the seller as to any known material benefits or risks of a transaction;
- advise the seller to obtain expert advice as to material matters beyond the licensee's expertise;
- account in a timely manner for all money and property received;
- inform the seller that the seller may be vicariously liable for the acts of the seller's agent or subagent that the seller approved, directed, or ratified; and
- comply with all applicable laws.

A licensee acting as a seller's agent owes no duty the buyer, except:

- to disclose to any prospective buyer all known adverse material facts;

- not to perpetuate a material misrepresentation of the seller that the licensee knows or should know is false.

A seller's agent may show alternative properties to prospective buyers and may list competing properties for sale without breaching any duty to the seller.

INSPECTION DUTIES

A seller's agent owes no duty to inspect property for the buyer's benefit or to verify the accuracy or completeness of any statement made by the seller or an independent inspector.

REQUIRED DISCLOSURES

A seller's agent may not disclose the following without the seller's informed consent:

- that a seller is willing to accept less than the asking price;
- the seller's motivating factors;
- that the seller will agree to other financing terms; and
- any material information about the seller, unless disclosure is required by law or failure to disclose would constitute fraud or dishonest dealing.

AGREEMENT REQUIREMENTS

A seller may agree in writing that his agent may extend a subagency offer to other responsible brokers to cooperate in selling the real estate.

Section amended 2011.

Wyo. Stat. Ann. § 33-28-303(a)—(e) (LexisNexis 2019)

Wyoming, Term of Relationship

No relevant provisions were located.

Wyoming, Transaction Brokers

A licensee engaged as an intermediary may not act as an advocate or agent for either party and is limited in the services he may provide.

TRANSACTION BROKER'S DUTIES

An intermediary owes the following duties to each party with whom he has contracted:

- to perform the terms of any written agreement with any parties to the transaction;
- to exercise reasonable skill and care;
- to present all offers and counteroffers in a timely manner;
- to advise the parties to obtain expert advice as to material matters beyond the intermediary's expertise;
- to account in a timely manner for all money and property received;
- to keep the parties fully informed regarding the transaction;
- to obtain all parties' written consent before assisting the buyer and seller in the same transaction;

- to assist the parties in complying with the terms and conditions of any contract;
- to disclose to the parties any interests the intermediary may have that are adverse to either party's interests;
- to disclose to all prospective buyers and sellers any known adverse material facts;
- to disclose that an intermediary owes no fiduciary duty to either the buyer or the seller, may not negotiate on behalf of the buyer or seller, may be required to disclose information about property to the other party, and may be prohibited from disclosing information about the other party if the information could materially affect negotiations; and
- to comply with all applicable laws.

An intermediary may act as follows without breaching any obligation or responsibility:

- show alternative properties to a prospective buyer;
- list competing properties; and
- show properties in which the buyer is interested to other prospective buyers.

An intermediary may cooperate with other brokers but may not engage subagents.

INVESTIGATION DUTIES

An intermediary has no duty to conduct an independent inspection of the property or to verify the accuracy or completeness of the statements made by a party or an independent inspector.

CONFIDENTIALITY OBLIGATIONS

An intermediary may not disclose the following without the party's informed consent:

- that a buyer is willing to pay more than the offered price;
- that a seller is willing to accept less than the asking price;
- the parties' motivating factors; or
- that a seller or buyer will agree to other financing terms.

REQUIRED DISCLOSURES

See "TRANSACTION BROKER'S DUTIES" above for required disclosures.

AGREEMENT REQUIREMENTS

A licensee may act as an intermediary only pursuant to a written agreement with the seller or buyer that discloses the duties and responsibilities set forth in § 33-28-305.

Section 33-28-305 amended 2017; § 33-28-302 amended 2017.

Wyo. Stat. Ann. §§ 33-28-302(c), -305 (LexisNexis 2019)