

The Consumer's Guide to

# Choosing Your Realtor



## Understanding Agency

*A must-read for those who own or  
want to own their own home*

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*"Consumer Advocacy in Action"*

## *How Does Agency Work?*

Agency is a relationship created when one person, the principal, delegates to another, the agent, the right to act on his or her behalf in business transactions and to exercise some degree of discretion while doing so. Real estate agents are licensed by the state to represent a person for the sale, building or purchasing of real estate. There are numerous laws, both common and statutory, controlling the rights and duties of the principal and the agent. The responsibilities of the agent are defined and restricted by state law, the Realtor®'s code of ethics and general principles of agency law.

When you select an agent, a realtor, to handle your real estate transactions you are placing them in a position of trust and confidence. They have what is called a fiduciary relationship with you, the principal. The term fiduciary describes the faithful relationship owed by an attorney to a client or a realtor to you, the principal. Among the obligations that your agent owes to you is loyalty, obedience, full disclosure of any facts, the duty to use skill, care and diligence, and the duty to account for all moneys.

When an agent breaches his or her fiduciary duties, you can usually bring civil action for money damages or compel the agent to forfeit their compensation. Further, the state licensing authority can bring disciplinary proceeding for violation of its regulations.

Agents are required to disclose material facts (such as a proposed new school, new sewer system being installed, new zoning that might increase the value of the property). While agents are required to disclose material and pertinent facts, race, creed, color, religion and sex are not material facts and should not be disclosed even at the principal's request. To do so would in fact violate Fair Housing regulations.

The selection of an agent to represent you is a very important choice. The agent may bind you to a contract, upon your verbal authority, when you have not in fact signed the agreement. It is virtually impossible to work effectively in this close relationship without the agent becoming knowledgeable of personal and confidential information. Financial information must be disclosed for the agent to work for you effectively. Without the principal's authorization, an agent cannot disclose to a third party confidential information that hurts his principal's bargaining position, such as the fact that the seller is forced to sell due to a job loss, or ill health, or that the seller will actually accept less than the list price. Also, confidential information learned during the course of the agency cannot be used at a later date against the principal, even after the transaction is closed.

Very logically, when a person is selling their home, their agent is called a Seller's Agent. For many years, all agents worked for the seller either as a Seller's Agent or as a sub-agent for the seller. That meant that the interest of the seller was the primary goal for ALL agents, even if they had the buyer for the property.

Locally, buyer agency has been in effect for about three and a half years. Buyers can now select an agent who represents their needs exclusively. This agent is called a Buyer's

Agent. The realtor fee is still paid by the seller as it has always been. The client and agent should discuss agency and decide if the client wants the agent to act as a Buyer Agent or as a sub-agent for the seller. Agency duties are owed to the seller in ALL transactions where there is no Buyer Agent. It makes sense to have a Buyer Agent represent you. Even if you are building a home, you need a Buyer Agent to represent you.

Limited Agency, also called Dual Agency, arises when a broker or agent has relationship with two clients who have opposing goals (buyer and seller). Then both clients must be notified AND sign an agreement that they want to continue the relationship. Then the agent must treat the interests of the buyer and seller equally.

The most practical solution, in addition to obtaining written consent, is for the selling broker to clearly state to the buyer that he is the seller's agent and owes his first loyalty to the seller but that he will assist the buyer according to the highest ethical standards of the real estate profession. The BEST solution is for buyer and seller to always use an agent of their choosing who's ONLY responsibility is to protect that client's best interest. The agent, whose name is on the sign outside the house you like, is clearly working for the seller.

Do your homework; select an agent to represent you as a Buyer's Agent. This is also critical if you are building a home.

## Teamwork Works Best

There are many principals which have become common statements we make without really appreciating how true they are. Or, because they are so common, we neglect to apply them as often or as effectively as we might. “Teamwork works” is a phrase we know and we know it works. I wonder how many people would consider it a major factor in how a real estate transaction comes together.

