

Real Estate Brokers and Salespersons Consumer Fact Sheet

Find helpful information about the real estate industry.

Agency Disclosure

A real estate broker or salesperson must tell you who he or she represents in a prospective transaction. This disclosure of the relationship the agent has with you or another party must be made in writing at the time of your first personal meeting to discuss a specific property or properties.

Types of Agent Relationships

Sellers Agent

If you engage the services of a listing broker to sell your property, you become the broker's client. That broker represents you, the seller, and owes you undivided loyalty, confidentiality and accountability. In negotiating for the best price and terms, he must put your interests first.

Buyer's Agent

You may engage the services of a broker to represent you exclusively as a buyer of real property. In this case, the broker represents you and is accountable to you. She must obey your instructions and keep confidential anything you tell her that may affect your purchase of real

property. In negotiating for the best prices and terms, she must put your interests first.

Disclosed Dual Agent

A broker can work for both the buyer and the seller on the same property provided the broker gets the consent of both parties and provides each with a written notice of the relationship. In this case, the broker is considered a "disclosed dual agent." This broker owes both the seller and buyer a duty to deal with them fairly and honestly. In this type of agency relationship, the broker does not represent either the seller or the buyer exclusively, and neither party can expect the broker's undivided loyalty. Undisclosed dual agency by a broker is illegal.

Facilitator

When a real estate agent works as a facilitator that agent assists the seller and buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated owe the seller and buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. The role of facilitator applies only to the seller and buyer in the particular property transaction involving the seller and buyer. Should the seller and buyer expressly agree a facilitator relationship can be changed to become an exclusive agency relationship with either the seller or the buyer.

Licensed Brokers and Salespersons

Only licensed real estate brokers and salespersons can assist you with the purchase, sale, lease or exchange of real property. The license

must be current and in an Active status. This assistance includes a number of services, such as examining property for basic valuations (not to be confused with the services of a licensed appraiser), negotiating purchase, sale or lease agreements, maintaining escrow accounts, and advertising.

To become licensed, an applicant must satisfactorily complete the agent curriculum in real estate approved by the Board and pass a written examination conducted by the Board's testing service.

A **real estate broker** negotiates agreements to sell, exchange, purchase, rent or lease interests in real property for a fee, commission or other valuable consideration for another person. A broker is responsible for accepting and escrowing all funds, such as a deposit placed on the purchase of a home, and for finalizing transactions. A real estate broker must supervise any transactions conducted by a salesperson.

A **real estate salesperson** engages in the same activities as a broker, except completing the negotiation of any agreement or transaction. A salesperson also has no authority or control over escrow funds.

A salesperson must be affiliated with a broker, either as an employee or as an independent contractor, and work under the supervision of the broker. A salesperson can not operate his own real estate business.

Things Buyers Should Know when Dealing with a Real Estate Agent

- Who does the real estate agent represent? The agent may represent the Buyer or the Seller, or both. If the agent is a Facilitator he does not represent either party. It is very important that the agent provide you with a disclosure of who he or she represents prior to any discussions about the transaction.

- Be cautious. Do not reveal too much personal information, especially when working with a seller's broker or a facilitator. Disclosing financial information or information regarding your urgency to make a deal may undermine your bargaining position if the broker conveys it to the seller.
- Make sure the real estate agent is licensed, active and in good standing with the Board. (Check that both the broker's and salesperson's licenses have not been subject to disciplinary action, such as a suspension or revocation.) Call (617) 727-2373.
- You can negotiate the amount of any deposit.

Deposits

Both parties need to be clear about who will hold any deposit funds and what will happen in the event of a dispute between the parties. All agreements should be in writing, and no party should sign an agreement or pay any money until they are comfortable that they understand the terms.

If a broker accepts money from you for any reason, that broker must deposit the payment in an escrow account, a bank account which is maintained specifically as a depository for funds belonging to others, in a timely manner. The money must be kept in the escrow account until the transaction is successfully completed or is terminated. *It is illegal for a broker to mingle your funds with his own.*

If a salesperson accepts your payment or deposit, the salesperson must turn over this money to the broker with whom she or he is affiliated.

- If you make an offer to purchase a property listed by a broker, the broker or salesperson is required to convey your offer to the owner of the property.
- You can negotiate the terms of a purchase and sale agreement.

Purchase and Sale Agreement

A Purchase and Sale Agreement is the contract between the buyer and seller noting the terms concerning the purchase of the house (real property). Essentially, it controls the sale of the home from seller to buyer. It includes information on what is being sold, the sale price, your financing, the type of title you will get, the closing date, the amount of deposit you have paid over and how much of the house price you are financing.

Typical negotiable items include:

The amount of the deposit, the closing date, the number of loan applications you will file and the main terms of such loan (e.g., that you are trying for a fixed rate loan that does not exceed a specific percentage and number of years). You may also rid the agreement of deposit dispute clauses or include one more favorable to you as the buyer should the sale fall through.

Allow enough time in the purchase and sale agreement to obtain financing. The purchase and sale agreement should also specify how many applications for financing constitute "good faith." Repeated unsuccessful applications can be costly and time consuming.

Investigate "pre-approval" before house hunting so you are clear about financial limitations.

If the broker or the seller makes any important promises or representations about the property or what will be included in the sale, those promises must be contained in the purchase and sale agreement.

