

Wait!



Before you call that number on the sign, know who is working for you!

Real Estate transactions can be complex, with terms like Buyers Agency, Sellers Agency, and Dual Agency floating around its difficult to know who represents who, and more importantly who is looking out for your interests. For example, you are driving around looking at homes in a particular neighborhood and see a Realtor's sign in the front yard. What happens when you call that number? Did you know the agent on the other end of that phone is 100% working for the seller? Any information you provide will be used to help the seller should a negotiation occur. Without a Buyers Agent to protect you, you can be in a serious disadvantage!

Commissions

It is also important to understand that having a Buyers Agent to protect you costs you NOTHING. In fact the commission on the home has already been negotiated between the Seller and their Agent before the home was even placed on the market. The Seller's Agent has determined what portion of that predefined commission they are willing to pay out to a Buyers Agent. The Seller has no control over that percentage! So back to our example, when you call the number on the sign, the Seller's Agent does not have to split or pay out that negotiated commission when acting as a Dual Agent, however they still continue to work (in most cases) in the best interest of the Sellers.

The National Association of Realtors has put forth a set of guidelines for the duties of Real Estate Agents. These are very important to know and understand as you move through the process.

Fiduciary Duties of a Real Estate Agent

A real estate broker who becomes an agent of a seller or buyer is deemed to be a **fiduciary**. Other examples of fiduciaries are trustees, executors, and guardians.

As a fiduciary, a real estate broker is held by law to owe specific duties to his/her principal (the person who they are representing), **in addition** to duties or obligations set forth in a listing agreement, buyer representation agreement, or other contract of employment. Subagents of the broker also owe the same fiduciary duties to the broker's principal. These specific fiduciary duties include:

- Loyalty
- Obedience
- Disclosure
- Confidentiality
- Reasonable care and diligence
- Accounting

Loyalty

One of the most fundamental fiduciary duties an agent owes to the principal. The duty obligates a real estate broker to act at all times, solely in the best interests of the principal, excluding all other interests, including that of the broker.

An example of breach of loyalty is when a broker purchases a property listed with his/her firm, and immediately resells it at a profit. Such conduct is usually considered appropriate and lawful by persons who act at arms length, but a fiduciary would be considered to have stolen an opportunity for profit that rightfully belongs to the principal.

Sellers Agent	Exclusive Buyer's Agent
Must do everything possible to gain an advantage for the Seller.	Must do everything possible to gain an advantage for the Buyer.

Obedience

An agent is obligated to promptly and efficiently obey all lawful instructions of his/her principal that conform to the purpose of the agency relationship. However, the duty does not include an obligation to obey unlawful instructions, such as instructions to not market a property to minorities or to misrepresent the condition of a property.

Sellers Agent	Exclusive Buyer's Agent
Must obey all lawful instruction of the Seller, is not obligated to obey instructions from the Buyer.	Must obey all lawful instruction of the Buyer, is not obligated to obey instructions from the Seller.

Disclosure

An agent must disclose to the principal all known relevant and material information that pertains to the scope of the agency. The duty includes any facts affecting the value or desirability of the property, as well as any other relevant information pertaining to the transaction, such as the other party's bargaining position, the identity of all potential purchasers, information concerning the ability or willingness of the buyer to offer a higher price, any intent to subdivide or resell the property for a profit.

An agent's duty of disclosure to his/her principal must not be confused with a real estate broker's duty to disclose any know material facts about the property value to non-principals. The duty to disclose known material facts is based on a real estate broker's duty to treat all persons honestly. The duty of honesty does not depend on the existence of an agency relationship.

Sellers Agent	Exclusive Buyer's Agent
<p>Must reveal any known material defects in the property.</p> <p>Must NOT reveal information about traffic problems, poor school system, declining property values, etc. since these items might make the property less desirable to Buyers.</p>	<p>Must tell Buyer everything they can find out about the Seller including the motivation for selling and any reasons the Seller may have for wanting a quick sale.</p> <p>Must tell Buyer everything they can find out about the property, including traffic problems, poor school system, high crime rates, etc.</p>

Confidentiality

An agent is obligated to safeguard his/her principal's lawful confidences and secrets. Therefore, a real estate broker must keep confidential any information that may weaken a principal's bargaining position. The duty of confidentiality precludes a broker who represents a seller from disclosing to a buyer that the seller can, or must, sell a property below the listed price. Conversely, a broker who represents a buyer is prohibited from disclosing to a seller that the buyer can, or will, pay more than what has been offered for a property.

The duty of confidentiality does not include an obligation by a broker who represents a seller to withhold know material facts about the condition of the seller's property from the buyer, or to misrepresent the property's condition. To do so constitutes misrepresentation and impose liability on both the broker and the seller.

Sellers Agent	Exclusive Buyer's Agent
<p>Must tell the Seller everything they can find out about the Buyer, including all financial details they can obtain.</p> <p>Must conceal anything about the Seller that would help the Buyer gain an advantage, such as impending foreclosure, need to move in a hurry, need to sell to settle divorce, etc.</p>	<p>Must keep all information about the Buyer confidential, including the Buyer's ability or willingness to pay more for the property than they are offering as well as the Buyer's motivation for buying.</p>

Reasonable care and diligence

An agent is obligated to use reasonable care and diligence when pursuing the principal's affairs. The standard of care expected of a buyer's or seller's real estate broker is that of a competent real estate professional. By reason of his/her license, a broker is considered to have skill and expertise in real estate matters superior to that of the average person.

As an agent who represents others in their real estate dealings, a broker or salesperson is under a duty to use superior skill and knowledge while pursuing the principal's affairs. However, no broker is expected to perform tasks or know information outside the scope of his/her real estate license. Real estate licensees are not expected to perform services normally provided by engineers, lawyers, accountants, or other professionals. If concerns arise outside the scope of a broker's responsibility, the broker should acknowledge that and suggest that the principal seek assistance from a reliable outside source.

Sellers Agent	Exclusive Buyer's Agent
<p>Must prepare themselves through education and study to competently represent the Seller in all matters.</p>	<p>Must prepare themselves through education and study to competently represent the Buyer in all matters.</p>

Accounting

An agent is obligated to account for all money or property that belongs to his/her principal entrusted to that agent. The duty compels a real estate broker to safeguard any money, deeds, or other documents entrusted to them relative to their client's transactions of affairs.

Sellers Agent	Exclusive Buyer's Agent
<p>Must account to Seller for any money or documents entrusted to them.</p>	<p>Must account to Buyer for any money or documents entrusted to them.</p>

Whether a principal is a buyer or a seller, an agent always owes that person the above six fiduciary duties. These duties are inherent in all agency relationships and enforced by all courts of law in the United States. If you have any questions, please don't hesitate to ask us!