



Agency Compliance Manual

2005

Notes:

The Fair Housing Language was revised in Sept. 2011.

[View Fair Housing Language](#)

This affects the Consumer Guides to Agency Relationships and the Fair Housing Language contained in the "Requirements of the Agency Agreement" section of this manual.

Internet Confidentiality

As of Jan. 1, 2013, brokers are required to include in their company policy section a section on how confidential information will be protected on internet websites including social networking sites and blogs. Such language should be added to the section of the policy dealing with Confidential Information. This affects the Brokerage Company Policy and Sample Company Policy sections of this manual.

[View Sample Language](#)

This manual was prepared by The Ohio Association of REALTORS® staff.

Published by The Ohio Association of REALTORS®
200 E. Town St.
Columbus, OH 43215

Copyright 2004
Ohio Association of REALTORS®
All Rights Reserved

This manual can also be found on OAR's website at www.ohiorealtors.org in the Legal Section.

The information contained in this manual is deemed correct as of the date of publication: November 2004.

The Ohio Association of REALTORS® is not responsible for any information contained herein that is later rendered inaccurate based upon a change in the Ohio Revised Code, case law or any interpretation thereof adopted by the Ohio Division of Real Estate & Professional Licensing or the Ohio Real Estate Commission that occurs after the date of publication.

Table of Contents

Introduction	5
Types of Agency Relationships	7
Requirements of the Agency Agreement	8
Implied Agency	9
Agency Duties	10
Scope of Agency Relationships within a Brokerage/'Split' Agency	12
Management-Level Licensees	14
Appointment of Agent	16
Dual Agency	22
Brokerage Company Policy	24
Disclosure of the Brokerage Agency Policy: The 'Consumer Guide to Agency Relationships' ...	28
The Agency Disclosure Statement and Procedures	32
Disclosure of Status as a Buyer Broker	37
Confidential Information	39
Changing an Agency Relationship	44
Termination of an Agency Relationship	46
Citation Authority	47
Effective Date of SB 106 and Implementation Issues	48
Brokerage Policies and Consumer Guide Samples	49
<hr/>	
Introduction of Company Policy A: Exclusive Seller Agency	51
• Sample Policy A:	52
• Sample Policy A 'Consumer Guide to Agency Relationships'	56
Introduction of Company Policy B: Exclusive Buyer Agency	59
• Sample Policy B:	60
• Sample Policy B 'Consumer Guide to Agency Relationships'	63
Introduction of Company Policy C: 'Split' Agency	65
• Sample Policy C:	66
• Sample Policy C 'Consumer Guide to Agency Relationships'	72
Introduction of Company Policy D: Dual Agency	75
• Sample Policy D:	76
• Sample Policy D 'Consumer Guide to Agency Relationships'	80
Introduction of Company Policy E: 'Split' Agency, But Never Dual Agency	83
• Sample Policy E:	84
• Sample Policy E 'Consumer Guide to Agency Relationships'	90

Introduction ...



The Ohio Association of REALTORS® is pleased to present this 2005 Agency Compliance Manual, which incorporates recent changes to Ohio license law governing agency relationships entered into by real estate licensees and their buyers and sellers.

As a result of a collaborative effort between the Ohio Division of Real Estate & Professional Licensing and OAR, legislation was signed into law that modernizes agency disclosure and ensures that consumers are provided full and timely information on the various agency options available to them and the role of real estate licensees in real estate transactions.

This law, effective January 2005, is the result of a comprehensive review of agency disclosure that began in 2001 and culminated with Gov. Bob Taft signing Senate Bill 106 into law on Aug. 5, 2004. REALTORS® and Ohio regulators agreed to modify several key areas of Ohio's existing agency law in order to streamline the disclosure process, reduce paperwork and, as a result, provide the consumer with a clear understanding of the licensee's role and duties in a real estate purchase or lease.

Ohio's REALTOR® organization has been in the forefront of supporting full and timely disclosure on an array of issues -- from agency to property condition. The recent changes are designed to enhance state law which first went into effect in 1989 and was later amended in 1996.

OAR firmly believes that the current revisions will be embraced by both consumers and real estate professionals and, as a result, ensure that the safeguards contained in Ohio agency law will be maintained and strengthened.



Types of Agency Relationships

Ohio law defines the types of agency relationships that licensees may enter into. They are: seller agency; buyer agency; subagency; and dual agency (with consent). The term buyer is defined to include a tenant, and seller is defined to also include a landlord. Thus tenant agency and representation of landlords are also permitted.

For easier reading of this manual, this same concept will be utilized. Although the manual will generally refer to buyers and sellers, these should be interpreted by the reader to also mean tenant and landlord, respectively.

