

Buyer Agency

What is a buyer's agent?
How does a buyer's agent affect a transaction?

In Wisconsin, a real estate buyer can choose to work with either a selling agent (sometimes also referred to as a subagent or a co-broke agent) or a buyer's agent. Either way, your agent is a specially trained professional, licensed by the state of Wisconsin, who is obligated by law to treat all parties to a real estate transaction fairly.

HOW ARE BUYER'S AGENTS AND SELLING AGENTS ALIKE?

As a real estate buyer, what type of fair treatment can I expect from all real estate brokerage firms and their agents?

ALL real estate agents in a transaction owe the following duties to both buyers and sellers:

- 1. Fair and Honest Treatment.** Every agent must provide services honestly and fairly. When answering your questions, every agent must be honest and accurate.
- 2. Disclosure of Material Adverse Facts.** All agents must disclose material adverse facts that you do not already know or that you cannot discover through vigilant observation. Adverse facts are conditions that significantly and adversely affect the property value, the structure, or the health of the occupants, or information concerning the inability or refusal of a party to carry out the offer. Examples of material adverse facts include problems with water in the basement, the absence of legal access to the property, or the fact that the bankruptcy trustee now controls the property because the seller filed for bankruptcy.
- 3. Confidentiality.** Every agent must keep confidential any information which you indicate is confidential and any information that the agent knows a reasonable person would want to be kept confidential. When you receive the required broker statement that the agent must give you before beginning to

negotiate for you, you can list the information you consider to be confidential. You can also list information that might otherwise be considered confidential but which you are authorizing the agent to disclose. For example, a buyer can permit the agent to reveal information about his financial qualifications to the seller to encourage the seller to accept his or her offer to purchase.

- 4. Accurate Market Condition Information.** You may ask the agent to provide timely and accurate information about market conditions that affect your transaction, and the agent must respond within a reasonable time with market information such as sale prices for comparable properties.
- 5. Reasonable Skill and Care.** Every agent must be knowledgeable concerning real estate laws, public policies, current market conditions, and the physical characteristics of the property being sold. Every agent must use reasonable skill and care in:
 - Inspecting properties
 - Preparing and giving a general explanation of the purchase contract and other relevant legal documents
 - Recommending that you seek third-party expert advisers (such as attorneys, accountants, home inspectors, or building contractors) when appropriate
 - Monitoring deadlines and closing dates
 - Making reasonable efforts to find a property meeting the buyer's criteria
- 6. Safeguarding Funds.** Every agent must safeguard all funds or other things of value received from the parties to the transaction. Funds, such as earnest money or cash advances, must be held in the firm's trust account where they are kept separate from the firm's money and where separate records are kept for each transaction.
- 7. Objective Presentation of Offers.** Every agent must make an objective and unbiased presentation of all proposals and offers, and indicate the advantages and disadvantages of each.

HOW ARE SELLING AGENTS AND BUYER'S AGENTS DIFFERENT?

The first thing to remember is that Wisconsin law does not allow the real estate agents in a transaction to be adversarial toward the seller or the buyer. They are legally required to treat all parties fairly.

If you work with a selling agent and there is no contract between you and the agent's firm, you are not the agent's client. You will,

however, receive a Disclosure to Customers before the agent may negotiate on your behalf. That disclosure statement lists the fair treatment duties the selling agent owes to you, and indicates that the selling agent's firm is either an agent of the seller or an agent of the listing broker (subagency). The selling agent will show you properties you are interested in seeing, get more information about properties of interest, and draft the purchase contract as you direct. The selling agent must provide you with information about any known or potential property defects, and help you identify situations when you should consult a professional, such as a home inspector or building contractor, to help you evaluate the condition of the property, or an attorney or accountant to give you legal or tax advice.

If you work with a buyer's agent, you and the agent's firm will sign a WB-36 Buyer Agency Agreement, which includes mandatory Disclosure to Clients language. This disclosure lists the fair treatment duties owed by all agents to all parties and the duties the firm and its agents owe to you as the client. In buyer agency, you are the client of the firm, which receives a fee when you find a property and negotiate a purchase contract in accordance with your buyer agency agreement. You have the right to negotiate the fee with the buyer agent's firm. You may authorize payment of the fee in whole or in part by the listing broker or the seller whenever possible in a given transaction, but you generally are responsible to pay any fee not paid in this manner. A buyer's agent helps you negotiate for beneficial contract terms and provides valuable information and advice to you throughout the transaction. A buyer's agent owes you the fair treatment duties owed to all parties, plus the higher level of client duties.

