

What Buyers and Sellers Need to Know about Real Estate Agents



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Many home buyers and sellers use the services of real estate agents/brokers. Yet, most consumers understand little about who their agent represents, how negotiable commissions are, and the many ways to buy and sell a house. To get better service from real estate agents, it is essential to understand the system in which they work.

Know Whom They Represent

State laws require that agents treat both buyers and sellers fairly and honestly. But most agents, even those who work with buyers, often legally represent the interests of sellers only. In the typical home sale there are two agents. The one working with the seller is called the listing agent (or broker), and the one working with the buyer is called the selling agent (or broker). But both agents often are paid by sellers and are legally obligated to represent the seller's interests. This is because many selling brokers work as sub-agents for listing brokers.

It is important for you as a home buyer or home seller to know who, if anyone, is legally representing you. When an agent or broker is representing you, they by law owe you "loyalty, obedience, care, accounting, disclosure, and confidentiality."

While many agents represent only the interest of sellers, a growing number of agents represent only buyers. These agents are called buyer agents/brokers.

Over the last several years, many agents who work with buyers have been criticized for representing the interests of sellers. Some of the agents began calling themselves dual agents. Dual agency is the situation where both a buyer and a seller are represented by the same agent in the same transaction. Dual agency can only occur after the informed consent of both the buyer and seller is obtained. However, the fiduciary duties of loyalty, obedience, care, accounting, and disclosure and confidentiality are easily compromised in a dual agency situation. It is impossible to be completely loyal to the interest of buyer and seller both, as their interests are completely opposed. Dual agency creates a disservice to both clients.

What Service Can an Agent Provide?

Whether an agent represents you or not, they can provide many services. As you set out to look at homes on the market and begin to make inquiries, you will encounter agents who are representing the owners of these “listed” homes. These brokers must disclose to you that they are representing the owner of the house. The broker is not allowed to disclose information that is detrimental to the seller’s negotiating position. However, the agent provides many services in order to contribute to a successful sale and that is in the interest of the seller. Listing agents can:

- check housing inventory on the Multiple Listing Service (MLS) and show you any home that you want to inspect
- counsel you on finding the right type of home that you can afford (pre-qualify)
- provide current information on neighborhoods, schools and local taxes
- accompany you on visits to homes that interest you
- help you prepare an offer on the proper legal contract forms
- expedite the negotiation process
- provide guidance in the sources and costs of financing
- help you prepare for closing

A buyers’ agent offers additional services:

- showing homes not on the MLS
- counsel you on how much to offer for the home of your choice
- negotiate a sales contract on your behalf

If you, as a buyer, want someone to legally represent you, use a buyers’ agent/broker. You will be asked to sign a contract to secure the services of a buyer’s agent. Be sure that you understand who is going to pay the buyers’ agent. Buyers’ agents may receive a commission paid by the seller or collect a fee from the buyer, or both, but the broker must explicitly acknowledge whose interest he or she is representing.

If you work with a sellers’ agent or a sub-agent of the seller’s agent, you should never disclose anything that you do not want the seller to know. They are not representing you.

How to Find an Agent

It is important that you work with an agent who is competent not just at the paperwork of a home sale, but also at knowing the pricing structure in your local community. There is no way to guarantee that one’s agent will be competent and highly motivated, but one can take several steps that will increase the chances of employing one who is capable. Ask friends, relatives, and business associates who have recently bought or sold a home for recommendations.

Ask the following questions:

- 1) What experience have you had as an agent? How many homes have you sold in the last year?
- 2) Can you give me the names of several former clients?
- 3) Do you have full access to the area MLS?
- 4) Will you represent my interests or those of the other party?
- 5) Will you inform me which houses you are showing are listed by you?
- 6) Will you make decisions about what homes to show me (buyer) without any regard for the level of their sub-agent commissions listed on the MLS?
- 7) Will you show me (buyer) the MLS listings of houses you think would interest me and, if permissible, give me copies of these listings?
- 8) How many homes are you prepared to show me (buyer)?
- 9) Will you work exclusively with sub-agents, or will you also work with buyer brokers? Are you prepared to split your commission with buyer agents or if they are being paid by the buyer, will you lower your commission accordingly?

Once you have selected an agent, make certain that there is a written agreement that spells out everything that he/she has promised. Keep in mind that any standard form that the agent uses can be modified if he/she agrees to this change. The more knowledgeable you are, the better value you will receive from an agent. Being knowledgeable can save you money on the price of a home and can make the home buying or home selling process more pleasant.

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