I believe in teamwork and have always seen myself as a team player. Frequently because I’m outspoken I become or get chosen as the team leader, but I recognize that the leader can only function effectively with and through team effort. All the players have a role to play and the goal is achieved quickest, easiest and with the least amount of frustration to all parties IF all parties recognized that they are part of a team.

Yes, this does relate to real estate. A recent experience, a rather unpleasant one, reawakened my realization that working together is a good thing. Sometimes nothing works if there is not a spirit of genuine cooperation and teamwork. Let’s use the example of a seller and their agent (this could be applied to a buyer too but the example would be different). The seller and the realtor become the initial team. When I first meet with someone who is considering using me to sell their home I share my feelings that we are a team; I have certain things I need to do: Carefully analyze the market data to help establish a price at which the home is for sale, process all the correct paperwork in a timely fashion so others are award the home is for sale, aggressively market the home through flyers and other mediums, coordinate showings of the home. These are a FEW of my responsibilities and things to be done immediately. The seller also has some work to do. Taking time to make minor repairs, clean the house thoroughly and keep it clean for showings are a few of the seller’s responsibilities.

Suppose I do all my stuff very, very well. The price is just right for the neighborhood, the flyers are very enticing, the home looks great outside, the owner spent lots of money fixing up to sell it and several agents show it. A problem arises though because the house always, or most always a mess. Clothing everywhere, trash left open in the kitchen, bathroom a disaster. The home does not show well. The seller is negating their efforts with fixing up by now not cleaning it up. It’s a crucial piece of teamwork on their part to get an offer.

Or suppose the seller feels so uncomfortable about other people being in their home that they insist on being present at all showings. That may seem reasonable to you but it’s a real negative factor to potential buyers and their agents. They feel rushed and less likely to really open cabinets and closets and linger to access your home, to get a feel for how it might be as THEIR home. The less time a person spends in the house, the less time there is for the house to begin to “feel like home.”

Realtors sometimes mess up their teamwork effort too. Suppose the realtor, for whatever reason, does not promptly return calls to agents wanting to schedule showings. The home is in great shape thanks to a serious seller who had done all they could to make the home clean and attractive. The realtor has done pretty well with pricing and flyers. The problem is people see it listed by they can't get inside when they want to. Sounds like a great house on paper, looks good if you drive by. Sure wish you could get inside. In today's society where everyone has a hectic schedule, timing is crucial. Realtors should have an organized system for scheduling showings PROMPTLY after receiving a call. Seller should make their home readily available by lock box with as few restrictions as possible. Teamwork is the catchword here. If either party doesn't share the notion that they need each other and are working for a common goal, there will be a problem.

The number of people who join this TEAM EFFORT expands with the introduction of lots of other team member; the potential buyer, the cooperating realtor, the banker and the banker's team, the inspector, the appraiser, the title company. You need a team of at least 20 people to sell just one house. Every relationship with a realtor, whom you've met, talked with and feel comfortable that you're on the same page with is crucial. You can't work enthusiastically with someone you don't really trust or believe will work with you. No realtor is right for everyone. Select a realtor. Likewise, not everyone who needs to sell is a client, you as a realtor, want to take on. Both parties should evaluate and make a decision, not fall into something. Teamwork works. Select the right team member.

“An agent who understands where you're coming from”

## Do You Need an Attorney and a Realtor?

That's a question I am asked fairly often. The answer is: it depends. It depends on a lot of factors which can only be determined on a case by case basis. Most of the time you don't need an attorney to help with the sale or purchase of a home. But there are certain situations which almost certainly will require consultation with an attorney in addition to the professional services being performed by your realtor.

If a home is a part of an estate, you definitely should have an attorney handle the paperwork for the estate prior to engaging a realtor to try to sell a real property involved. Even if there is no dispute about ownership of the property the details about HOW it can be transferred to a buyer should be handled by an attorney. It will save everyone a lot of frustration and delays later is an attorney is involved from the beginning to determine IF an estate must be opened, whether it must be a supervised or unsupervised estate, among other questions.

