

What You Should Know About Agency

You need to know who represents your interests and who doesn't. You need to know your options and the implications of each option. Too often Realtors are uncertain about agency relationship laws and may not clearly explain your rights and their duties. Agency is all about who represents you. Know your options.

Gerald Anderson, 2005

A bit of History

Until recently Agency was not much of an issue. The Realtor who signed a contract with a homeowner to list their property represented the interests of the homeowner and only the homeowner. They were the Seller's agent. Any Realtor at the listing firm, not just the listing Realtor, worked exclusively for the Seller and owed complete loyalty to the Seller. They were all the exclusive agents of the Seller. The legal theory was that the Broker in charge of the firm actually took the listing and, all Realtors working for that Broker owed the Seller the same duties and became the Seller's agent.

Interestingly, all of the Realtors working at the other real estate firms, also owed the same duty of loyalty to the Seller. They had no duty of loyalty to the Buyer. This relationship stemmed from the law of Sub-Agency. All of the Realtors working at other firms were considered sub-agents of the listing Broker. They therefore inherited that Broker's duties of loyalty to the Seller. Not surprisingly, many buyers did not understand sub-agency. Sub-agency is still practiced in many states.

Under sub-agency, the Seller is the Client. The Buyer is a Customer. Realtors are Agents or sub-agents of the Seller and are therefore often called Real Estate Agents. The real estate company was often called a Real Estate Agency.

In 1996, Connecticut began changing its agency laws so the Buyer could be represented. The first step was to require all Realtors to explain to Buyers who represents them. The second step was require Realtors to offer to represent Buyers as their agent. This offer of representation requires the Buyer to sign a Buyer-Broker (sometimes called a Buyer-Client) agreement with the firm, just like the Seller signed a Listing agreement with the Listing firm. The final step was to eliminate the requirement of Sub-agency. Sub-agency is no longer practiced in Greenwich.

A written agreement is needed to be Represented & become a Client

Whether you are a seller or a buyer, if you want to be represented, you must enter into a written Agreement which obligates the Realtor and everyone in that real estate firm to represent you as your Agent. This is [Connecticut law](#). For the seller this Agreement is called an Exclusive Right to Sell. For the buyer, the agreement is called an Exclusive Right to Represent Buyer. See our Buyer Representation Agreement in the Downloadable Forms section of www.GreenwichLiving.com.

Until such time as a Buyer chooses to enter into a written contract for representation, the Buyer will be treated as an unrepresented customer and not as a client. This means that as a buyer-customer, Greenwich Realtors should only show you the listings of their own firm. Because Sub-Agency is no longer practiced, no Realtor should show customers (unrepresented-buyers) properties listed by other real estate companies.

Duties Owed Clients

Once a Buyer or a Seller signs a representation agreement they become a client of the real estate firm and an agency relationship is created. In addition to the duties of fairness and truthfulness owed to Customers, that firm and every Realtor in that firm then owes the following duties to their client: **loyalty, obedience, complete disclosure, confidentiality, diligence** and **accounting**. The agent must disclose to their client all known relevant and material information. As a result, in Connecticut all Sellers are Clients and almost all Buyers are Clients. Each side is represented by a Realtor who works only in their interest.

Buyer Options

Who represent you and the duties to you should be explained by your Realtor at your first meeting. If you choose not to be represented, you should be asked to sign a document that says your rights were explained and you chose not to be represented.

■ Unrepresented Buyer working with a Seller's Broker

A broker who lists a property, and any Realtor licensed to that listing broker, represents the Seller and acts on behalf of the Seller. This has not changed from prior law.

When a Realtor at the listing firm is working with a Buyer as a customer, he or she is representing the Seller, not the Buyer. The Realtor must act in the Seller's best interest and must tell the Seller any information disclosed by the Buyer. When the Buyer is not represented, the buyer will not receive advice or counsel from the Realtor. Their only real duties to the Buyer are to be fair and to disclose to the Buyer material facts the broker is aware of which could adversely and significantly affect the Buyer's use and enjoyment of the property.

■ **Unrepresented Buyer Working with a Subagent**

No one in Greenwich practices sub-agency. Realtors showing Buyers properties not listed by their must own firm should have signed a Representation Agreement signed with the buyer.

■ **Represented Buyer Working with Their Buyer-Broker**

A Buyer may enter into an agreement with the broker or Realtor to represent and act on behalf of the Buyer. In this event, the Broker and any Realtor working for that Broker, represents the Buyer only. This is true even though the Realtor is being paid the Seller or Listing Broker. A Buyer's broker owes to the Buyer the duties described above in **Duties Owed Clients**.

Dual Agency

Dual Agency occurs when a Real Estate firm represents a Seller and a Buyer in the same transaction.

If a Realtor in a firm is working with a Seller as a Client and that Realtor, or some other Realtor in the same firm, is representing a Buyer as a client and that Buyer is interested in the Seller's property, the firm and both Realtors are the agents of both the Buyer and the Seller. This is called Dual Agency.

■ **Broker Representing both Seller and Buyer as a Dual Agent**

Dual Agency changes the type of representation the broker and any Realtors in that firm can provide. Dual Agency prohibits Realtors in the Listing Firm from acting exclusively for either party. Dual agency requires the informed consent of both the clients. This consent must be in writing. See the Connecticut Dual Agency agreement in the Downloadable Forms section of www.GreenwichLiving.com.

In a Dual Agency, confidential information about price, other offers, terms and motivation for pursuing a transaction will be kept confidential. Other information will be shared. Dual agents may not advocate for one party to the detriment of the other.

Within the limitations described above, dual agents owe to both Seller and Buyer the fiduciary duties described above. Obviously the Realtor(s) must be very skilled and trustworthy to negotiate a sale between the two parties.

Connecticut law requires Realtors to discuss agency and the possibility of dual agency with buyers and sellers at their first "substantive" contact or meeting. However, neither can agree to a dual agency in advance of the Buyer Client wishing to place an offer on a Seller Client's property.

■ **Broker representing both Clients as Designated Agency**

In 1999 Connecticut amended the Dual Agency law to allow a special form of Dual Agency called Designated Agency. See the Connecticut Designated Agency Agreement in the Downloadable Forms section of www.GreenwichLiving.com.

Under Designated Agency, if the firm has sufficient safeguards in place to protect the confidential information of both the Buyer and the Seller, the firm can designate two Realtors - one to represent the Seller and one to represent the Buyer. The designated agent(s) owe complete fiduciary duties only to the person they represent.

- Anderson Associates practices Designated Agency.

■ **Purchases from a FSBO (property For Sale by its Owner)**

In the event that a Buyer client wishes to consider the purchase a property being sold by an owner, the firm can provide the Buyer with two choices:

■ **Designated Agency**

Almost all FSBOs are willing to pay a commission to a real estate firm which brings a buyer client. When the firm signs an agreement with the FSBO, even if that agreement is just to pay the Buyer Agent's commission, the firm will become a Dual Agent. The firm will then appoint a designated agent to represent the Seller and the Buyer's interests will not be compromised.

■ **Sole Buyer Agency**

If either the Buyer or the FSBO seller does not want to agree to Designated Agency, the firm can still continue to represent the Buyer. In that event, the Buyer will want to make their offer contingent on the FSBO paying a fee to the Buyer Agent's firm (an agreement between the FSBO and the buyer does not trigger Dual Agency) or will want to make their offer low enough to compensate for paying the commission themselves.

For more information on agency read the Connecticut Agency Policy

<http://198.65.140.147/legal/policy.htm>



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