



# RECAD



## THE RULE

RULE 790-X-3.13.  
Agency/Brokerage Services  
Disclosure.

(1) The Real Estate Consumers Agency and Disclosure Act (RECAD) requires the Alabama Real Estate Commission to write a Real Estate Brokerage Services Disclosure form which describes the alternative types of brokerage services available to consumers in Alabama transactions.

The use of this form is mandatory as required by RECAD and this rule. Additionally, the Commission has written a Consumer Information booklet which is optional and may be used by any licensees who choose to use it.

(2) Licensees, except those engaged in rental or property management services, and those in transactions set out in Section 34-27-82(d), are required to provide the Real Estate Brokerage Services Disclosure form to the consumer as soon as reasonably possible for his or her signature.

Consumers are not required by law to sign the form, although the licensee should encourage that it be signed. If the consumer declines to sign, the licensee shall make a note to this effect on the form. The texts of the optional Consumer Information Booklet and the mandatory form follow:

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# A Consumer Information Booklet

## What Consumers Need To Know When Working with a Real Estate Broker

As real estate transactions have become more complex and varied, the types of real estate brokerage arrangements available to the public have evolved to meet the changing needs of consumers entering this market. This booklet is intended to provide buyers and sellers with a description of the different types of brokerage arrangements so that consumers can choose the type of brokerage services best suited to their needs.

### Know Your Rights

At the initial contact between a licensee (both sales persons and brokers) and the public, the licensee shall be considered to be a transaction broker. As soon as reasonably possible and before the exchange of confidential information, Alabama law requires the licensee to provide you with a written disclosure form that describes different types of brokerage arrangements. You are encouraged to read and sign this disclosure form.

After disclosure you may then choose the type of brokerage agreement best suited to your needs. This brokerage agreement will contain a statement of the specific brokerage services the broker will provide. In the absence of a signed brokerage agreement, the transaction brokerage relationship will remain in effect. Make sure you talk to the real estate licensee with whom you are working to determine the type of services you need or will receive under alternative brokerage arrangements.

### Customer or Client?

The most important thing you need to know when working with real estate licensee is whether you are a client or a customer. A licensee owes certain duties to a client that are different from the services the licensee performs for a customer.

### Agent and Client

An agent is a person who acts for or represents you in negotiations with other parties. The client or principal is the person the agent represents. The licensee when acting as an agent must loyally represent the best interest of the client by placing the interests of the client ahead of the interests of any other party. In a real estate transaction, when a real estate salesperson is employed as an agent, the salesperson is obligated to negotiate the best price and terms for his or her client.

### What is a Customer?

A customer is a person who is provided services by a real estate broker, but who is not a client of the broker. In this case, the real estate licensee is not acting as an agent. The actual services you receive from a real estate broker depend on the arrangement that is established between you and the licensee. The different types of real estate agreements are described below.

There are basically three types of real estate brokerage

relationships that can be established between the consumer and a real estate licensee: Single agency, limited consensual dual agency, a contract brokerage arrangement.

### Transaction Brokerage

Transaction brokerage describes a brokerage arrangement whereby the real estate licensee assists one or more parties, who are customers, in a contemplated real estate transaction, without being the agent, fiduciary, or advocate of that party to the transaction. This means that real estate brokers and salespeople can act as intermediaries between buyers and sellers. With this type of brokerage arrangement, home buyers and sellers are customers and not clients of the licensees with whom they are working. The basic function of the licensee is to bring buyers and sellers together so that a real estate sale can be completed. Sellers will employ the licensee to help market the real estate by identifying qualified buyers and showing their properties to prospective purchasers. This will usually also involve advertising properties for sale in newspapers and other media. Sellers will commonly also rely on the expertise, experience, advice of the real estate licensee to help make their property ready for sale and determine an appropriate asking price. Buyers, in turn, rely on the services of brokers to find and show them suitable real estate that they can afford and have the desired characteristics. Real estate professionals may also help consumers obtain mortgage financing as well as assist them with finalizing the real estate sale and recording the deed and other documents associated with the sale.

Transaction brokerage arrangements are usually best suited for consumers who are primarily interested in the marketing services and expertise that can be provided by real estate professionals, but who do not need an agent to represent them in the negotiations for the sale or purchase of real estate. Under a transaction brokerage, the licensee must provide brokerage services to parties honestly and in good faith and avoid showing favoritism to either buyer or seller. Alabama law also requires all licensees exercise reasonable care and skill when providing brokerage services, answer all questions completely and accurately, and present all written purchase offers to sellers promptly and in a truthful manner.

Licensees must also keep confidential any information given to them in confidence, unless disclosure of this information is required by law. For sellers, this means that licensees must answer a buyer's questions about the condition of the property completely honestly. In addition, the buyer must be told about any hidden defects known to the licensee that could affect the health or safety of occupants.

### Single Agency

A single agency arrangement describes a relationship whereby the real estate licensee represents only one party in a real estate sale transaction. In the case of a single agency brokerage arrangement, the real estate licensee represents

either the buyer or the seller, but not both parties to the real estate transaction. This type of brokerage arrangement is most appropriate for consumers who need the advice and negotiating skills of real estate professionals in addition to their marketing services. If a seller enters into single agency agreement with a real estate broker, the broker is referred to as a seller's agent. Under this arrangement the broker must represent only the seller in the negotiations with buyers. Here the broker will seek the highest possible price and best possible sale terms for the seller. This type of brokerage arrangement can involve the use of subagents, especially in situations where properties are marketed through a multiple listing service.

