

REAL ESTATE ADVISOR

BUYING OR SELLING? KNOW THY AGENT.

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Selling and buying a home is one of life's most important and exciting events. But it is also a difficult process that involves specialized knowledge and skills. This is why most people look to experienced real estate professionals such as a real estate agent for help. When working with a real estate agent, homebuyers and sellers need to understand the duties of the agent. These duties vary depending on the type of agency relationship between the agent and the buyer or seller.

THE REAL ESTATE AGENT'S RELATIONSHIP WITH CONSUMERS

When working with a real estate agent, you are either a client or a customer. It is important to understand what differentiates a client from a customer, and what duties and services are owed by the agent respectively. Regardless of whether you are a client or a customer, all real estate agents must treat all parties to a real estate transaction fairly.

The CLIENT

A client engages the professional advice and services of a real estate agent. It is the agent's job to use his or her special knowledge about buying and selling real estate to protect the best interests of the client. When you sign a listing contract or a buyer agency agreement, you become the client of the real estate agent. Although the agent works for you and owes you additional services, called fiduciary duties, the agent must also treat his or her customers fairly.

The CUSTOMER

A customer, on the other hand, receives services from a real estate agent who is performing for the benefit of the agent's client. In this type of relationship, there is no contract between you and the agent. The agent will show you homes, share information about houses of interest, and draft the purchase contract at your direction. When the agent starts identifying and showing you properties, you will be asked to sign an agency disclosure form stating you are aware of the agent's relationship with you and the seller. Although you are not the agent's client, the agent is required by law to treat you fairly and honestly. The agent must provide you with information about any known property defects and help identify those situations when non-real estate expertise should be sought. The agent may suggest that you consult with a home inspector or building contractor to help you evaluate a property condition, or an attorney or accountant to advise you on legal or tax matters.

FAIR TREATMENT FOR ALL

Whether you are a customer or a client, you expect and deserve top-notch service from your real estate agent. This is why Wisconsin law requires real estate agents to treat all parties fairly in a real estate transaction. As a party to a real estate transaction, what types of fair treatment can you expect from a real estate agent?

1. Fair and Honest Treatment.

2. Disclosure of Material Adverse Facts. Adverse facts are conditions which significantly affect the property value, structure or the health of the occupants, or information concerning the inability or refusal of a party to carry out the offer.

3. Confidentiality. The agent must keep confidential any information which you indicate is confidential, and any information which the agent knows a reasonable person would want to be kept confidential (other than information required to be disclosed by law).

4. Provision of Accurate Market Condition Information.

You may ask the agent to provide timely and accurate information about market conditions. The agent will then give you examples of the prices that comparable properties are selling for.

5. Reasonable Skill and Care. The real estate agent is hired to do more than just locate a property or find a buyer. The agent is held to a standard of care that requires knowledge concerning real estate laws, public policies, current market conditions, and the physical characteristics of the property being sold.

6. Accounting. The agent must safeguard all funds or other things of value received from the parties to the transaction.

7. Objective Presentation of Offers. The agent must make an objective and unbiased presentation of all proposals and offers, and indicate the advantages and disadvantages of each.

FIDUCIARY DUTIES OWED TO THE CLIENT

The law also provides that the agent has additional obligations with respect to his or her client, called fiduciary duties. As a client, what fiduciary duties are owed to you in addition to the fair treatment duties owed to all parties?

1. Loyalty. The real estate agent must loyally represent you and put your best interests ahead of the interests of any other party. This means the broker must avoid all conflicts of interest with you.

2. Disclosure. The agent is obligated to make a full, fair and timely disclosure to you of all known facts that are lawfully material to the transaction. A material fact is one that a reasonable person might feel is important in choosing a course of action.

3. Obedience. The agent must carry out the obligations stated in the client/agent contract and must obey all of your lawful orders which relate to the agent's duties as stated in the agency contract.

Although the buyer/customer and seller/client relationships are the most common relationships in a real estate transaction, there are other ways that you can interact with a real estate agent, depending on the circumstances and type of service you want and need.