FAQs

1) Q: Why isn't acting as a facilitator or transaction broker an option under Ohio's agency law, as some states allow?

A: The trend toward transaction brokers has died. Although considered at one time, it was not made part of Ohio law for several reasons. First, agency-level service is ingrained in licensees' behavior. Second, buyers and sellers want agency representation. Third, there was a concern that facilitator status would be misused and give licensees a false sense of immunity from liability. Finally, the lack of case law in this area also led to the conclusion that the concept of facilitator was not the solution to the bigger questions involved with agency.

2) Q: Does anyone still act as a subagent in Ohio?

A: Very rarely. With the advent of buyer agency, subagency has lost favor in Ohio and across the country.

3) Q: Someone told me that if a buyer wants to purchase one of my listings that I must act as buyer's agent and thus be a dual agent. Is that true?

A: Ohio law does not mandate that you represent all buyers. Depending on your brokerage's policy, you could either treat the buyer as a customer and just represent the seller, or you could act as a dual agent, representing both the buyer and seller if the parties agree.



Requirements of the Agency Agreement

Under Ohio law, listing agreements and buyer agency agreements are not required to be in writing. However, it is always a good business practice and highly recommended that such agency relationships be reduced to writing.

If a written agency agreement is entered into, Ohio license law imposes certain requirements. A written agency agreement includes a listing agreement, buyer or tenant representation agreement, property management agreement or contract to auction real estate.

First, the agreement must contain a definite expiration date. Secondly, the agency agreement must contain the fair housing logo and mandatory fair housing language if the property involved falls under the definition of housing covered by the fair housing laws. This would include agency agreements involving residential property and vacant land.

The required language is:

It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

Finally, the written agency agreement must contain a place for the client to sign and date it and a copy must be given to the client in a timely manner after the client signs it.

FAQs

1) Q: Do I have to include the fair housing language and logo in my listing, buyer agency or property management agreements if the real estate involved is commercial, retail or industrial property?

A: No. Since these types of properties are not covered under the fair housing laws, this fair housing language is not required in agency agreements involving such properties.

2) Q: Does the fair housing language and logo need to be included in a listing agreement or buyer agency agreement for vacant land?

A: Yes. The fair housing language and logo must be in all agency agreements for vacant land. This requirement applies to all vacant land regardless of the intended use of the land or how the land is zoned.

3) Q: Do these requirements apply only to exclusive agency agreements?

A: They apply to any agreement in which a licensee agrees to perform services requiring a license, regardless of whether the agreement is exclusive.

4) Q: I thought listing agreements had to be in writing under the Statute of Frauds?

A: No, the Statute of Frauds does not apply to agency agreements. Although it is not a good business practice, you can legally agree to represent a seller or buyer verbally.

5) Q: Is the fair housing language and logo required on purchase contracts?

A: No, although it can be included if you wish.



Implied Agency

For several years, many REALTORS® have been concerned about the level of service they can provide a customer without implying an agency relationship that was not intended. Such a concern could arise where a listing agent is working with a buyer as a customer or when a buyer's agent is representing a buyer on the purchase of a "FSBO" in which the seller is unrepresented.

Ohio law addresses this issue in two sections. First, it provides that an agency relationship cannot be implied between a buyer or seller and licensee as a result of the licensee merely providing the following information:

- Information regarding lenders, inspectors, attorneys, insurance agents, surveyors, draftspersons, architects, schools, shopping facilities, places of worship and other similar information; and

- Market information or other information obtained from a property listing service or public records.

Second, Ohio license law clarifies that a buyer or seller's promise to pay a licensee does not, by itself, determine whether an agency relationship exists with that licensee. This prevents a seller from claiming that a buyer's agent represented the seller merely because the seller, either directly or through his listing broker, paid the buyer's agent.

FAQs

1) Q: Someone told me that under Ohio law, whenever I am working with a buyer, that I will be a buyer's agent. Is that true?

A: No. Under Ohio law, there is no presumption that you represent either the buyer or seller. Instead, you must affirmatively decide what agency relationship you want to establish with buyers and/or sellers.

2) Q: Does Ohio law totally eliminate the risk that I could imply an agency relationship through my words or actions?

A: No, it merely identifies several of the services that you can provide to a customer without unintentionally creating an agency relationship. It also clarifies that the source of compensation, by itself, does not establish an agency relationship.

3) Q: If I represent the seller, can I give the buyer "comps" without implying an agency relationship?

A: Yes, as long as they are obtained from a property listing service such as a multiple listing service or other public record. Ohio law provides that "comps" can be given to the buyer without creating an agency relationship with the buyer or breaching your duty to the seller. Of course, if these comps do not support the listing price, you probably should discuss it with the seller before you provide them to the buyer.



