

Important Notice

The State of Georgia Code

The meaning of this relationship shown below as cited by Title 10 Commerce and Trade Chapter 6A. Brokerage Relationships in Real Estate Transactions.

§ 10-6A-3. Definitions

(14) "Transaction broker" means a broker who has not entered into a client relationship with any of the parties to a particular real estate transaction and who performs only ministerial acts on behalf of one or more of the parties, but who is paid valuable consideration by one or more parties to the transaction pursuant to a verbal or written agreement for performing brokerage services.

§ 10-6A-14. Ministerial acts explained; required actions of transaction brokers; false information

(a) A broker acting as a transaction broker may provide assistance to buyers, sellers, tenants, and landlords by performing ministerial acts. Examples of ministerial acts which can be performed by the transaction broker on behalf of any of the parties in a real estate transaction include without limitation the following:

- (1) Identifying property for sale, lease, or exchange;
- (2) Providing real estate statistics and information on property;
- (3) Providing preprinted real estate form contracts, leases, and related exhibits and addenda;
- (4) Acting as a scribe in the preparation of real estate form contracts, leases, and related exhibits and addenda;
- (5) Locating architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys, and other professionals; and
- (6) Identifying schools, shopping facilities, places of worship, and other similar facilities on behalf of any of the parties in a real estate transaction.

(b) A broker acting as a transaction broker shall do the following:

- (1) Timely present all offers to and from the parties involving the sale, lease, and exchange of property;
- (2) Timely account for all money and property received by the broker on behalf of a party in a real estate transaction; and
- (3) Timely disclose the following to all buyers and tenants with whom the broker is working:
 - (A) All adverse material facts pertaining to the physical condition of the property and improvements located thereon including but not limited to material defects in the property, environmental contamination, and facts required by statute or regulation to be disclosed which are actually known by the broker which could not be discovered by a reasonably diligent inspection of the property by the buyer; and

(B) All material facts pertaining to existing adverse physical conditions in the immediate neighborhood within one mile of the property which are actually known to the broker and which could not be discovered by the buyer upon a diligent inspection of the neighborhood or through the review of reasonably available governmental regulations, documents, records, maps, and statistics. Examples of reasonably available governmental regulations, documents, records, maps, and statistics shall include without limitation: land use maps and plans; zoning ordinances; recorded plats and surveys; transportation maps and plans; maps of flood plains; crime statistics; tax maps; school district boundary maps; and maps showing the boundary lines of governmental jurisdictions.

(c) Transaction brokers shall not knowingly give any party in a real estate transaction false information; provided, however, that a broker shall not be liable to a party for providing false information to the party if broker did not have actual knowledge that the information was false and discloses to the party the source of the information. Nothing in this subsection shall limit any obligation of a seller under any applicable law to disclose to prospective buyers all adverse material facts actually known by the seller pertaining to the physical condition of the property nor shall it limit the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, any improvements located thereon, and the neighborhood in which the property is located. No cause of action shall arise on behalf of any person against a broker for revealing information in compliance with this subsection. No broker shall be liable for failure to disclose any matter other than those matters enumerated in this subsection. Violations of this subsection shall not create liability on the part of the broker absent a finding of fraud on the part of the broker.

The above codes are acknowledged and understood as evidenced by your signature below.

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THE ABC'S OF AGENCY UNDERSTANDING REAL ESTATE BROKERAGE RELATIONSHIPS IN GEORGIA

I. Introduction:

Real estate brokers are licensed professionals trained to help consumers buy, sell, or lease real property. The business relationship between real estate brokers and consumers can take many forms, each of which is called a brokerage relationship. This brochure describes the types of brokerage relationships most commonly offered by real estate brokers. Hopefully, the brochure will make it easier for consumers to make informed choices on how best to work with a real estate broker. It should be noted that real estate brokers are not required to offer all of the brokerage relationships described in this brochure. Instead, each real estate broker is free to decide which of these relationships he or she will offer.

II. Real Estate Brokerage Generally:

As a general rule, only licensed real estate brokers can be paid a fee to help consumers buy, sell, or lease property. Many brokers have licensed real estate salespersons, commonly known as real estate agents, who act on behalf of the broker in helping consumers buy, sell, or lease property. While real estate agents can be employees of the real estate broker, most act as independent contractors. Real estate brokers often incorporate or set themselves up as limited liability companies or partnerships. All brokerage firms, however, are required to have a responsible or a qualifying broker. In the majority of real estate transactions, the consumer interacts only with his or her real estate agent and not the real estate broker. The real estate broker in those instances works behind the scenes to solve problems and support, supervise and assist his or her agents.

III. Client vs. Customer in Brokerage Relationships:

All brokerage relationships fall into one of two broad categories: (1) broker-client relationships; and (2) broker-customer relationships. In a broker-client relationship, the real estate broker is representing the client and is acting as his or her legal agent in buying, selling, or leasing property. In Georgia, a broker-client relationship can only be formed by the parties entering into a written agreement. The agreement must explain, among other things, how the broker will be paid, the duty of the broker to keep client confidences, and the types of client or agency relationships offered by the broker.

