

Who really represents you in a real estate transaction?

by *Ilyce_Glink*

Agency disclosure is a mouthful -- tough to say, and tougher still to figure out who represents whom in a real estate transaction. Seller brokers, also known as listing brokers or conventional brokers, typically represent homeowners. They sign a listing agreement (which is negotiable) with the seller outlining the details of their relationship. In essence, seller brokers generally agree to be the sole agent for a property. They agree to do their best to sell a property and if they do sell it, they receive a commission (also negotiable). Buyer's agents represent the buyer. They typically offer an agency disclosure agreement stating that they owe their fiduciary responsibility to the buyer, even if the seller pays the commission. This sounds simple enough, but then there are other folks who muddy the waters. Dual agents represent both buyer and seller in the same transaction -- or, I should say, represent neither party. Whatever fiduciary responsibility the agent had to the buyer or seller goes out the window once the agent brings both sides to the table. Dual agents are also often called "facilitators," which the National Association of Realtors likes to say means that they make the deal happen. Other industry observers call this a "non-agent" roll because neither the buyer nor the seller gets the representation he or she was expecting. To recap, we have buyer's agents, who represent buyers but can also represent sellers. We have seller's agents, who are the listing agents for a transaction but can also represent buyers. And, we have dual agents, who wind up bringing both buyer and seller to the closing table. If you're trying to eliminate potential conflicts in your deal, you may want to try a couple of other types of agency. Exclusive buyer's agents (who typically belong to the National Association of Exclusive Buyers Agents, or online NAEBA.org) never represent sellers. They only represent buyers, and they typically will take buyers wherever they want to go in a metro area. Exclusive seller agents only list properties. They do not work with buyers, and so can never bring both sides of a deal together. Discount agents, which are more often than not Internet-based, or For Sale By Owner services simply help facilitate a deal by pushing paperwork. Typically, a seller will use a FSBO Web site or hire a discount agent and perhaps pay a flat fee in order to do the deal. One seller recently wrote to ask which of several deals I thought was better: A discount agent offered to list her property for a 2 percent commission. If the agent sold the property to a buyer who was represented by a different agent, the seller would have to pay another 2 percent. If the agent sold it to one of her own clients, she would receive 2.5 percent. Another option was to use a Web-based service that would charge \$1,200 for a listing in the local multiple listing service (MLS), a Web site for the listing (with photos), all paperwork and any backend support the seller would need. If a buyer came with an agent, the seller would pay another 2 percent to the buyer's agent. If not, there would be no additional fees other than typical closing costs, like transfer stamps. I told the seller that if she didn't mind doing more work on her own, the Internet-based discount brokerage firm might be a good choice. Otherwise, she should use the agent. It is easy to see how confusing the situation can become, especially if a seller winds up working with a seller's agent -- who does not become a dual agent. This happens more frequently than you might imagine. Every time you walk into a developer's sales office without a buyer's agent, you're an unrepresented seller. The developer's salesperson is under no obligation to help you, represent your best interests, or even steer you to someone who can help you. In fact, many new construction salespeople are giving a bonus if someone like you walks in without representation. You can be an unrepresented seller if you go to an open house and start talking to the listing agent. He or she doesn't represent you, and so everything you say can (and probably should) be transmitted back to the seller. Seller agents cannot tell buyers what to offer for a property. They cannot tell you which home to buy if you're deciding between two -- even if they represent both properties. They can't point out the defects of a home, unless they're material and not visible to the naked eye. And finally, seller agents can only provide you with the information you need to make a reasonable offer only if you ask for it. You can see why it's important to know who represents you in the single biggest transaction of your life. Adjust your expectations accordingly. © 2007 Real Estate Matters, Tribune Media Services, Inc.