



Agency Disclosure

As a real estate consumer in Massachusetts, it is your choice as to the type and nature of services you receive.

1. You may choose not to have representation by a real estate agent and represent yourself while the agent of a company represents the other party.
2. You can choose to enter into an agreement to be represented by an agent of a company.
3. You can choose to be represented by a company that only represents buyers or sellers or is a designated agency whose agents represent both buyers and sellers.

Whichever you choose, you must read any contract with an agent prior to signing. Confirm the services that will be offered and how the fee is paid (and by whom). You should discuss the nature of the representation with the agent sufficiently to understand.

Before you share information with an agent about your need, motivation, time line or financial concerns, be sure you understand whether or not that agent is working only in your best interests. This information may affect your bargaining position when negotiating a deal.

Common Questions

If I choose to be represented by a Buyer agent or Seller agent, what services should I expect?

- Obedience
- Loyalty
- Reasonable care and skill
- Confidentiality
- Accounting for funds

What should I ask when seeking representation by a real estate agent?

- Are you licensed and what is your license #?
- Can I work with other Companies during the time of the agreement?
- What will happen if I buy or sell on my own without the agent?
- When will the agreement expire?
- What happens if the agent found a potential buyer or seller while I was under agreement and the potential buyer or seller contacts me after the agreement has expired?
- How will the agent or company be paid for their services?
- Does the company represent both buyers and sellers?
- Will the agent or company continue to provide any services after the transaction is completed?

How can I make sure the Agent is licensed?

- Before you hire a broker or salesperson, check that his/her license is current and active at www.mass.gov/dpl. Inactive agents may not practice real estate.

Agency Relationships in Massachusetts

At your first personal meeting to discuss a specific property or properties, real estate agents (brokers and salespeople) must give you an Agency Disclosure Form. The purpose of this form is to disclose the agent's relationship with you or any other party to the transaction (buyer or seller).

The form also includes explanations of the different types of agency relationships. Before you begin working with an agent it is important to understand that Mass Law provides for different types of representation and broker/agent relationships for both buyers and sellers.

Seller's Agent

A seller can engage the services of a real estate agent to sell his/her property. This agent, called the listing agent, is then the agent for the seller. This means that the real estate agent represents the seller. The agent must put the seller's interests first and negotiate for the best price and terms for the seller. The agent must, however, disclose any known material defects about the property to the buyer.

Buyer Agent:

A buyer can engage the services of a real estate agent to purchase property. The real estate agent is then the agent for the buyer. The agent must put the buyer's interests first and negotiate for the best price and terms for the buyer. This means that the real estate agent represents the buyer, and of course that the agent must disclose any known material defects about the property to the buyer.

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 owes the seller or 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.

If you choose not to be represented by an agent and you wish to deal directly with an agent representing another party (the buyer or seller) the law requires that agent to perform the following basic duties when dealing with any buyer or seller.

- Present all offers in a timely manner
- Account for funds received on the client's behalf
- Provide an explanation of the services to be provided by the agent
- Be fair and honest and provide accurate information
- Disclose known material defects about the property

Unless you enter into a written agreement designating an agent to represent you, the agent does not represent your interests or act as your agent. Unless you have a written agreement, you should not expect the agent to promote your best interests or to keep your bargaining information confidential.

Dual Agent:

A real estate agent may act as a dual agent representing both the seller and buyer in a transaction but only with the express and informed written consent of both the seller and buyer. Written consent to dual agency must be obtained by the real estate agent prior to the execution of an offer to purchase a specific property. A dual agent shall be neutral with regard to any conflicting interests of the seller and buyer.

Consequently a dual agent cannot satisfy fully the duties that would be offered by either a seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds.

Working with Real Estate Companies or Agencies:

When dealing with a real estate company or agency you should understand the role of both the company and the individual agents that work for that firm. There are two basic types of agencies:

1. those where all the agents work on your behalf
2. those where some agents may work on your behalf and other agents may work on behalf of the other party in your transaction.

When a company has agents working for both the buyer and the seller on the same transaction, both the buyer and the seller must agree to this relationship within that company. This is to protect the consumers (both the buyer and the seller) by ensuring consumers always understand who represents their interests. Once agents have been designated to you, they may not be changed without your consent. Only those agents specifically designated to represent you will protect your interests and you should deal only with them. Others in the same firm may represent a party with opposing interests.