If a potential buyer is under a court ordered guardianship, of any type, then their attorney should of course be involved in any efforts to purchase or sell real estate.

Anyone who has acquired a significant amount of money unexpectedly, from lottery or gambling winnings, inheritance, retirement buy-out or some other source, should most definitely consult both an attorney and a financial planner to help with making the appropriate decisions about the use of that money. They would also be wise to move slowly about selection of property to invest in. People usually are less careful about what my family calls "found money" (money you didn't save, struggle and sweat for) than they are money you had to acquire the hard way.

Contracts are legally binding. You need to remember that. Yes, you can get out of them but there is always a cost to getting out of a contract. It is much better to understand what you're signing and be prepared to honor the contract you committed to. It is always preferable that you read a contract completely and leisurely BEFORE you sign it. I would never recommend signing a contract to buy or sell a home that I had not had the opportunity to read, study and question before being asked to sign it. It is reasonable to ask your realtor for a copy before you reach the point of deciding. As a professional realtor, I always provide either the listing contract or purchase agreement to a customer at our first meeting so they can have a chance to review it and be sure they understand it. That also provides them an opportunity to have their attorney review it if they choose to. There shouldn't be such a rush to sign anything. It's binding on you, the consumer. You owe it to yourself to understand what you are agreeing to.

Attorneys are sometimes retained either to review documents before a closing or to attend a closing with a client. Not necessary, but sometimes appropriate. I recently attended a closing on the purchase of a home where my client, the seller, had asked her attorney to attend as well. I will be honest and tell you that normally I feel that I have explained things thoroughly and carefully enough that my clients, I hope, won't feel uncomfortable enough that they need to have an attorney. In this particular case I was very happy to have the attorney attend for several reasons: he was thoroughly familiar with real estate transactions and handled enough of them to be knowledgeable about what are normal seller charges, how the contract needs to be interpreted and other details that ALL attorneys are not familiar with.

Having someone my client respected enough to hire to advise her was especially helpful in this particular case as I also represented the buyer (Limited Agency) when a question was raised by the seller about costs she didn't understand and hadn't anticipated, her attorney was able to explain to her satisfaction and there no need for her to feel I had taken the side of the buyer at her expense.

Anytime there is a dispute about the interpretation of the contract itself, inspection issues, etc., then having an attorney to review the material in question and help to clarify things is good. I do urge you to deal with a real estate attorney or an attorney at least familiar with real estate transactions. The issues are too important on the buying or selling of a home to not feel absolutely sure you fully understand every detail of the transaction.

## Consumer Beware: Contracts are Legally Binding

This section addresses situations where a contract has been signed by two parties.

It doesn't happen every day but it seems to be happening more and more lately; someone enters into (signs) a contract to buy or sell their home and then has serious second thoughts. I mean serious to the extent that, "I just don't want to do this." If either party to a contract fails to perform the agreement, various remedies are available to the other party. Either party can be sued for "specific performance" and/or damages. One can also seek repayment of any costs incurred (inspections, appraisal, etc.) as a result of the contract.

Within recent months I have had five situations where the contract needed to be ended, three with people seeking advice on how to get out of the deal with a builder when they "changed their mind."

The law allows you to end a contract and get your earnest money back if you are unable to get a mortgage. Your right to have the earnest money returned may be challenged if it can be proven that you **INTENTIONALLY** did something to have the loan denied because you really just "changed your mind."

A conflict arises fairly often when a buyer does not clearly understand the amount of money needed to close the deal or the monthly payment turns out to be higher than they feel comfortable with. Points and closing costs and prepaids can all be confusing if it's not explained carefully. This problem can be eliminated **IF** you have a "good faith estimate" which details **ALL** of yours costs and you know exactly what you're dealing with. Getting full mortgage approval is highly recommended, especially if you're the least bit uncertain about your financing.

