

BUYER-BROKER AGREEMENT

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What is a buyer-broker? First it is important to understand the legal concept of agency. Agency is the legal relationship created by a principal (either a Seller or a Buyer) and a real estate broker (to include any associate licensee of that broker, often called agents or salespersons) when they have chosen that broker to act on their behalf, or under their control, in business or financial transactions and in this case, the buying of real estate. Further, by law, agency creates a fiduciary relationship with certain duties, obligations and high standards of trust, good faith, and loyalty. Note that the payment of a fee or commission does not create this agency.

In many parts of the country, still today, real estate agents only have an express agency relationship with the sellers of real estate - not the buyers. This is true because the only written agency agreements have typically been the Listing Agreements for the sale of property.

In many parts of the country, when a buyer engages a real estate agent to help them find and purchase property, they typically do not execute a Buyer Broker Agreement and therefore do not have an expressed agency relationship. In other words, real estate agents actually only work for the sellers - whether it was their listing or not. Buyers are not be treated as clients, only as customers. This is an important distinction - and one that many people have not really understood.

To establish buyer agency, an Exclusive Buyer/Tenant Representation Agreement needs to be executed. It details the understanding and responsibilities between the buyer and the broker they choose to represent them. And, in addition to establishing a legal agency relationship for the benefit of the buyer, it provides the real estate agent with a commitment on the part of the buyer to work exclusively with them and promise loyalty as well.

Though it is well known that the public perception of real estate agents rarely ranks much higher than that of lawyers, the truth is that a competent real estate agent is an invaluable resource when buying a home. Good real estate agents work very hard. Much harder than most people realize. They spend lots of time, energy, and money helping home buyers find the right house, negotiating its purchase, providing expert advice, and bringing the transaction to a close.

There is a lot of responsibility and liability associated with this business. The average home buyer is probably unaware of the education, skill, effort and expense it really takes to consummate a real estate transaction.

Real estate agents (with very, very rare exception) are only compensated by commission. That commission is paid by the sellers of real estate to the listing broker who then cooperates with and pays the selling broker (the buyers' broker) an agreed upon share of the listing commission. And though those commissions may appear to be pretty lucrative at face value (e.g., a 3% selling commission on a \$250,000 sale is \$7,500), that sum is then split between the agent and the company, leaving only \$3,750. Additionally, there are a lot of significant expenses that come out of the remaining amount beyond the gasoline and auto expense in showing buyers houses.

Real estate agents are typically not really employees - they are independent, licensed contractors with the real estate company. In one way or another - directly or indirectly through fees or commission sharing with their company, they pay all of the expense associated with being in business. This would include all of the overhead expense of having an office, all of the office furniture, equipment, supplies, staff, phones, computers, etc., etc., etc. There are lots of other administrative costs: continuing education, professional fees, licensing expense, and medical insurance. Not unlike with other professionals, the cost of errors and omissions insurance (a type of liability coverage) has become absolutely obscene. Let's not forget about all of the ordinary day-to-day expense of having a suitable vehicle, its operation, maintenance and insurance, office equipment, telephones, copy machines, fax machines, computers, internet

service, MLS membership and service, proper wardrobe, advertising, etc., etc. It really is very expensive to be in this business.

Now, consider the way some prospective buyers want to treat real estate agents. They want to have the agent show them properties, drive all over town, be available both day and night, seven days a week, answer any and all questions, give advice, buy them lunch, and provide any number of other services. Some people schedule appointments they do not keep. Others are constantly late. The truth is, you may not believe some of the stories to be told. Sometimes people have all of this done even when they do not have a realistic expectation or capability to buy a home. Or, after months of looking with an agent, the buyers will walk into a new home subdivision and purchase a home without even telling them. Or, buy a For Sale By Owner (FSBO) house without using the agent. There are all kinds of ways that real estate agents get left with nothing but a pile of expenses and with no compensation at all. Another classic example is when the buyers use the services of an agent, maybe for weeks or months - and they finally find the house they want. Then, their cousin calls and says he has just gotten his real estate license and needs their help.

Professional real estate agents have learned that buyers who are sincere in their interest to purchase a home with capable assistance are more than willing to make a commitment to their agent. This can only properly be done with an Exclusive Buyer/Tenant Representation Agreement.

Another aspect to understand is that with new home subdivision sales, the salespeople that work there, work for the builder or developer exclusively. They do not represent the buyers. They may make you feel like you are their primary interest by being so nice and charming - but they have no obligation to you as a client. You will be completely unrepresented. If you are interested in looking at new home subdivisions, simply let your agent know and they should be glad to take you there and show you the properties. They will protect your interests just as on the purchase of any resale property. Most builders / developers will cooperate with buyer brokers and pay them a commission - on one condition: that the agent physically accompanies the buyers on at least the initial visit and properly

registers with them. Otherwise, many developers will not compensate outside agents.

Yet another possibility to consider: let's assume you are out driving around one day by yourself and you happen to see a new home subdivision or a FSBO that looks interesting to you. You decide to stop and take a look. If you do not tell the selling party that you are working with an agent and have an exclusive agreement with them, the seller is pretty unlikely to be willing to cooperate later.

Look, it comes down to this one point. If it is reasonable for you to expect that a real estate professional is supposed to do everything possible in your best interest, then shouldn't you be willing to commit to protecting their interests? And, promising your loyalty?

Should you enter into a Buyer- Broker Agreement hurriedly?

Absolutely not! Take your time. Interview different agents. Find one that you feel is competent and that you are compatible with. Make sure the agent has the time available to work with you on your schedule. Have a full and open discussion about what you want and how the agent works. What are their credentials? Ask all the questions you want - you should feel comfortable with all of the answers.

Now, let's look at what is in this agreement specifically:

- the parties are identified - the buyers and the real estate broker,
- a broker (agent) is employed and granted irrevocable right to locate property and negotiate terms and conditions acceptable to the buyer,
- a general description of the type of property of interest is provided,
- the term or length of the agreement is identified, noting that any release from this agreement must be mutually agreed upon,
- an acknowledgment is made about all compensation,
- provision for an optional retainer fee is made and determined,
- a specific provision regarding protection in new home sales situations is identified,

- permission to work with other buyers for the same kinds of properties is granted to the broker,
- buyer duties are identified,
- broker duties are identified, and
- a statement is made about the requirement to abide by all local, state, and federal laws prohibiting discrimination related to racial, ethnic, or religious, or disability consideration.

It is all actually pretty straightforward and reasonable. It is the best way to deal with your agent. You make the agent feel comfortable about your intentions - it is almost inevitable that they will do a better job for you.

DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Long & Foster Real Estate, Inc. in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, and MRP-Military Relocation Professional.

Please note that this article was written by John to provide objective information and to also reflect his opinion of good practice at the time of its' writing for the general benefit of those considering sale or

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