

Understanding Agency

It's important to understand what legal responsibilities your real estate salesperson has to you and to other parties in the transactions. Ask your salesperson to explain what type of agency relationship you have with him or her and with the brokerage company.

1. SELLER'S REPRESENTATIVE (ALSO KNOWN AS A LISTING AGENT OR SELLER'S AGENT)

A seller's agent is hired by and represents the seller. All fiduciary duties are owed to the seller. The agency relationship is usually created by a listing contract.

2. BUYER'S REPRESENTATIVE (ALSO KNOWN AS A BUYER'S AGENT)

A real estate licensee who is hired by prospective buyers to represent them in a real estate transaction. The buyer's rep works in the buyer's best interest throughout the transaction and owes fiduciary duties to the buyer. The buyer can pay the licensee directly through a negotiated fee, or the buyer's rep may be paid by the seller or by a commission split with the listing broker.

3. DESIGNATED AGENT (ALSO CALLED, AMONG OTHER THINGS, APPO INTED AGENCY)

This is a brokerage practice that allows the managing broker to designate which licensees in the brokerage will act as an agent of the seller and which will act as an agent of the buyer. Designated agency avoids the problem of creating a dual-agency relationship for licensees at the brokerage. The designated agents give their clients full representation, with all of the attendant fiduciary duties. The broker still has the responsibility of supervising both groups of licensees.

4. NONAGENCY RELATIONSHIP (CALLED, AMONG OTHER THINGS, A TRANSACTION BROKER OR FACILITATOR)

Some states permit a real estate licensee to have a type of nonagency relationship with a consumer. These relationships vary considerably from state to state, both as to the duties owed to the consumer and the name used to describe them. Very generally, the duties owed to the consumer in a nonagency relationship are less than the complete, traditional fiduciary duties of an agency relationship.