

# LOYALTY AGREEMENT



## EXCLUSIVE BUYER AGENCY AGREEMENT

[With Consent To Designated Agency and Consent To Dual Agency]

This Exclusive Buyer Agency Agreement is made between \_\_\_\_\_ ("BUYER") and \_\_\_\_\_ ("BROKER").

In consideration of the mutual promises set forth below, BUYER and BROKER agree as follows:

1. Exclusive Buyer Agency. BUYER grants to BROKER the exclusive right to locate or procure real property acceptable for purchase/lease by BUYER. BUYER further agrees to refer all potentially acceptable real property to BROKER during the term of this Agreement and agrees to notify all other real estate agents who communicate with BUYER of BROKER'S exclusive agency relationship with BUYER. The final decision whether or not a property is acceptable for purchase shall be solely within the discretion of BUYER.

2. Term Of Agency. The term of this Agreement shall be from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_, unless extended verbally or in writing or terminated by completion of the purpose or by agreement.

3. Broker's Services/Duties. BROKER agrees to use reasonable efforts to locate real property acceptable to BUYER and to assist BUYER to negotiate terms and conditions of a contract acceptable to BUYER for the acquisition of the real property (the "Contract"). The Contract may consist of an accepted offer, purchase and sale agreement, option, deed, exchange agreement, lease or similar instrument. BROKER agrees to assist in locating properties, arrange showings, analyze financing alternatives, give advice concerning real estate practices and procedures, assist in negotiations, arrange inspections requested by BUYER and coordinate activities throughout the process. BUYER agrees that such services do not constitute a guarantee or warranty concerning any real property. BUYER agrees that BROKER has not been retained as an attorney, inspector, home inspector, pest/termite inspector, septic inspector, surveyor or to determine the condition of the real property and has not been retained to provide legal advice, to provide an opinion concerning lawfulness of current or anticipated uses, to perform a title search or to act as a mortgage broker. BUYER agrees that BROKER shall have no duty to disclose any matter or condition outside the boundaries of the real property being considered for purchase, including, but not limited to, present conditions and anticipated changes in the neighborhood where the property is located. BROKER recommends that an attorney and other professionals be hired for such services as BUYER deems appropriate and that BUYER personally investigate particular matters which may be of importance, including, but not limited to, neighborhood composition, the level of crime and presence of sex offenders. BROKER agrees to preserve confidential information of BUYER, making disclosure of confidential information solely to the extent necessary to establish BUYER'S financial qualifications. BROKER represents that BROKER is duly licensed as a real estate broker by the Commonwealth of Massachusetts. BUYER is advised that sellers or sellers' representatives are not required to treat the existence, terms or conditions of an offer as confidential, unless a confidentiality agreement has been made with the seller before submission of an offer. BUYER understands that BROKER represents other buyers and agrees that it will not constitute a breach of duty for the BUYER'S agent to introduce another prospective buyer to a property in which BUYER may be interested or to assist another buyer with a purchase. BROKER shall maintain confidentiality of material information of each buyer. Should either party file a claim for violation of General Laws Chapter 93A, the prevailing party (including any agent of the BROKER) shall be entitled to recover reasonable attorneys' fees and costs, but no fees and costs shall be recovered in the event that a tender of settlement was made in advance of suit, but rejected, and the court or arbitrator determines that the rejected tender was reasonable in relationship to the injury actually suffered.

4. Buyer's Duties. BUYER agrees to work exclusively with BROKER during the term of this agreement. BUYER agrees to conduct all negotiations with the knowledge and assistance of BROKER. BUYER agrees to cooperate with BROKER by providing relevant personal and financial information and to cooperate in scheduling and attending showings. BUYER agrees to advise BROKER of any interest in purchase or lease of real property about which BUYER was previously advised by any other person. BUYER shall provide any lender's letter of pre-approval or pre-qualification to BROKER within seven (7) days of receipt. BUYER agrees not to attend any open house without advance notice and approval of BROKER and agrees to advise each listing broker at each open house of BUYER'S agency relationship with BROKER. BUYER represents that BUYER is not subject to any earlier agency agreement with any other broker or any protection period. BUYER understands that this agreement does not relieve BUYER of the duty to exercise due diligence for BUYER'S own protection, including the duty to investigate any information of importance to the BUYER. BUYER further understands and agrees that BROKER may show other prospective buyers properties in which BUYER may be interested.



5. Broker's Compensation. BUYER agrees to pay BROKER:

(a) Retainer. BUYER shall pay BROKER a retainer in the amount of \$ \_\_\_\_\_ upon signing this Agreement as compensation for professional counseling, consultation, and research. Such retainer is non-refundable and shall ( ) shall not ( ) be credited against any Success Fee.

