

Sample Policy D: Dual Agency

SECTION A: GENERAL POLICY ON AGENCY

- 1) It is the policy of (brokerage name) to represent both buyers and sellers.
- 2) When an agent lists a property, all agents in the brokerage are appointed to represent the seller. Language reflecting this fact is included in our company listing agreement.
- 3) When an agent represents a buyer, all agents in the brokerage are appointed to represent the buyer. Language reflecting this fact is included in our company's buyer agency agreement.
- 4) When representing a seller, (brokerage name) and its agents owe the seller the duties of loyalty, obedience, confidentiality, accounting and reasonable skill and care in performing our duties, and any other duties contained in our listing agreement. We are required to act solely on behalf of the seller's interest to seek the best price and terms for the seller. Finally, as a seller's agent, we also have a duty to disclose to the seller all material information obtained from the buyer or from any other source.
- 5) When representing a buyer, (brokerage name) and its agents owe the buyer the duties of loyalty, obedience, confidentiality, accounting and reasonable skill and care in performing their duties and any other duties contained in an agency agreement. The agent and brokerage are required to act solely on behalf of the buyer's interests to seek the best price and terms for the buyer. Finally, a buyer's agent and brokerage also have a duty to disclose to the buyer all material information obtained from the seller or from any other source.
- 6) When a buyer represented by (brokerage name) wants to buy property listed with our company, dual agency occurs. This is true regardless of whether one agent represents both parties or two separate agents are involved. This is because all agents are bound to agency relationships under our policy, by virtue of the language in the agency agreements appointing all agents. If this occurs, the buyer and seller must sign an Agency Disclosure Statement that describes the duties and obligations of the dual agent. A dual agent may not disclose any confidential information that would place one party at an advantage over the other party and may not disclose any of the following information without the informed consent of the party to whom the information pertains: 1) that a buyer is willing to pay

more than the price offered; 2) that a seller is willing to accept less than the asking price; 3) motivating factors of either party for buying or selling; or 4) that a party will agree to financing terms other than those offered.

SECTION B: MANAGEMENT-LEVEL POSITIONS

The following positions in the brokerage are considered to be management level: (Name positions or titles that fall under the definition of a management level licensee.)

SECTION C: APPOINTMENT OF LICENSEES

The listing contract and buyer agency agreement used by agents both contain language that appoints all agents in the brokerage to represent our clients. Thus, no further appointment is necessary.

SECTION D: WORKING WITH RELATIVES, BUSINESS ASSOCIATES, ETC.

1) If a person with whom an agent has a personal, family or business relationship wants to sell property, the agent shall act as a listing agent representing the seller. If a buyer represented by the listing agent or any other agent in our brokerage wants to buy this property, dual agency occurs. The nature of this relationship with the seller must be disclosed to the buyer before the buyer consents to dual agency and the relationship must be disclosed on the Agency Disclosure Statement. If the buyer is working with an agent from another brokerage, that cooperating agent must likewise be notified of the nature of the relationship with the seller, and it must be disclosed in writing prior to entering into a purchase contract. *(Note: This is required by Article 4 of the National Association of REALTORS® Code of Ethics.)*

2 a) If a person with whom an agent has a personal, family or business relationship wants to buy property, that agent shall represent that buyer as a buyer's agent. If that buyer purchases property listed with another firm, or a for-sale-by-owner, any family, business or personal relationship with the buyer must be disclosed in writing prior to entering into a purchase contract. *(Note: This is required by Article 4 of the National Association of REALTORS® Code of Ethics.)*

b) If the buyer wants to purchase property listed with their agent or any other agent in the brokerage, dual agency occurs. The seller must be informed about the nature of the relationship with the buyer before the seller consents to the dual agency and this relationship must be disclosed on the Agency Disclosure Statement.

3) If an agent has a personal, family or business relationship with another agent involved in a transaction, that fact must be disclosed to the parties. This disclosure must be made prior to a contract being entered into. *(Here brokers may want to indicate that agents are required to notify them that such a situation exists so the broker can determine if any policy change is necessary.)*

SECTION E: AGENTS BUYING OR SELLING THEIR OWN PROPERTY

(Note: License law does not require licensees to list or buy property through their brokerage, but this requirement can be imposed by the brokerage. This must be addressed in the policy. Below is sample language if it is to be handled through the brokerage.)