What duties does a buyer's agent owe to me as the client in addition to the fair treatment duties owed to all parties?

- 1. Loyalty.** A buyer's agent must loyally represent you, avoid conflicts of interest with you, and put your best interests ahead of the interests of any other party in the transaction.
- 2. Information and Advice.** A buyer's agent must, upon your request, provide information and advice about real estate matters that are material to your transaction.
- 3. Disclosure of Material Information.** A buyer's agent is obligated to disclose to you all information that is material to the transaction and that you don't already know and cannot discover through reasonably vigilant observation. A material fact is one that a reasonable person might feel is important in choosing a course of action. Examples of material information include:

- The existence of other offers

- The reason the seller is selling, provided the seller permits this information to be shared with others and does not require it to be kept confidential

4. Obedience. The buyer's agent must carry out the obligations stated in the WB-36 Buyer Agency Agreement and must obey all of your lawful requests that relate to the agent's duties as stated in that contract. For example, the agent must order a survey or appraisal on your behalf if you ask him or her to do so, provided this function lies within the scope of the buyer agency contract.

However, an agent may not violate the law even if you ask the agent to do this. For example, the agent may not show you only properties that are not owned by minority sellers.

5. Negotiation. The agent is required to act as an intermediary by facilitating or participating in communications between you and the other parties to a transaction, completing offers or other forms as you request, or presenting the proposals of other parties to you and giving a general explanation of the proposal's provisions. You may waive (in writing) the duty to negotiate in part or in full.

WHAT ARE THE ADVANTAGES OF WORKING WITH A BUYER'S AGENT?

The buyer's agent represents the interests of the buyer, but also must know how to work constructively with the listing agent so that the parties are satisfied with the transaction: the seller sells and the buyer buys. Acting in an adversarial way is not the most effective way to represent a buyer.

A buyer's agent can:

- Give a negative opinion or critique of a seller's property beyond just disclosing defects.
- Recommend or suggest an offering price or give an opinion about whether a particular house is priced too high or too low.
- Structure the offer and draft offer provisions with the buyer's best interest in mind.
- Recommend and assist the buyer with negotiation strategies for the best price and beneficial terms.
- Research and disclose information about a property's history, title

and liens so the buyer can make a better-informed decision. The amount of optional investigation and research that a buyer's agent may do for a buyer will vary from agent to agent.

- Give information and advice within the scope of the agent's expertise as a licensed real estate agent.

WHAT IS MULTIPLE REPRESENTATION?

Multiple representation exists when one real estate firm represents both the seller and the buyer as clients in the same transaction. That means the seller signed a listing contract and the buyer signed a buyer agency agreement with agents from the same firm. Multiple representation does not apply to buyers who are customers, only to buyers who are clients.

There are two types of multiple representation, one with designated agency and one without designated agency. A client may consent to either type of multiple representation, or none at all.

Multiple Representation With Designated Agency

All parties in a transaction must consent to designated agency in writing before it may be implemented, and any or all of the parties may thereafter withdraw consent, in writing, at any time. In this relationship, the firm may assign or designate one agent to represent the seller as a seller's agent, and one agent to represent the buyer as a buyer's agent (these agents will likely be the agents already working with the seller and the buyer).

Each agent will provide full negotiation services to the respective client. Each designated agent may provide advice and opinions to assist the client he or she is negotiating for, even if that advice and those opinions favor the interests of that client over the interests of the firm's other client in the transaction.

Multiple Representation Without Designated Agency

In a multiple representation without designated agency, one real estate firm represents both the seller and the buyer as clients in the same transaction, but without designated agency. The firm and its agents represent both clients but cannot put the interests of one client ahead of the interests of the other client in the transaction. Because the buyer and seller will likely have opposing

interests in the transaction at some point, it is impossible to provide the fullest level of client services at all times. Accordingly, the firm takes on a neutral role as middleman during negotiations. For example, the agent will prepare contract proposals as directed by a party and present contract proposals in an objective manner, but may not provide either party with advice on how to gain an advantage over the other.

A multiple representation without designated agency relationship generally may be authorized in three different ways when the same firm represents a seller client (listing contract) and a buyer client (buyer agency agreement) in the same transaction:

1. One client consents to designated agency while the other consents to multiple representation without designated agency in their respective agency agreements. Because both clients did not consent to designated agency, this is a multiple representation without designated agency relationship.
2. When the agency contracts were first entered into, both clients consented to multiple representation with designated agency, but later one or both clients withdraws the consent to designated agency. This then becomes a multiple representation relationship without designated agency.
3. When the agency agreements were first entered into, both of the clients consented to multiple representation without designated

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