(b) Success Fee. The parties agree that compensation equal to \_\_\_\_\_ (*insert percent of purchase price or other amount*) shall be due BROKER upon successful completion of this Agreement or in the event that, within \_\_\_\_\_ days following the term of this Agreement, BUYER or any person acting for or with BUYER purchases, leases or otherwise acquires an interest in the real property after becoming aware of the availability of the real property or receiving information about the real property during said term. The parties agree that BROKER shall first seek compensation, if any, offered by the listing agent or otherwise from the transaction (listing broker/seller). If obtained, such amount shall be credited to the amount of the Success Fee. If such fee cannot be obtained in whole or in part from the transaction, BUYER agrees to pay BROKER the Success Fee, due at the time set for closing.

(c) All fee disputes, claims or controversies arising out of or related to this Agreement shall, upon demand of either party, be submitted for binding arbitration, to the local association/board of REALTORS® or, in the event the association/board declines to hear the matter, to the American Arbitration Association (AAA) or, upon mutual agreement, to another dispute resolution service. The REALTOR® arbitration proceedings shall be conducted by a panel of three (3) arbitrators according to the then current rules of the association/board of REALTORS® or, if before AAA, by a single arbitrator according to the consumer arbitration rules, or if not applicable, to the commercial arbitration rules of the AAA, and all proceedings will be conducted at a location in Massachusetts chosen by the arbitrator. Reasonable attorneys' fees and costs shall be awarded to the generally prevailing party in the arbitration.

6. Consent To Designated Agency. A designated agent is a real estate licensee who has been appointed by a broker or salesperson to represent a buyer as a "designated buyer's agent" or to represent a seller as a "designated seller's agent." When a buyer or seller consents to designated agency only that designated agent represents the buyer or seller. Any other agents affiliated with BROKER may represent another party to the transaction and by consenting to designated agency the buyer or seller permits those agents to represent another party. Individuals who are designated agents owe fiduciary duties to their respective clients. You are further advised that: (a) the designated buyer's agent will represent the BUYER and will owe the BUYER the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care and obedience to lawful instruction; (b) all other licensees affiliated with the appointing BROKER will not represent the BUYER nor will they owe the other duties specified in paragraph (a) to that BUYER, and may potentially represent the seller; and (c) if designated agents affiliated with the same broker represent the seller and buyer in a transaction, the appointing broker shall be a dual agent and neutral as to any conflicting interests of the seller and buyer, but will continue to owe the seller and buyer the duties of confidentiality of material information and to account for funds. **By signing this agreement, BUYER consents to designated agency.** If designated agency occurs in a transaction, a notice of designated agency will be given. The designated agent(s) for the BUYER is/are: \_\_\_\_\_

*[insert name(s) of agent(s)]*

In the event that the designated agent appointed to represent BUYER ceases to be associated with the BROKER, BUYER hereby consents to appointment by BROKER of one or more agents associated with the BROKER to represent BUYER. Written notice of that appointment shall be given by BROKER to BUYER in a timely manner.

7. Consent To Dual Agency. The BUYER understands that the designated buyer's agent with whom BUYER is working also represents sellers and that if the BUYER is introduced to a property listed by that agent on behalf of a seller, a "dual agency" will be created. The designated buyer's agent may act as a dual agent who represents both prospective buyer and seller with their informed written consent. A dual agent is authorized to assist the buyer and seller in a transaction, but shall be neutral with regard to any conflicting interest of the buyer and seller. Consequently, a dual agent will not have the ability to satisfy fully the duties of loyalty, full disclosure, reasonable care and obedience to lawful instructions, but shall still owe the duty of confidentiality of material information and the duty to account for funds. BUYER understands that material information received from either client that is confidential may not be disclosed by a dual agent, except: (1) if disclosure is expressly authorized; (2) if such disclosure is required by law; (3) if such disclosure is intended to prevent illegal conduct; or (4) if such disclosure is necessary to prosecute a claim against a person represented or to defend a claim against the broker or salesperson. This duty of confidentiality shall continue after termination of the brokerage relationship. When the

agent with whom the buyer is working is a dual agent, that broker with whom the agent is affiliated is also a dual agent and shall remain neutral as to any conflicting interests of the buyer and Seller. **By signing this agreement, BUYER consents to have the designated buyer's agent(s) act as a dual agent.** Except as expressly provided, this dual agency shall not extend to other licensees affiliated with BROKER. If dual agency occurs in a transaction, a notice of dual agency will be given.

8. Disclosure Of Identity/Other Brokers/Other Potential Buyers. BROKER is authorized to disclose BUYER'S identity. BROKER is authorized to cooperate with and pay compensation to other brokers in connection with the performance of BROKER'S services. BUYER understands that BROKER may represent other buyers interested in purchasing the same or a similar property. BUYER consents to such representation.

9. Entire Agreement/Governing Law. This Agreement is the entire agreement between the parties. It is binding upon the parties' heirs, successors, and personal representatives. Assignment shall not limit the rights of BROKER. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Unless otherwise stated, this Agreement may not be modified, except in writing signed by both parties.

10. Other Provisions. \_\_\_\_\_  
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**This document creates binding legal obligations. For legal advice, consult an attorney.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
BUYER or Authorized Representative

\_\_\_\_\_  
BROKER Or Authorized Representative

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BUYER or Authorized Representative