1) Agents selling their own property must list it with (brokerage name) and act as their own listing agent.

a) If the agent's property is shown to a buyer working with another brokerage, that cooperating agent shall be notified of the fact that the listing agent is also the seller and this must be noted on any subsequent contract that is entered into.

b) If a buyer contacts the listing agent/seller directly about the property, that buyer shall be treated as a customer and told the property is owned by the listing agent. The buyer shall be given the Agency Disclosure Statement indicating that the listing agent represents the seller. If the buyer wants representation, they must be referred to another brokerage. *(Note: if the buyer is referred to another agent in the same brokerage, the agent must function as a dual agent because the property is listed with the brokerage.)*

c) If the seller/listing agent or another agent in (brokerage name) already has an agency relationship with a buyer who now wants to see his property, the listing agent must disclose the fact that he is the owner. If the buyer decides to make an offer, the agent(s) must act as a dual agent. The buyer must be presented with the Agency Disclosure Statement prior to signing the offer and the fact that the listing agent is the seller must be disclosed on this form as a "material relationship."

2) Agents buying property for themselves must also handle these transactions through the brokerage and act as a buyer's agent.

a) If the property the agent wishes to see is listed with another brokerage, the listing brokerage must be notified at first contact of the fact the agent is acting for himself. On any offer the agent makes, it must indicate that he is a licensed agent with (brokerage name) and submit an Agency Disclosure Statement indicating that he is a buyer's agent.

b) If the property the agent desires to purchase is listed with him or another agent in (brokerage name), the circumstances must be disclosed to the seller immediately and the seller must consent to the agent(s) acting as dual agents. The Agency Disclosure Statement must be given to the seller before any offer to purchase is presented to the seller, and the fact that the buyer is a licensed agent with (brokerage name) must be disclosed on this form as a "material relationship."

c) If the property an agent is interested in seeing for his own possible purchase is not listed (a FSBO), then the agent shall notify the seller at first contact that he is a buyer's agent representing himself. The agent shall also disclose his intent, if any, to seek compensation from the seller. The agent shall not have the seller sign a listing agreement. In the event the agent wishes to purchase this property, the fact that the buyer is a licensed agent with (brokerage name) shall be noted on the offer and an Agency Disclosure Statement indicating the agent is acting as a buyer's agent shall be delivered with the offer.

SECTION F: CONFIDENTIAL INFORMATION

1) Since all licensees in (brokerage name) represent all buyer and seller/clients of the brokerage, all agents act as dual agents on all in-company transactions. Therefore, all information, including confidential information, can be shared within the office. All licensees must keep such information confidential and cannot disclose it or use it to benefit one party.

2) For this reason, it is not necessary to establish procedures to protect confidential information within the office.

3) On cooperative transactions with other brokerages, agents, of course, must recognize their obligation not to disclose such information to licensees affiliated with other brokerages or their clients.

SECTION G: DUAL AGENCY

1) Agents acting as a dual agent shall disclose to the parties all relevant information necessary for them to make an informed decision about whether to consent to the dual agency. This would include, but not be limited to, the nature of the relationship an agent may have with a party to the transaction. This must be done on the Agency Disclosure Statement. If this information later changes, this change must be provided in writing to the parties as soon as possible and they must be given an opportunity to revoke their consent to the dual agency.

2) In the event a party refuses to consent to the dual agency, or seeks to terminate any agency relationship as a result of the proposed dual agency, (broker/manager) shall be notified immediately. If the client's consent cannot be obtained, (brokerage name) and its agents cannot act as dual agents. The (broker/manager) shall, depending on the circumstances and wishes of the parties, determine which relationship shall be terminated.