When you buy an existing home, the process normally takes at least several days, sometimes a week. An offer goes to the seller; there is a counter-offer, another counter-offer until an agreement is reached. Both parties have their realtors explaining the pros and cons. Both parties have time to think about it and the process ends anytime one party decided they don't like the terms. It's a negotiated contract.

It has been my experience that the situation most likely to lead to buyers changing their mind is when they buy from a builder. The contract is NOT negotiated. The contract is presented by the builder's agent, is generally implied or maybe even stated that there can be no changes to the contract. (That's not true!)

Buying or selling a home is emotional. Building a home is the MOST emotional way to acquire a house. Being swept away by your emotions when you're at home with your sweetie is a good thing, but getting carried away emotionally while you're out "looking at models" on a Saturday or Sunday afternoon is definitely a bad thing. This picture is further complicated by two facts: 1. There is no one there to represent your rights as a buyer; 2. There is always some promotion that is about to expire so you must sign today.

Please understand that I sell new construction homes, representing buyers as a buyer's agent. I am not trashing builders nor am I trying to frighten you into using a realtor to help you when you go to a builder. I am trying to educate you as to what's going on so that you know that having a realtor represent you as your buyer's agent when you buy from a builder is your best protection to avoid a contract that doesn't take care of your needs or needing to get out of it altogether. First, you must sign your realtor's name on the builder's registration card every time you go to a different builder. The builder will not recognize your agent later if you didn't register your realtor's name. You will not save money by not using your realtor. The nice sales agent is not your realtor. Second, select your realtor before you decide to go cruising around (you can't register your realtor if you don't have one). You need a realtor who is familiar with new construction to help you. THIS IS VERY, VERY IMPORTANT. What you (or your realtor) don't know can hurt you.

The fact that most people do not know or will not understand is that nice agent in the model is representing the seller. The responsibility of the seller's agent is to get the best possible situation in all areas for the seller. They have no obligation to protect you. They obviously have real estate knowledge that you don't have. You need someone whose responsibility is to use their knowledge and their commitment to protect you.

The responsibilities of your buyer's agent would include being sure you understand all the terms of the purchase agreement, including financing. You need someone who will urge you to consider many aspects you might otherwise overlook, the possible resale value of the home, any drawbacks to the lots being discussed, the impact of surrounding areas, TRUE COST of the home, not just the base cost but the pretties you add plus necessities such as appliances, window coverings, a patio and the dining rooms set you don't own. Your realtor will help you focus on what EXACTLY are your up-front costs and then monthly payments.

When the builder has a bank they recommend (or they offer you deal if you deal with their bank) Most always the situation is fixed in their favor. If you understand the contract and that's what you want to do, that's fine. The problem is when you don't understand.

On a very basic level many people do not understand that filling out the purchase agreement and leaving a deposit means you are buying the house. It does not mean you're thinking about it. When someone solicits you to buy at your home you have three days to change your mind. This is not the case when you go into a model home and come out having signed a contract. Under law, you can be held to the contract, even if you didn't understand it. Many, many people forfeit their deposit once they change their mind. And the builder still may sue for specific performance or sue for damages.

Be forewarned; get someone to help you understand the contract. Please notice I said HELP. The bottom line is your name on the contract; you're the one who made a commitment. Any legal repercussions will be against you. Usually your agent and the builder's agent) won't suffer a loss. You must take your time, know what you want, stay within your budget, understand the money side, and never sign a contract with blank spaces (simply draw a line through the area.)

It's important that you don't do anything until you've had plenty of time to consider all your options. SLOW DOWN. Take a blank contract home and study it. If you're not sure, wa-i-t. Ask some more questions and be sure the answers make sense to you. Remember, CONTRACTS ARE LEGALLY BINDING.