

# THE CONSUMER'S GUIDE TO REAL ESTATE AGENCY IN ILLINOIS



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## AGENCY

- ▶ A legal framework that allows a person to act through a representative
- ▶ Common examples include:
  - An attorney representing you in a business transaction
  - A stock broker buying and selling investments on your behalf
  - A real estate broker assisting you in buying, selling or leasing real estate
- ▶ Under the Act, your real estate agent will owe you certain statutory duties that are similar to fiduciary agency duties

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## DESIGNATED AGENCY IN ILLINOIS REAL ESTATE TRANSACTIONS

- ▶ An arrangement where one or more agents from a real estate brokerage company are appointed as your legal/designated agent
- ▶ You will be presumed to be represented by the real estate agent you are working with unless you have a written agreement otherwise
- ▶ Other associates in the brokerage firm may be designated agents for other buyers or sellers and may be the legal agent of the opposite party in your transaction
- ▶ Even though your brokerage agreement will be with the real estate brokerage company, you will have a designated agent(s) to act on your behalf

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## DESIGNATED AGENCY DUTIES UNDER THE ACT

- ▶ Perform according to the terms of your agency agreement
  - ▶ Promote your best interests as follows:
    - Seeking a transaction that meets the terms of your agency agreement or that is otherwise acceptable to you
    - Presenting all offers to you and from you unless you direct your agent otherwise
    - Disclosing material facts about the transaction that the agent actually knows about and the information is not confidential to someone else
- NOTE:** Material facts typically will not include information related to property that is not the subject of the transaction, that is a fact situation not related to the subject property or occurrences related to the subject property
- Accounting for all money/property received from you or for your benefit
  - Obeying your lawful instructions
  - Promoting your best interests above the agent's or someone else's best interests
- ▶ Exercise reasonable skill and care in performing brokerage services
  - ▶ Keeping your confidential information confidential
  - ▶ Complying with the Act and other laws that might apply, i.e. fair housing and civil rights statutes

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## NOT VIOLATIONS OF AGENCY DUTIES

- ▶ Showing the same or similar properties to more than one interested buyer or tenant client
- ▶ Compensation based on percentage of purchase/lease price
- ▶ Relaying false information to you (client) if agent did not know or have reason to know the information was false

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## REQUIRED AGENCY DISCLOSURE UNDER THE ACT

- ▶ No later than entering a brokerage agreement (can be an oral agreement), you must be advised of the following from the brokerage company:
  - That a designated agency relationship exists
  - The name of your designated agent(s) in writing
  - What the brokerage company will be paid and the company's policy regarding payment to other brokerage companies that might be involved in your transaction

## DISCLOSED DUAL AGENCY

- ▶ Sometimes a designated agent can represent both you and the opposite party in the transaction in a limited role
- ▶ Before doing so, the agent must have the informed written consent of the parties
- ▶ If your designated agent might act as a dual agent, he/she should talk to you about the potential for dual agency and give you a disclosure form entitled *Disclosure and Consent to Dual Agency* for your review
  - You will see that the agent's role becomes limited when you have dual agency
  - You are under no obligation to consent to disclosed dual agency
- ▶ If you do consent, you must sign the disclosure form before the agent acts as a disclosed dual agent
  - Sometimes, this language will be included in your written brokerage agreement
- ▶ You will be asked to sign a confirmation of your consent to dual agency no later than when you sign a purchase or lease contract

## TREATMENT OF CUSTOMERS AS OPPOSED TO CLIENTS

- ▶ Sometimes someone on the opposite side of your transaction will not be represented by a real estate agent, in which case your agent will give that party a notice that tells that person the agent represents you only
  - This notice might be called a Notice of No Agency Relationship
  - It will allow the agent to do certain clerical type acts for that party for your benefit
- Some examples of clerical type acts

might include:

- Talking to an inquiring consumer about availability and pricing of brokerage services
  - Responding to phone calls from a consumer about price or location of a property
  - Setting an appointment to view a property
  - Completing business or factual information on a contract for the consumer but on your behalf
- ▶ If you are a customer and not a client, you should receive a *Notice of No Agency Relationship*
    - You should not disclose anything to the agent who is treating you as a customer that would be confidential to you, i.e. anything that might hinder your bargaining position, or anything you would not want the opposing party to know and that is not otherwise published.

## EXCLUSIVE BROKERAGE AGREEMENTS

- ▶ Sometimes, your agent will ask you to sign an exclusive brokerage agreement
- ▶ This means that you are agreeing to work only with the real estate brokerage company and designated agent(s) named in the agreement to the exclusion of other real estate firms and agents
- ▶ If you are the seller, the contract will likely be called an *Exclusive Right to Sell* or an *Exclusive Agency Agreement* (also sometimes called an *Exclusive Seller Representation Agreement*)
- ▶ If you are the buyer, the contract will likely

be called an *Exclusive Right to Acquire*, *Exclusive Right to Purchase* or *Exclusive Buyer Agency Agreement* (sometimes called an *Exclusive Buyer Representation Agreement*)

- ▶ Under an exclusive brokerage agreement, the designated agent(s) is required by the Act to provide certain minimum services. These services generally include:
  - Accepting and presenting offers and counter offers
  - Assisting you in the preparation of offers, counteroffers etc., and
  - Answering your questions related to negotiations in a real estate transaction

## ITEMS YOU SHOULD RECEIVE

- ▶ If you are a client:
  - Written disclosure of your designated agent
  - This might be a stand-alone form or included in a written listing or buyer brokerage agreement.
- ▶ If you are a customer and not a client:
  - Written disclosure of Notice of No Agency
- ▶ If your agent is a disclosed dual agent:
  - Written disclosure (stand-alone form or part of brokerage agreement) where you consent to dual agent's limited role and description of limits: can't really advise you.
  - A confirmation of that consent; usually within the purchase contract but could be a stand-alone form.

**For additional information, contact the Illinois Department of Financial and Professional Regulation Real Estate Division at 888-473-4858.**

**\*Note:** As used throughout this document, "written" documentation could be delivered in electronic or physical form.