

# Brokerage Relationships in Florida

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In the past, real estate agents always represented the seller, whether the agent helped a seller to market and sell a home or helped a buyer find and purchase a home. In other words, agents were at one time legally bound to represent the seller in a residential real estate transaction. In that scenario, the seller paid both the listing agent and the agent who brought the buyer.

Today, agents either represent the buyer, the seller, or both. If you want to sell your home, you can work with a "seller's agent." If you want to buy a home, you can work with a "buyer's agent." Florida law requires real estate agents to disclose to consumers who they represent. The real estate agent you choose should fully disclose how they work with individuals and the options available to you.

Historically, there has been confusion among buyers and sellers regarding what role real estate licensees have in real estate negotiations. The payment or promise of payment (compensation) alone to a licensee does not determine whether a brokerage relationship has been created. The Florida legislature and the real estate industry have attempted to define the brokerage relationships and disclosure requirements as they apply to real estate dealings.

Buyers and sellers have three basic options in all real estate transactions concerning the role the real estate brokerage firm will assume for them:

- 1) The brokerage firm may work as a *transaction broker* for the buyer and/or the seller.
- 2) The brokerage firm may work as a single agent of either the buyer or the seller (but not for both the buyer and the seller in the same transaction).
- 3) The parties may agree that the brokerage firm will not represent the buyer or the seller at all. This situation is referred to as a *no brokerage relationship*. The brokerage firm simply facilitates the transaction.

Chapter 475 of the Florida Statutes mandates certain duties and obligations in each type of brokerage relationship. These duties and obligations apply to all real estate transactions. However, written disclosures are only required when dealing in residential real estate transactions.

## No Brokerage Relationship

In some cases, the seller or the buyer can choose not to be represented by a real estate broker. In such a situation, the broker would simply facilitate the sale (or the purchase) of real property without entering into either a transaction broker or single agent relationship. A real estate broker working in a no brokerage capacity with either a buyer or a seller has the three following duties:

- 1) Deal honestly and fairly
- 2) Disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer
- 3) Account for all funds entrusted to the licensee

## Transaction Broker

A transaction broker is a broker who provides limited representation to a buyer, a seller, or both during a transaction, but does not represent either part in a fiduciary capacity or as a single agent. The seven duties of the transaction broker in this limited form of representation are as follows:

- 1) Deal honestly and fairly
- 2) Account for all funds entrusted to the licensee
- 3) Use skill, care and diligence in the transaction
- 4) Disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer
- 5) Present all offers and counteroffers in a timely manner
- 6) Exercise limited confidentiality unless waived in writing by a party
- 7) Perform any additional duties that are mutually agreed to with a party

Licensees working in this type of relationship are said to be dealing 'at arm's length' with the customer.

## Single Agent Relationship

The Florida real estate law defines a single agent as a broker who represents, as a fiduciary, either the buyer or the seller, but not both, in the same transaction. A fiduciary acts in a position of trust or confidence for another, and owes complete allegiance to the client. The single agent acts completely on behalf of the client he or she represents, putting the clients interests first. This would include getting the best price for the client, and never putting the agent's own interests at the expense of the client. The nine duties of a Single Agent are as follows:

- 1) Deal honestly and fairly
- 2) Loyalty
- 3) Confidentiality
- 4) Obedience
- 5) Full Disclosure
- 6) Account for all funds entrusted to the licensee
- 7) Use skill, care and diligence in the transaction
- 8) Present all offers and counteroffers in a timely manner
- 9) Disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer