

## DUAL AGENCY

When a buyer or tenant client of a real estate company becomes interested in property listed by that company, the real estate company, or broker, becomes a dual agent (**Dual Agency**). Meaning that the company has a legal obligation to represent both parties and a duty to maintain the confidentiality of information obtained from each party.

## INTRA-COMPANY AGENCY

When both seller and buyer (or landlord and tenant) agree to Dual Agency by signing a Consent for Dual Agency form, the real estate company ("dual agent") will assign one agent to represent the seller or landlord (the seller's "intra-company agent"), and another agent to represent the buyer or tenant (the buyer's "intra-company agent").

**Intra-Company Agents** can provide the same services to their clients as exclusive seller's or buyer's agents, including advising their clients as to price and negotiation strategy.

## DISCLOSURE

Agency **Disclosure** law requires real estate agents to provide written disclosures to both seller and buyer, explaining who the agent is representing and what the agent's responsibilities are. These written disclosures are prepared by the Maryland Real Estate Commission.

The duties of the agent in a real estate transaction do not relieve the buyers or sellers from the responsibility to protect their own interests. All agreements should be read carefully to ensure that they adequately express your understanding of the transaction. Also, as a principal, you should ensure that any existing relationship is disclosed to other principals and their agents.

*Please note that a real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, you should consult an appropriate advisor.*

# UNDERSTANDING THE ROLE OF REAL ESTATE AGENTS

FOR USE IN THE STATE OF  
MARYLAND



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Everyone involved in a real estate transaction should understand the unique role of real estate agents. This role has been defined over the years by law and by custom.

In the past, real estate agents generally worked for sellers, assisting them in finding qualified buyers for their property. Thus, buyers were typically considered customers and the real estate agent's obligations remained solely with the seller.

Recently, more and more homebuyers have sought exclusive representation throughout the real estate transaction process. With the advent of Buyer Agency, many issues have emerged concerning the role of real estate agents.

### Is Your Agent Really Your Agent? How Can You Be Sure?

As soon as you begin discussions with a real estate agent, you should understand what type of agency relationship or representation exists between you and the agent.

There are four kinds of agency relationships: Seller Agency, Buyer Agency, Dual Agency and Intra-Company Agency.

Before examining these relationships in further detail, let's review some basic definitions.

#### Basic Definitions:

- **Agent**
- **Customer**
- **Intra-Company Agency**
- **Principal**
- **Seller Agency**
- **Disclosure**
- **Agency**
- **Buyer Agency**
- **Client**
- **Dual Agency**

An **Agent** is one who represents another, called the **Principal**, in dealing with third persons. Such representation is called **Agency**.

The difference between a **Client** and a **Customer** further defines the nature of agency relationships. A Client is a buyer or seller who is represented by an agent. The agent provides advice and also owes the Principal duties of reasonable care: loyalty, disclosure, confidentiality, diligence and accounting.

A Customer is entitled to honest treatment, including disclosure of material adverse facts known to the agent.

## SELLER AGENCY

**Seller Agency** is the "traditional" agency relationship. Simply put, the listing and cooperating ("selling") agents are agents of the seller. Their duties of reasonable care are to the seller.

### Seller Agents, as With All Agents, Are Obligated by a Code of Ethics:

- To respond honestly to questions about the property from the buyer.
- To disclose material adverse facts about the property to the buyer.
- To present all buyer offers to the seller promptly.

### How Seller Agency Affects the Buyer.

The seller's agent can be helpful to the buyer in a variety of ways. The seller's agent can show the buyer available properties, describe the attributes and amenities of properties, provide information about sources of financing, and submit the buyer's offer to purchase. These are called "ministerial acts". They do not bring about an agency relationship between the buyer and sales agent.

## BUYER AGENCY

Just as a written Listing Agreement is required to represent the seller, a written Buyer Representation Agreement is required to represent a buyer, referred to as **Buyer Agency**.

The buyer agent owes the buyer loyalty, disclosure, confidentiality, accurate accounting, reasonable care and diligence. Among several duties owed to a buyer client, are that the buyer agent should disclose any material facts or information about the property which are reasonably known to the buyer agent.

### Presumed Buyer Agent.

Under Maryland law, the real estate agent is a presumed buyer's agent unless you or the agent determine otherwise. When you begin discussions with a real estate agent, you should understand what type of agency relationship exists between you and the agent. Written agency disclosure of the relationship is required under Maryland law.

If the agent is representing you as a presumed buyer's agent, a buyer representation agreement must be signed when you decide to write an Offer to Purchase. If you wish to see a Long & Foster listing, you must sign a Consent for Dual Agency. Then your agent becomes an intra-company agent.

### Buyers Agents Are Obligated to Reveal to Buyers\*:

- Any known willingness of the seller to accept a lower price.
- Facts relating to the urgency of the seller's need to dispose of the property.
- The agent's relationships to the seller or interest in the property for sale.
- Facts affecting the value of the property.
- The length of time the property has been on the market and all other offers or counteroffers.
- Information that would affect the buyer's ability to obtain the property at the lowest price and on the most favorable terms.

### How Buyer Agency Benefits Buyers and Sellers Alike.

By offering the option of buyer agency, Long & Foster is able to give buyers who seek representation the same Long & Foster advantages we give our sellers—not only can we represent the buyers' best interests *exclusively*—but we also can give them our broad knowledge, experience in real estate, and the professional integrity and innovation that have made Long & Foster the number one privately-owned real estate company in America.

*\*To the extent reasonably known to the Buyer Agent.*