

A Seller's Guide to Real Estate Agency

Who represents me? And who pays the fee?

We are pleased to have the opportunity to help you market your property. The decision to sell your real estate investment is an important one, and we want to assist you in every way we can. Buyers now have the opportunity to choose to be actively represented by their Realtor. This document is designed to inform you of the different options available to Buyers and how they may affect you, the Seller.

What is meant by the terms “client” and “customer”?

The Seller in real estate transactions is traditionally a “client” who selects a real estate agent to represent him or her in the sale of a property. A “client” has a contract with a Listing Agent (real estate firm) which binds the agent to work for the client with undivided allegiance. In return, the Seller agrees to pay the agent a commission upon closing of the sale.

Until recently, the Buyer was usually a “customer.” The Realtor working with a Buyer “customer” in the purchase of your property is your Subagent and will be negotiating such things as price, terms, and special conditions with your best interests in mind.

Now the Buyer also has the option of selecting a Realtor, known as a “Buyer’s Agent,” to represent him or her as a “client.” This essentially gives the Buyer representation comparable to the Sellers.

What services will my Listing Agent provide?

The Listing Agent’s job is to secure a ready, willing, and able buyer for his or her “client’s” property. To this end your Realtor will:

- treat you honestly and ethically;
- assist you in pricing your property;
- expose your property to a maximum number of potential Buyers;
- provide helpful information about the property and respond accurately to questions about it;
- disclose all material facts, including defects, of which the Realtor is aware;
- qualify Buyer prospects and arrange for them to see your property;
- inform you, as soon as he or she knows, whether the Buyer’s Realtor is working as the Seller’s Subagent or as the Buyer’s Agent;
- present all offers to you promptly;
- assist you in contract negotiation;
- do everything possible to see that contract contingencies are met and the sale closes.

What services should I expect from a Subagent?

A Subagent working with a Buyer to sell your property can:

- provide the Buyer with information about available properties and sources of financing;
- Show the Buyer available properties and describe their attributes and amenities;
- assist the Buyer in submitting an offer.

Since the Subagent legally owes you, the Seller, undivided loyalty, this means that he or she:

- must negotiate the contract with your best interests in mind;
- must disclose to you whether the Buyer has indicated a willingness to pay more than the offered price or to accept other terms;
- may not disclose to the Buyer, without your permission, any confidential information, such as your reason for selling, your willingness to accept a different price or terms, etc.

How will I know the Buyer’s status?

It is important that the Buyer choose “customer” or “client” status at the earliest time practical. Your Listing Agent will inform you immediately.

How will the Buyer’s choice of “client” status affect me?

If a Buyer’s Agent presents an offer to purchase on your property, the Buyer is the “client” and his or her Realtor is:

- representing the Buyer’s best interests (rather than yours);
- advising (rather than simply informing) the Buyer on location, relative value, etc.;
- acting as the Buyer’s advocate to secure the best possible price and terms;
- keeping confidential financial information that is not material to the transaction, the Buyer’s willingness to negotiate price and terms, and (if requested) the Buyer’s identity.

cont.

From the Seller's perspective, we believe anything that brings Buyers to Beach Realty & Construction helps our Sellers. In fact, Buyer Agency is often just a recognition of the reality of the relationship between Buyer and his or her real estate agent. A Selling Agent, while technically a Subagent of the Seller, often establishes a close relationship with the Buyer after working weeks, months, or even years to purchase property.

What happens when Beach Realty represents both the Buyer and the Seller as “clients”?

We may represent both sides in a “Dual Agency” situation as long as the relationship is disclosed and agreed to by all parties in writing. When the Buyer and the Seller are being represented by different Beach agents neither of whom has confidential information about the other's client, each agent may be “designated” to serve the best interests of his or her client only. The Buyer's Agent will continue to advocate for the Buyer and the Listing Agent will continue to advocate for the Seller, as “Designated (Dual) Agents.”

If one agent is representing both the Buyer and the Seller, then he or she is a simple “Dual Agent” with an obligation to treat both parties fairly and equally and may not disclose confidential information to either party. Likewise, if either the Buyer's Agent or the Seller's Agent has confidential information about the other's client, they must both function as impartial “Dual Agents.” In these situations, both the Buyer and the Seller are playing on a level field, with no advantage to either side.

If a Buyer elects to be a “client” of your firm, who pays your brokerage fee?

In a transaction where the Buyer is a “customer” the Seller automatically pays the fee, which is divided between the listing agency and the selling agency. When you decide to list your property for sale and have it included in the Multiple Listing Service (MLS), you must also indicate whether you are willing to authorize the listing agency to share the agreed upon fee with a Realtor who is working as a Buyer's Agent or as a Dual Agent. The fee, along with any other expenses and obligations, is paid at closing out of the proceeds received from the Buyer. So please keep your options open.

Glossary

Agent: A person who represents and acts on behalf of another person in the purchase or sale of real estate.

Listing Agent: A licensed real estate agent who has entered into a contractual agreement with the owner of the property to serve as the agent of the owner for the specific purpose of finding a Buyer for the property.

Selling Agent: The Seller's Subagent who cooperates with the listing agent in finding a Buyer for the property.

Seller's Subagent: Any agent who is working with a buyer “customer”, including Selling Agents of the listing firm or those of cooperating firms.

Buyer's Agent: The selling broker or agent having a contractual agreement with the Buyer to represent him or her in the purchase of a property.

Dual Agent: An agent or firm who represents both the buyer and the seller in a transaction. Both parties must be informed and of consent to Dual Agency for it to be legal and ethical.

Designated Agent: A Dual agent who represents only the best interests of either the Buyer or the Seller.

Client: A Buyer or a Seller who has entered into a contractual agreement with a real estate agent to represent him or her in the purchase or sale of real estate.

Customer: A Buyer of real estate who has not entered into an Exclusive Buyer Agency Agreement and who is, therefore, representing his or her own best interests.

Realtor: A real estate professional who is a member of the National Association of Realtors and subscribes to its strict Code of Ethics.

Courtesy of Beach Realty & Construction