The other type of brokerage relationship is known as a broker-customer relationship. With this type of relationship, the broker is not representing the customer in a legal or agency capacity. However, the broker can still work with the customer and help him or her by performing what are known as ministerial acts. These include, for example, identifying property for sale or lease, providing pre-printed real estate form contracts, preparing real estate contracts at the direction of the customer, and locating lenders, inspectors, and closing attorneys on behalf of the customer. The different types of brokerage relationships within each of these categories are discussed below:

IV. Broker-Client Relationships:

A. Seller Agency/Landlord Agency:

Seller agency occurs when the real estate broker is representing the seller in selling his or her property. This type of brokerage relationship is created by the seller and the broker entering into a written contract known as a listing agreement. The listing agreement gives the broker, commonly referred to as the listing broker, the right to market the property for sale at a specific price and for a defined period of time. If the broker is successful in finding a buyer ready, willing, and able to purchase the property, the broker would normally be paid a fee or commission upon the closing of the transaction. This fee or commission is often shared with other real estate brokers, under what are known as cooperative brokerage agreements, if they or their agents find the buyer. Seller agency is also sometimes called listing agency.

Landlord agency is different from seller agency in that the listing broker is assisting the property owner in leasing rather than selling property.

B. Buyer Agency/Tenant Agency:

Buyer agency occurs when the real estate broker represents the buyer in locating and assisting the buyer in negotiating for the purchase of property suitable to the buyer. A buyer agency is created when the buyer enters into an agreement commonly known as a buyer brokerage agreement. A real estate broker can be compensated by one party yet represent another party. Therefore, in some buyer brokerage agreements, the fee or commission received by the buyer's broker is actually a portion of the fee or commission paid by the seller to the listing broker. In these situations, the seller also agrees that the listing broker will share the commission or fee with any buyer's broker who finds a buyer ready, willing and able to purchase the property. With some buyer brokerage agreements, the buyer pays a fee or commission directly to his or her broker. Buyer agency is sometimes referred to as buyer brokerage.

Tenant agency is different from buyer agency in that the broker is representing a consumer who is seeking to lease rather than purchase property.

C. Designated Agency:

In some real estate transactions, the real estate agent representing the buyer and the real estate agent representing the seller both work for the same broker or brokerage firm. In such a transaction, the broker may allow each agent to exclusively represent their respective clients. This type of brokerage relationship is known as designated agency.

In a designated agency transaction, the designated agent for the buyer owes the same duties to the buyer as if the agent was acting only as a buyer's agent. Similarly, the designated agent for the seller owes the same duties to the seller as if the agent was acting only as the seller's agent. With designated agency, each designated agent is prohibited from disclosing to anyone other than his or her broker any information requested to be kept confidential by the client unless the information is otherwise required to be disclosed by law. Therefore, designated agents may not disclose such confidential information to other agents in the company. The broker is also prohibited from revealing any confidential information he or she has received from one designated agent to the other designated agent, unless the information is otherwise required to be disclosed by law. Confidential information is defined as any information that could harm the client's negotiating position which information the client has not consented to be disclosed. In Georgia, designated agency is defined by state statute not to be dual agency.

D. Dual Agency:

Georgia law allows both parties to agree to have one agent or broker represent them in a real estate transaction at the same time. In other words, the agent or broker has a client relationship with all parties to the transaction without acting in a designated agency capacity. In these situations, neither party is exclusively represented by a designated real estate agent. This type of brokerage relationship is called "dual agency".

Georgia law allows real estate brokers to act as dual agents if they first get the written consent of both parties. The written consent must contain the following:

1. a description of the types of transactions in which the licensee will serve as a dual agent;
2. a statement that as a dual agent, the licensee represents two clients whose interests could be different or even adverse;
3. a statement that the dual agent will disclose all adverse material facts regarding the transaction known to the dual agent to all parties to the transaction except for information that is made confidential by request of another client and that is not allowed or required by law to be disclosed;
4. a statement that the licensee will disclose to each client in the transaction the nature of any material relationship the licensee or his or her broker have with other clients in the transaction other than incidental to the transaction;
5. a statement that the client does not have to consent to the dual agency; and
6. a statement that the client's consent has been given voluntarily and that the client has read and understood the brokerage engagement agreement;

This special consent is required because of the potential for conflicts of interest in dual agency transactions.

E. Subagency:

Subagency occurs when one real estate broker is appointed by another real estate broker as a subagent to assist the broker in performing its duties. In a typical subagency transaction, a listing broker practicing subagency might appoint the broker working with the buyer as his or her subagent. The broker acting as the subagent would work with the buyer but would represent the seller. The buyer then was the customer of the broker acting as a subagent, but the seller would be his or her client. Subagency relationships between real estate brokers in Georgia, while once the norm, are much less common today.

V. Broker-Customer Relationships:

A. Transaction Brokerage:

A transaction brokerage relationship is one in which a real estate broker or brokers assists both parties in a real estate transaction but does not enter into a client relationship with, nor represents, either party. In a transaction brokerage relationship, the broker treats both parties as customers and can only perform ministerial acts for either party, including the following:

1. identifying property;
2. providing real estate statistics and information of property;
3. providing preprinted real estate form contracts;
4. acting as a scribe in the preparation of form contracts;
5. locating relevant professionals, such as architects, engineers, surveyors, inspectors, lenders, insurance agents, and attorneys; and
6. identifying facilities such as schools, shopping centers, and places of worship.

B. Brokers May Help Parties Other Than Their Clients:

Brokers who represent one party in a real estate transaction as a client can still help the other party in the transaction by performing ministerial duties for the other party (of the type described under transaction brokerage section). When a real estate broker works with a party as a customer or client, the broker may not knowingly give the party false information.

VI. Always Choose a REALTOR®:

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