

Colorado Brokerage Relationships

A Brokerage relationship is a working relationship, between a licensed real estate broker and a buyer or seller, to engage the services of the licensed broker on behalf of the buyer or seller in acquiring or marketing real property. This relationship may be limited agency or non-agency according to the agreement of the parties. In the absence of a signed agreement regarding the brokerage relationship, the default position under Colorado License Law is "transaction-brokerage".

Prior to enactment of The Brokerage Relationships Act in January of 1994, every licensed real estate broker or salesperson in Colorado working to sell a listed property was assumed to be an agent of the seller. As agents of the seller, licensees working with a seller or a buyer owed the same duties of loyalty and fidelity to the seller.

The current law recognizes and defines different types of relationships between licensees and buyers and sellers such as single agency (buyer agency or seller agency), and the transaction-broker relationship.

Colorado real estate licensees are required by law to disclose, in writing, the nature of the working relationship to buyers and sellers and the level of service they will provide. A buyer or seller has the right to choose what type of representation best meets their needs just as they have the right to choose a broker to represent them in a real estate transaction.

When buying or selling real estate, you may decide to hire a real estate broker to assist you. At the time you begin a serious discussion of your real estate needs with a Colorado real estate broker, the broker should discuss brokerage services with you. The broker is required to advise you of the type of services the brokerage is going to provide. Colorado Law recognizes these services as the brokerage relationship.

There are two primary types of brokerage relationships: Agency and Transaction Brokerage.

Agency

Agency is a legal relationship resulting from an agreement that one person, called the agent (broker), shall act for and be subject to the control of another person, called the principal (buyer or seller). The fact that a real estate broker performs some acts for a purchaser or seller in a transaction does not itself create the agency relationship. In Colorado, the agency relationship can only be established through a written contract which constitutes the employment agreement between the principal and agent.

Both buyers and sellers can hire agents to represent their interests in a real estate transaction. Agency relationships include Buyer Agency and Seller Agency. The agency contract commonly binds you to a working relationship with that broker for a specified period of time. A broker engaged by a buyer or seller in an agency capacity has specific duties and obligations.

Buyers often use the services of the seller's broker to prepare and submit an offer on property. In this instance, the broker is still responsible for making a disclosure to the buyer concerning their working relationship. If the broker assisting the buyer is

representing the interests of the seller only, the broker must give the buyer a written disclosure to this effect.

Transaction Brokerage (Non-Agency)

If you do not choose to hire a broker to represent you in an agency capacity, a broker may assist you as a transaction broker. A transaction broker is one who assists a buyer, seller, or both throughout a real estate transaction without being an agent or advocate for the interests of either the buyer or seller.

Unlike Agency, Transaction Brokerage does not have to be established through a written contract. Transaction brokerage can be established through written disclosure. The disclosure defines the broker's duties and responsibilities and is not a contract. The transaction broker disclosure does not limit you to the services of any one broker. If done through a written contract, the contract is an employment agreement which binds you to the broker for a specified period of time.

BROKERAGE RELATIONSHIPS LAW

Effective January 1, 1994, SB 223, entitled Brokerage Relationships, codified much of the law of agency, as it relates to real estate, and established the laws concerning the working and legal relationships between the public and real estate brokers. This law enumerates and defines the working relationships with brokers, including agency and transaction brokerage, and sets forth the general duties, obligations, and responsibilities of a real estate broker in any particular real estate transaction.

In June 2002, the Colorado Legislature passed SB-196 which amended the current statute for Brokerage Relationships to implement Designated Brokerage. This law went into effect on January 1, 2003, and is mandatory for brokerage firms consisting of more than one licensee. A designated broker is defined as a broker "who is designated by an employing broker to serve as single agent or transaction broker for a seller, landlord, buyer, or tenant in a real estate transaction." The Employing broker shall make this designation in writing. The brokerage relationship between the designated broker and the public shall not extend to the employing broker, other licensees, or the brokerage firm.

Designated brokerage abolishes sub-agency and dual agency and reduces the vicarious liability of the public for the acts and omissions of their designated broker. Designated brokerage does not reduce the vicarious liability of the brokerage firm for the acts of its licensees, the duty of the employing broker to supervise and manage licensees, or the public's right to choose the type of brokerage relationship, agency or transaction brokerage.