Subagents are empowered to act for another broker in performing real estate services for that broker. The subagent owes the same duties to the broker's client as the broker. If a broker is an agent to the seller, then the subagent is also the seller's agent. When examining properties advertised through a multiple listing service it is important for buyers to determine whether the licensee that is showing them properties is acting in the capacity of a transaction broker, seller's agent or as a subagent of the seller.

Buyers should exercise care with respect to the information they reveal to licensees working as seller agents. For example, if you are the customer it would not be wise to tell a licensee the maximum price you would be willing to pay for a particular property when considering making a formal purchase offer. If you are the customer, the broker's primary responsibility is to the seller. In this case, the licensee, as the seller's agent, must convey such information to the seller.

A buyer's agent describes a real estate licensee who is employed by and represents only the buyer in a real estate transaction. This relationship is created by a written contract. This contract should clearly state the service the agent will perform for the buyer as well as specify how the licensee is paid for services rendered in connection with the real estate sale. In this case, the buyer is the client or principal and the real estate broker is the agent of and represents the buyer in dealings with sellers.

This type of real estate brokerage agreement should be used when the buyer needs guidance and representation when negotiating with sellers to purchase real estate. Buyers moving to a new location and who are unfamiliar with local market conditions would be those consumers most likely to benefit from this type of agency arrangement. It is becoming increasingly common in multiple listing situations for the selling broker (a licensee working with and showing properties to the buyer) to be an agent of the buyer and the listing broker to represent the owner-seller. Here, both the buyer and seller, working through their respective agents, could negotiate at arm's length with the benefit of professional help.

### Limited Consensual Dual Agent

Limited consensual dual agency is an agency relationship where real estate brokerage company represents both the buyer and the seller in the same real estate transaction.

Consensual dual agency requires the licensee to obtain the written consent of both the buyer and the seller to act as their agent. The two most common circumstances where dual agency is encountered are (1) when two or more salespersons licensed under the same broker each represent a different party to the transaction, and (2) when one licensee represents both the buyer and seller in the same sales transaction.

One major advantage of limited consensual dual agency is that it allows broader marketing opportunities than single agency arrangements. With this type of contract, salespeople can show houses of owners that they represent as agents to their buyer clients. Consensual dual agency is common in the larger real estate markets where real estate companies often have a large number of properties listed for sale. Many of these properties may be desirable to their buyers. With a dual agency agreement, the properties can be shown to their buyer clients.

In the case of dual agency, the principle function of the licensee is to help both parties reach a mutually satisfactory outcome to their negotiations. The dual agent must avoid showing favoritism to either party and refrain from revealing confidential information that could prove detrimental to one side or the other. Although buyers and sellers may not benefit from the full range of services or agent loyalty that could otherwise be provided with a single agency arrangement, consensual dual agency does offer consumers more assistance and guidance than would be possible under a contract brokerage agreement.

When considering signing a dual agency agreement, it is very important that you talk with the broker to determine the types of services that will be provided, and what types of information you will share with the broker and broker's other clients.

### Conclusion

After reading this consumer information booklet, you should sign a brokerage agreement that contains a statement of the services to be provided by the real estate professional. Remember, if you do not sign a brokerage agreement, by law, the licensee working with you will be considered a transaction broker. Ask your real estate licensee to clarify and explain anything in this booklet that you do not fully understand before signing a contract for real estate brokerage services. You are encouraged to sign the disclosure form and retain copy for your records.

THIS IS FOR INFORMATION PURPOSES.  
THIS IS NOT A CONTRACT.

## REAL ESTATE BROKERAGE SERVICES DISCLOSURE

\* Alabama law requires you, the consumer, to be informed about the types of services which real estate licensees may perform. The purpose of this disclosure is to give you a summary of these services.

A SINGLE AGENT is a licensee who represents only one party in a sale. That is, a single agent represents his or her client. The client may be either the seller or the buyer. A single agent must be completely loyal and faithful to the client.

A SUB-AGENT is another agent/licensee who also represents only one party in a sale. A sub-agent helps the agent represent the same client. The client may be either the seller or the buyer. A sub-agent must also be completely loyal and faithful to the client.

A LIMITED CONSENSUAL DUAL AGENT is a licensee for both the buyer and the seller. This may only be done with the written, informed consent of all parties. This type of agent must also be loyal and faithful to the client, except where the duties owed to the clients conflict with one another.

A TRANSACTION BROKER assists one or more parties, who are customers, in a sale. A transaction broker is not an agent and does not perform the same services as an agent.

\* Alabama law imposes the following obligations on all real estate licensees to all parties, no matter their relationship:

1. To provide services honestly and in good faith;
2. To exercise reasonable care and skill;
3. To keep confidential any information gained in confidence, unless disclosure is required by law or duty to a client, the information becomes public knowledge, or disclosure is authorized in writing;
4. Present all written offers promptly to the seller;
5. Answer your questions completely and accurately.

Further, even if you are working with a licensee who is not your agent, there are many things the licensee may do to assist you. Some examples are:

1. Provide information about properties;
2. Show properties;
3. Assist in making a written offer;
4. Provide information on financing.

You should choose which type of service you want from a licensee, and sign a brokerage service agreement. If you do not sign an agreement, by law the licensee working with you is a transaction broker.

The licensee's broker is required by law to have on file an office policy describing the company's brokerage services. You should feel free to ask any questions you have.

The Alabama Real Estate Commission requires the real estate licensee to sign, date, and provide you a copy of this form. Your signature is not required by law or rule, but would be appreciated.

Name of licensee \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Consumer name \_\_\_\_\_

Signature \_\_\_\_\_

Statutory Authority: Code of Ala.1975,  
" 34-27-8, 34-27-82, 34-27-87.

*(Acknowledgment for Receipt Purposes, Only)*

Date \_\_\_\_\_