Agency Law & Representation

Who do you represent?

Florida's Brokerage Law, the Brokerage Relationship Disclosure Act (BRDA) specifies four authorized "brokerage relationships".

They are:

1) Transaction Brokerage
2) Single Agency
3) No Brokerage Relationship
4) Designated Sales Associate – May **NOT** be used in a Residential Sale

Transaction Brokerage

As of revisions made to the BRDA in 2003, **there is now the presumption that ALL licensees are operating as transaction brokers** unless written disclosure of a single agency or no brokerage relationship is provided!!

As a Transaction Broker, **the Real Estate practitioner acts as a facilitator** bringing the parties together and as a conduit through which offers and information are passed back and forth

A Transaction Broker **does not represent either party in a fiduciary capacity** or as a single agent

A Transaction Broker is a licensee who **provides limited representation** to a buyer, a seller, **or both…** in the same transaction

(The requirement to provide transaction brokerage disclosure expired on July 1, 2008 and the disclosure form is no longer required or recommended)

Duties of a Transaction Broker:

- Deal honestly and fairly
- Account for all funds
- Use skill, care, and diligence in the transaction
- Disclose all known facts that materially affect the value of residential property and that are not readily observable to the Buyer
- Present all offers and counteroffers in a timely manner
- **Limited Confidentiality**
    - You can't tell the Buyer what the Seller is willing to accept
    - You can't tell the Seller what the Buyer is willing to offer
    - You can't discuss the Buyer's or Seller's "motivation" for buying or selling the property… unless you have authority to do so in writing

Single Agency (if asked and with permission)

A Single Agent represents, as a fiduciary, either the Buyer OR the Seller. A fiduciary relationship is one of trust and confidence between the licensee as a single agent and the Seller or Buyer as the principal.

As a Single Agent, a licensee **may not represent both Buyer and Seller in the same transaction.** Proper written disclosure, in the form of a **Single Agent Notice**, must be made to establish a Single Agency Relationship. The disclosure **must** be made before or at the time of entering into a listing agreement or an agreement for representation or before the showing of property, whichever occurs first.

Duties of a Single Agent:

- Dealing honestly and fairly
- Loyalty
- Confidentiality
- Obedience
- Full disclosure
- Accounting for all funds
- Skill, care, and diligence in the transaction
- Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing
- Disclosing all known facts that materially affect the value of residential real property and are not readily observable.
  (NOTE: Duties 2 through 5 are Fiduciary Duties)

Transition to Transaction Broker

The license law allows a licensee representing a party as a Single Agent, and is requested or desires to represent the other party in the same transaction, to transition from single agency to transaction broker. This transition requires a **"Consent to Transition to Transaction Broker"** form, which **MUST** be signed by the party or parties involved.

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No Brokerage Relationship (not recommended)

The BRDA does not require a customer to enter into a brokerage relationship with any real estate licensee. As such, a licensee may work with one party as either a single agent or a transaction broker and work with another party in a no brokerage relationship. To take it one step further, the licensee may work with both parties at the same time in no brokerage relationships.
(NOTE: Compensation as a coop may be low or zero depending on the Brokerage with the listing)

Duties in a No Brokerage Relationship:

- Dealing honestly and fairly
- Disclosing all known facts that materially affect the value of residential real property and which are not readily observable to the Buyer
- Accounting for all funs entrusted to the licensee