

Can I depend on my Realtor?

Many people have an unfavorable opinion of Realtors. When asked, they tend to rate the reliability and trustworthiness of Realtors on the low side of the scale. This is a problem for both the Realtor and the buyer or seller. When there is no trust, there can be no easily productive relationship. We're going to explain the legal duties owed by a real estate agent in my state. You'll find that the laws in almost all states are very similar. Once you understand how a Realtor has legal duties to their client, you'll find that you can actually rely on them to give you their best advice.

The first thing you need to know, before we get into the legal aspects of the agent-client relationship is that not all real estate agents are Realtors. The trademarked name "Realtor" is reserved for members of the National Association of Realtors (NAR). NAR charges annual dues and imposes continuing education standards on its members. In addition, members of NAR subscribe to a code of ethics that covers all possible situations. They can also be punished for ethics violations. This means that, as a potential client, your first step should be to make sure that the person you're going to ask to represent you is a Realtor.

With that in mind, there are also legal duties imposed by the various states. Since we work in Florida, we're going to discuss Florida statutes. It's up to you to make sure you understand the statutes in the area where you're planning to buy or sell.

There are several different relationships defined by law. An agent can be a single agent, a transaction broker, an agent who has no representational relationship, and a designated agent. It used to be that agents could be considered to be sub-agents and dual agents, but these terms are not normally used today.

No Brokerage Relationship

Let's start with the simplest relationship, you go to an open house and speak to the agent there. You have no established relationship with this agent and they do not represent you. In fact, they probably represent the seller as either a single agent or a transaction broker. In this case they owe you, the potential buyer, the duties of honesty and full disclosure. This means that they cannot hide or fail to disclose aspects of the property which might impact its value and that they must tell you the truth. As a single agent representing the seller, they cannot tell you anything confidential about the seller and they cannot tell you if they know that the seller will negotiate on the price. No brokerage relationship means you are owed the following duties by law in the state of Florida:

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

Single Agent

A single agent may either represent the seller or the buyer alone, but may not represent both. The single agent has a fiduciary duty to his or her client and is bound to keep their client's financial interest uppermost in their mind when working on the client's goal. The duties of a single agent in Florida are:

- Dealing honestly & 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.

The thing to remember for the buyer or seller in this case is that they are responsible for the actions of their agent, since the agent represents them solely in the transaction. This can have legal repercussions in some cases.

Transaction Broker

A transaction broker has limited duties to both parties and is considered to have the goal of facilitating the transaction. Again, this form of agency enforces full disclosure of material facts which may be known to the agent, but not to the other parties. However, the agent is prohibited from disclosing certain types of information about either party which could damage their negotiating status. In Florida a transaction broker must provide to you a limited form of representation that includes the following duties:

- Dealing honestly and fairly;
- Accounting for all funds;
- Using skill, care, and diligence in the transaction;
- Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
- Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
- Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential;
- Any additional duties that are entered into by this or by separate written agreement.

In this case, limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

Designated Agent

The status of designated agent is not commonly encountered in residential transactions. It's usually reserved for commercial real estate deals. The reason is that a single real estate brokerage business is often responsible for both the selling side and the buying side of a commercial transaction. In this case, the company's broker in charge will appoint an agent to represent the seller's interests and another agent to represent the buyer's interest. The buyer or seller is required to have assets of one million dollars or more and must request that the broker use the designated sales associate form of representation.

- Dealing honestly & 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.

Florida law prohibits a designated sales associate from disclosing, except to the broker or persons specified by the broker, information made confidential by request or at the instruction of the customer the designated sales associate is representing. However, Florida law allows a designated sales associate to disclose information allowed to be disclosed or required to be disclosed by law and also allows a designated sales associate to disclose to his or her broker, or persons specified by the broker, confidential information of a customer for the purpose of seeking advice or assistance for the benefit of the customer in regard to a transaction. Florida law requires that the broker must hold this information confidential and may not use such information to the detriment of the other party.

How Agents get Paid

Agents get paid when they sell a property. When a seller lists their house for sale with a brokerage firm, they sign a contract agreeing to pay a certain commission (usually a percentage of the sale price, but sometimes a fixed amount.) When they place the listed house in the Multiple Listing Service (mls), they include the commission percentage that an agent who brings a buyer will earn. The commission is actually payable to the brokerage companies which are involved. The company broker may then pay the agent who actually worked on the transaction a percentage of the commission received. This amount can vary from as low as 40% to 100% of their side of the commission.

With this structure in place, you can see how it impacts the trustworthiness of the agent with whom you're working and their desire for you to be loyal to them and not use several agents. It's normal for a seller to sign a listing contract and then change agents if their house doesn't sell for any of a number of reasons. This failure to sell may be the agent's fault, but it's often due to an agent giving good advice and the seller not following it. It's more common for buyers to think that they need to have several agents looking for houses for them simultaneously. The drawback here is that once the agents become aware that they are competing for the buyer's business, they will not be as interested in helping or following through as they would if they knew the buyer was loyal to them.

Benefits of a Buyer Agent

If a buyer is loyal, they can depend on their agent providing the following services:

- Locating properties which match the buyer's needs.
- Previewing properties for the buyer.
- Checking and verifying the properties advertised condition.
- Helping the buyer locate experts for all necessary inspections.
- Verifying the utility amounts and the property tax.
- Providing an estimate of the value of the property.
- Advising the buyer on how to put an offer together.
- Presenting the offer to the seller's agent.
- Doing their best to assist the buyer in negotiating favorable contract terms.
- Explaining all legal documents which the buyer will encounter.
- Helping the buyer locate suitable financing.
- Helping the buyer verify title, zoning, building code, easement, and home owner's

- association requirements.
- Referring the buyer to tested service personal.
- Helping the buyer determine if the property will be easily sold in the future.
- Listening to the buyer's concerns and problems and providing reasonable answers to their buyers questions.
- Providing consulting and educational services up front so their buyer can know what to expect.

Benefits of a Single Agent for a Seller

The benefits that a seller can expect from their agent are:

- Providing a marketing plan.
- Helping to determine the best pricing to sell.
- Arranging for showings.
- Advertising the property.
- Securing an offer on the property.
- Advising the seller on how best to negotiate the offer and communicating all information and counter-offers reliably and in a timely fashion.
- Tracking the transaction from contract through the closing process.
- Being present at all inspections.
- Providing additional information for the appraiser to assist them in determining value.
- Being at closing and verifying that the seller is signing the correct documents.

Summary

This basic discussion should help you understand how Realtors work and why you can trust them. We're not saying every Realtor is perfect, but the profession sets high standards for ethical conduct and, if they want to remain in business for more than a short time, you can be assured that they take those standards seriously. Just as you wouldn't think of buying an automobile without knowing the difference between a sedan, a coupe, or a pick-up truck, you should know the difference between a single agent and a transaction broker.