Agency Duties

Ohio law requires that licensees act as a fiduciary of their client and act in their client's best interest.

In general terms, a licensee's fiduciary duties include:

- Exercising reasonable skill and care in representing the client;
- Performing the terms of any written agency agreement;
- Following any lawful instructions of the client;
- Performing all duties specified in the license law, in a manner that is loyal to the interest of the client;
- Complying with all requirements of the license law, along with other applicable statutes, rules and regulations. Those include the federal and Ohio fair housing laws and the Ohio landlord tenant act;
- Disclosing to the client any material facts of the transaction of which the licensee is aware or should be aware in the exercise of reasonable skill and care and that are not confidential information under a current or prior agency or dual agency relationship;
- Advising the client to obtain expert advice related to material matters when necessary or appropriate;
- Accounting in a timely manner for all money and property received in which the client has or may have an interest; and
- Keeping confidential all confidential information, unless the licensee is permitted to disclose the information. This requirement includes not disclosing confidential information to other licensees in the brokerage who are not agents of the client.

Duties of a seller's agent

In addition to their overall fiduciary responsibilities, licensees acting as seller's agents, whether they are listing agents or subagents, owe these duties to the seller:

- To seek an offer to purchase at a price and with terms acceptable to the seller. Unless the seller directs otherwise, the listing agent is not obligated to seek additional offers once the property is subject to a contract of sale, lease or letter of intent to lease;
- To present an offer to purchase to the seller in a timely

manner, even if the property is subject to a contract of sale, lease or letter of intent to lease; and

- To provide the seller with a copy of any agency disclosure form signed by the buyer, prior to presenting the seller with an offer to purchase.

Seller's agents are forbidden from offering subagency to other brokerages or offering compensation to buyer brokers without the seller's knowledge and consent.

But Ohio law specifically permits seller's agents, whether they are listing agents or subagents, to show alternate properties to buyers and to represent other sellers without breaching their duties to the seller.

Duties of a buyer's agent

Licensees acting as buyer's agents also must fulfill certain duties to their clients. These are in addition to their fiduciary duties described above. Those duties are:

- Seeking a property at a price and with purchase or lease terms acceptable to the buyer. Unless the buyer directs otherwise, the buyer's agent is not obligated to seek additional purchase or lease possibilities if the buyer is a party to a contract to purchase property, or has entered into a lease or has extended a letter of intent to lease; and
- Presenting any offer or counteroffer to purchase or lease to the listing agent in a timely manner, even if the property is subject to a contract of sale, lease or letter of intent to lease.

Buyer's agents are forbidden from offering subagency or accepting compensation from a seller's agent without the knowledge and consent of the buyer.

But a licensee does not breach any duty or obligation to the buyer by showing the same properties to other buyers or by acting as an agent or subagent for other buyers, or as an agent or subagent for sellers, except that any dual agency relationship must be disclosed to a client.

FAQs

1) Q: I represent a buyer who is interested in seeing a property. Another buyer that I represent also wants to see the same property. Is it a violation of my agency duties to show it to both of them?

A: No. Ohio license law specifically provides that this is not a violation of your agency duties. To make sure buyers understand this, you may want to include language in your buyer agency agreement disclosing that you could potentially represent other buyers on the same property. Such a provision should explain that you will keep the confidential information of each client in confidence and not disclose it to the other party.

2) Q: What is the best way for me to obtain permission from the seller to offer buyer agency compensation?

A: The easiest way to accomplish this is to include a section in your listing contract in which the seller indicates that he permits this.

3) Q: Should I include the same kind of section in my written buyer agency agreement to obtain the buyer's permission to receive my compensation from the listing broker or seller?

A: Yes.

4) Q: If the listing broker or seller is offering a bonus to the selling agent, am I required to tell the buyer this?

A: If you are acting as a buyer's agent, your fiduciary duties would require you to disclose this to the buyer. Make sure you document your disclosure in your files. Remember, any bonus that you receive must be made payable to your brokerage.

5) Q: I know I must present all offers in a timely manner, but what is a timely manner?

A: A timely manner is defined to mean as soon as possible under the circumstances.

6) Q: Do I have an obligation to present verbal offers to my client?

A: Although a verbal agreement is not binding in Ohio, unless your seller instructs you otherwise, your duty to present all offers would require you to present even verbal ones.



