

# Real Estate Relationships In New Jersey



In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions the terms "buyers" and "sellers" should be read as "tenants" and "landlords," respectively.)

1. **AS A SELLER'S AGENT OR SUBAGENT, I, AS A LICENSEE, REPRESENT THE SELLER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.**
2. **AS A BUYER'S AGENT, I, AS A LICENSEE, REPRESENT THE BUYER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.**
3. **AS A DISCLOSED DUAL AGENT, I AS A LICENSEE, REPRESENT BOTH PARTIES. HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.**
4. **AS A TRANSACTION BROKER, I, AS A LICENSEE, DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.**

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of business relationship you have with that licensee.

There are four business relationships: (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented. These four relationships are defined in greater detail below. Please read carefully before making your choice.

## SELLER'S AGENT

A seller's agent **WORKS ONLY FOR THE SELLER** and has legal obligations, called fiduciary duties to the seller. These include reasonable care, undivided loyalty, confidentiality and full disclosure. Seller's agents often work with buyers, but do not represent the buyers. However, in working with buyers a seller's agent must act honestly. In dealing with both parties, a seller's agent may not make any misrepresentation to either party on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

Seller's agents include all persons licensed with a brokerage firm which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents. In such cases, those firms and all persons licensed with such firms, are called "subagents". Sellers who do not desire to have their property marketed through subagents should so inform the seller's agent.

## BUYER'S AGENT

A buyer's agent **WORKS ONLY FOR THE BUYER**. A buyer's agent has fiduciary duties to the buyer which include reasonable care, undivided loyalty, confidentiality and full disclosure. However, in dealing with sellers a buyer's agent must act honestly. In deal with both parties, a buyer's agent may not make any misrepresentations on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition to the property which a reasonable inspection by the licensee would disclose. A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm which is to work as their agent.

## DISCLOSED DUAL AGENT

A disclosed dual agent **WORKS FOR BOTH THE BUYER AND THE SELLER**. To work as a dual agent, a firm must first obtain the informed written consent of the buyer and the seller. Therefore, before acting as a disclosed dual agent, brokerage firms must make written disclosure to both parties. Disclosed dual agency is most likely to occur when a licensee with a real estate firm working as a buyer's agent shows the buyer properties owned by sellers for whom that firm is also working as a seller's agent or subagent.

A real estate licensee working as a disclosed dual agent must carefully explain to each party that, in addition to working as their agent, their firm will also work as the agent for the other party. They must also explain what affect their working as a disclosed dual agent will have on the fiduciary duties their firm owes to the buyer and to the seller. When working as a disclosed dual agent, a brokerage firm must have the express permission of a party prior to disclosing confidential information to the other party. Such information includes the highest price a buyer can afford to pay and the lowest price a seller will accept and the parties' motivation to buy or sell. Remember, a brokerage firm acting as a disclosed dual agent will not be able to put one party's interests ahead of those of the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party on the basis of confidential information obtained from or about the other party. If you decide to enter into an agency relationship with a firm which is to work as disclosed dual agent, you are advised to sign a written agreement with that firm.

## TRANSACTION BROKER

The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone. A **TRANSACTION BROKER DOES NOT PROMOTE THE INTERESTS OF ONE PARTY OVER THOSE OF THE OTHER PARTY TO THE TRANSACTION**. Licensees with such a firm would be required to treat all parties honestly and to act in a competent manner, but they would not be required to keep confidential information. A transaction broker can locate qualified buyers for a seller or suitable properties for a buyer. They can then work with both parties in an effort to arrive at an agreement on the sale or rental of real estate and perform tasks to facilitate the closing of a transaction. A transaction broker primarily serves as a manager of the transaction, communicating information between the parties to assist them in arriving at a mutually acceptable agreement and in closing the transaction, but cannot advise or counsel either party on how to gain an advantage at the expense of the other party. Owners considering working with transaction brokers are advised to sign a written agreement with that firm which clearly states what services that firm will perform and how it will be paid. In addition, any transaction brokerage agreement with a seller or landlord should specifically state whether a notice on the property to be rented or sold will or will not be circulated in any or all Multiple Listing System(s) of which that firm is a member.

**YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS FROM YOUR OWN LAWYER. THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.**

## ACKNOWLEDGEMENT

### For the Sellers and Landlords

By signing this Consumer Information Statement, I acknowledge that I received this Statement from \_\_\_\_\_ prior to discussing my motivation to sell or lease or my desired selling or leasing price with one of its representatives. (Name of Brokerage Firm)

Seller/Landlord: \_\_\_\_\_

Date: \_\_\_\_\_

### For the Buyers and Tenants

By signing this Consumer Information Statement, I acknowledge that I received this Statement from \_\_\_\_\_ prior to discussing my motivation or financial ability to buy or lease with one of its representatives. (Name of Brokerage Firm)

Buyer/Tenant: \_\_\_\_\_

Date: \_\_\_\_\_

## DECLARATION OF BUSINESS RELATIONSHIP

I, \_\_\_\_\_, as an authorized representative of \_\_\_\_\_  
 (Name of Licensee) (Name of Brokerage Firm)

intend, as of this time, to work with you as a:

- Seller's Agent Only     
  Buyer's Agent Only     
  Seller's Agent and Disclosed Dual Agent if the opportunity arises  
 Buyer's Agent and Disclosed Dual Agent if the opportunity arises     
  Transaction Broker Only  
 Seller's Agent on properties on which this firm is acting as the seller's agent and transaction broker on other properties