SECTION H: CHANGING AGENCY RELATIONSHIPS

Agents shall not change agency relationships once they have been established, unless approved by (broker/manager). If such a change is approved, the client whose agency relationship is being terminated must consent in writing and any persons who know of the previous relationship must be notified in writing as well. *(Here brokers may want to indicate any form agents are to use in this situation.)*

SECTION I: POLICY ON COOPERATION AND COMPENSATION

1) It is the policy of (brokerage name) to cooperate with all other brokerages on an equal and consistent basis. This means (brokerage name) and its agents will make its listings available to other brokerages to show, provide information that is not confidential, and present all offers written by other brokerages in a timely and objective manner. *(Note: If a brokerage does not offer such cooperation to all brokerages on an equal and consistent basis, the broker must indicate that fact.)*

2) Unless the seller does not authorize it, (brokerage name) will offer compensation to the following other brokerages: *(Here, the broker must indicate whether they will offer compensation to subagents only, to buyer brokers only, to both or neither. The broker also should indicate what compensation the brokerage will offer.)*

3) (Brokerage name) does reserve the right, in some instances, to vary the compensation it offers to other brokerages, whether as subagency or buyer agency compensation. Therefore it may not offer compensation on an equal and consistent basis to all brokerages.

4) When acting as a buyer's agent on properties listed with another brokerage, (brokerage name) does accept the buyer agency compensation offered by the listing brokerage in the multiple listing service. *(The broker also should indicate here how he wants to handle the situation where the property is a FSBO, is not in the MLS, compensation is not offered to buyer brokers, or the compensation offered is deemed to be insufficient.)*

The following two sections are not required to be included in your brokerage company policy but may be helpful to your agents to understand the procedures you want them to follow and to assure compliance with license law requirements.

SECTION J: GENERAL LISTING PROCEDURES

1) When securing a listing, explain to the seller that you, the brokerage and all affiliated agents will represent him. Review the language in the listing agreement that appoints all agents to represent the seller.

2) Explain to the seller our brokerage policy of also representing buyers. Disclose the fact that you have buyers that you represent and that other agents in the firm represent buyers also. Use the "Consumer Guide to Agency Relationships" to help explain that dual agency will occur if one of our brokerage's buyer/clients purchases his listing.

3) Have the seller sign and date acknowledging receipt of the "Consumer Guide to Agency Relationships."

4) Have the seller check on the listing agreement whether he authorizes (brokerage name) to offer subagency and/or compensation to buyer brokerages. Have the seller sign and date the listing agreement.

5) Unless exempt, on property built before 1978, have the seller complete the lead-based paint disclosure and acknowledgement form, sign and date it.

6) Unless exempt, on residential property, have the seller complete the residential property disclosure form, sign and date it.

SECTION K: GENERAL PROCEDURES WHEN REPRESENTING BUYERS

1) When establishing an agency relationship with a buyer, explain that you, the brokerage and all affiliated agents will represent him.

2) Explain to the buyer that our brokerage also takes listings and therefore represents those sellers. Use the "Consumer Guide to Agency Relationships" to help explain that dual agency will occur if he buys one of our brokerage's listings.

3) The buyer must be provided with the "Consumer Guide to Agency Relationships" before the earliest of the following events:

- Showing the buyer property;
- Pre-qualifying the buyer;
- Asking the buyer for specific information about his financial ability to purchase property;
- Discussing an offer; or
- Submitting an offer.

4) Have the buyer sign and date acknowledging receipt of the "Consumer Guide to Agency Relationships."

5) Have the buyer sign our buyer agency agreement.

6) When you contact other brokerages about their listings, immediately disclose the fact that you are a buyer's agent. Do the same on FSBO's and disclose any intent to seek compensation from the seller.

7) On residential properties, give the buyer the residential property disclosure form, the lead-based paint disclosure and acknowledgement form and the EPA lead paint pamphlet, if required. Have the buyer sign these forms before signing the offer.

8) When you write an offer on property listed with another brokerage, have the buyer sign the Agency Disclosure Statement prior to signing the offer and deliver this form along with the offer.

9) If the buyer is making an offer on property listed with our brokerage, explain that you will be a dual agent. Disclose to both buyer and seller any material facts- for example, if you have a personal, family or business relationship with one of the parties. If such a relationship exists, indicate it on the Agency Disclosure Statement. Have the buyer sign the Agency Disclosure Statement before the buyer signs the offer. The seller must sign the Agency Disclosure Statement before the offer is presented to him.