Allow enough time in the purchase and sale agreement to have a professional home inspection performed. Use references from friends, not the seller's broker, to find your own inspector. If you are represented by a buyer broker

- On the day of the closing, before papers are passed, make one final walk through of the property to be sure it is in the agreed upon condition.
- It is often wise to seek legal advice prior to signing any documents concerning the purchase of real estate. Ask questions. Don't sign anything including a contract for representation by a real estate agent until it has been explained to your full satisfaction.

Things Sellers Should Know when Dealing with a Real Estate Agent

- Find out what your relationship with the firm will be. Some firms practice designated agency. This means only certain agents represent you (with your consent) and other agents in the firm do not and may in fact represent an opposing party. Other agencies and all the agents affiliated with that agency will represent you. If you use
- Make sure the real estate agent is licensed and in good standing with the Board. (Check that both the broker's and salesperson's licenses have not been subject to disciplinary action, such as a suspension or revocation.) Visit www.mass.gov/dpl/ or call (617) 727-2373.
- Sellers typically use the services of a real estate broker to sell their residential or commercial property. This is usually described as giving that broker a listing. The terms of the listing agreement *are negotiable*.

Listing Agreement

Often brokers present sellers with a standard listing agreement (an agreement which contains "standard language"). These agreements are commonly used in the practice. (They are not, however, developed by

the Real Estate Board or by state government.) You may negotiate different terms that are acceptable to you and the broker.

Typical negotiable items include:

How long you will give a broker to sell your real property, the type of advertising which will be done, and the commission you will pay to the broker.

Unless your needs demand otherwise, your listing agreement should seek to have your property advertised in as many advertising mediums as possible, thereby giving it greater exposure to more potential buyers. (For example, the Listing Service of private professional associations, local newspapers, newspapers with statewide circulation, or the internet.)

- Determine whether you want the real estate agent to be the only person to represent you. This is a typical arrangement, but some sellers may wish to enter into a non-exclusive listing agreement with an agent, based on their particular needs. In such situations, the agent does not exclusively have the right to sell your real property. That agent will attempt to sell it, but you may also employ other agents and your own efforts in selling the real property. Naturally, non-exclusive listing agreements may affect the ultimate terms of the agreement, particularly the commission. (Remember, the broker bears the cost of advertising the property, which can be substantial. With a non-exclusive listing agreement, the broker may want a larger commission for a sale made by the broker since he or she undertakes these costs without the exclusive right to sell.)
- Check if a broker has errors and omissions insurance for his or her brokering practice. (State licensing law requires real estate brokers to have a five thousand dollar surety bond, but many brokers carry additional errors and omissions insurance.) This

may be helpful should there be a problem which leads to litigation against a broker.

- Check to be sure your broker will accept offers made from other brokers including brokers who represent the buyer exclusively and brokers who may not be affiliated with a professional association. Brokers are required to present all offers that are made to them to you, the seller, all offers received on your behalf.
- Clearly understand what your interests are so that when you enter into a listing agreement with a broker you are comfortable with the terms. You also may want to have an attorney review such an agreement before you sign it.

Things Renters Should Know when Dealing with a Real Estate Agent

Anyone in the business of finding living accommodations for another for a fee, commission, or other valuable consideration must be licensed as a real estate broker or salesperson.

- Make sure the real estate agent is licensed and in good standing with the Board.
- When seeking to rent or lease an apartment, house, or condominium through a real estate broker or salesperson, you may be asked to complete an application. Know what you are signing. Some applications may bind you to a fee that must be paid whether or not you ever sign a lease.
- Even when a standard application form (a form that contains "standard" language) is used, you can submit the application with changes that reflect your terms.
- There are no "agency disclosure" regulations for agents finding rental or lease property for a fee. Ask who the agent represents - you or the landlord?

- If you are asked to make a deposit, find out what the deposit will be applied to - first or last month's rent, security deposit, or a fee and under what circumstances, if any, might you forfeit any portion of that money.
- Determine whether it is you or the landlord who will pay the agent's commission. If you are required to pay the commission, find out when the payment is due.

It is illegal for an apartment listing service to advertise or otherwise represent listings that claim to meet certain specifications when, in fact, they do not, or to state that it has listings meeting certain specifications when it has no such listings. It is also illegal for an apartment listing service to induce you to sign a contract by falsely representing that it has listings that conform to your requirements at the time the contract is executed.

Your Responsibility as a Consumer

Whether you are a buyer, a seller, landlord, or a potential tenant, the duties of a real estate broker or salesperson do not relieve you of the responsibility to protect your own interests. If you have questions concerning your particular transaction, pose them to the agent. If you need advice on legal, tax, insurance or other matters, it is your responsibility to consult a professional in those areas.

It is illegal for a broker or salesperson to advise you against using the services of an attorney in any real estate transaction.

Filing a Complaint

While the majority of licensees conduct themselves as true professionals, the Division of Professional Licensure will take action against those who violate the statutes or the Board's rules and regulations.

In many cases, complaints are made by dissatisfied consumers - but, dissatisfaction alone is not proof of incompetence or sufficient grounds for disciplinary action.

If you have a serious complaint against a real estate broker or salesperson, call or write the Division's Office of Investigations and ask for a **complaint form**  :

Division of Professional Licensure
Office of Investigations
1000 Washington Street, Suite 710
Boston, MA 02118
tel. (617) 727-7406