Scope of Agency Relationships within a Brokerage/‘Split’ Agency

Ohio's agency law specifies which licensees in a brokerage are bound by the agency relationships created by that company's agents. Under these provisions when a licensee enters into an agency relationship with either a buyer or seller, the following people are bound to that agency relationship:

- The licensee forming the relationship;
- The brokerage the licensee is affiliated with;
- Management-level licensees within that brokerage who have direct supervision over licensees (There are two exceptions to this general provision. These are discussed in the section on management-level licensees.);
- Any licensees within the brokerage who helped establish the agency relationship;
- Licensees within the brokerage who are specifically appointed, with the client's consent, to represent the client; and
- Any other licensees within the brokerage who receive confidential information from the agent.

Unless they fall into one of the categories listed above, the other salespeople in the brokerage are not bound by an agency relationship created by another licensee in the brokerage. This means that if one salesperson lists a property, for example, other licensees in the same brokerage are not also considered the seller's agents. If another licensee enters into a buyer's representation agreement, other salespeople within the brokerage are not automatically considered buyer's agents.

This section of the state license law thus allows one salesperson in a brokerage to represent the seller and another salesperson within the same brokerage to represent the buyer without either salesperson being considered a dual agent. This is often referred to as "split" or "designated" agency.

Licensees in this situation must:

- Serve as agent only to the party the licensee agreed to represent; and
- Fulfill the duties owed to their respective client, as spelled out in the license law and in the agency agreement.

Even though the agents in a "split agency" situation are not dual agents, the brokerage with which they are affiliated is. This is because the brokerage is bound by the agency relationship created by each of its individual agents. A brokerage includes, by definition, affiliated licensees who have been assigned management duties that include supervision of licensees whose duties may conflict with other affiliated licensees. These management-level licensees, in short, are dual agents as well. (There are two exceptions to this that are discussed in the section on Management-Level Licensees).

As dual agents, the brokerage and its management-level licensees, have certain duties. Those include:

- To objectively supervise the affiliated licensees in the fulfillment of their duties and obligations to their respective clients;
- To refrain from advocating or negotiating on behalf of either the seller or the buyer; and
- To refrain from disclosing to any other employee of the brokerage, or any party or client, any confidential information of a client of which the brokerage or management-level licensee becomes aware. In addition, the brokerage or management-level licensee must refrain from using a client's confidential information for the benefit of another client.

FAQs

1) Q: My brokerage practices "split" agency. If I represent a buyer who wants to buy property listed with another agent in my brokerage, are we both dual agents?

A: No. Unless that is the policy of your brokerage, you would be considered to represent only the buyer and the listing agent would represent only the seller.

2) Q: Does this mean I can actively negotiate on behalf of my buyer client and the listing agent can do the same for his seller?

A: Yes. Each of you are obligated to fulfill your fiduciary duties to your separate clients. This means that among other duties, you must each use your best skills and efforts to negotiate the best deal for your client and to act in their best interests.

3) Q: What is my brokerage's role?

A: Your brokerage--the sole proprietor, partnership or corporation holding your license--would be considered a dual agent since both you and the listing agent work for the brokerage. Any management-level licensees in your brokerage would be considered dual agents as well.

4) Q: What restrictions are there on my broker and the management-level licensees in my brokerage as dual agents?

A: Although they are dual agents, your brokerage and the management-level licensees are still required to supervise both you and the listing agent to make sure you are each fulfilling your respective duties to your clients. However, in doing so, they cannot take either the buyer or seller's side and they can't advocate or negotiate for either the buyer or seller. If they learn any confidential information about the buyer or seller, regardless of the source, they cannot disclose it to the other party or their agent, or use it in any way to benefit one party over the other.

5) Q: Another agent in my brokerage and I work as a team, co-listing properties and working together with buyer clients. Are we always going to be bound by each other's agency relationships?

A: Probably. If you assist each other in establishing the agency relationship or share a client's confidential information with one another, this will bind you to each other's agency relationships. Since it is probably a selling tool that your clients will have two agents working for them instead of one, you and your "teammate" probably want to each sign the agency agreement or include language appointing the licensee who is not signing it to be the client's agent as well.

6) Q: I referred a seller to another agent in our brokerage because the property involved was outside my area of specialization. Am I considered to be that seller's agent because I made the referral?

A: No, you would not be bound to represent the seller.

7) Q: My personal assistant works primarily for me but also has his own clients that he handles himself. Am I bound by his agency relationships?

A: You would only be bound by the agency relationships your personal assistant enters into if you were a management-level licensee, you helped him establish them, were appointed to represent his clients, or received confidential information from him about his clients. If you do not want to be obligated to represent your personal assistant's clients, you need to make sure he keeps you out of those transactions he does on his own.

8) Q: Are my licensed personal assistants bound by the listings I take and the buyer agency relationships I enter into?

A: Your personal assistants would be bound to your agency relationships if they helped you establish those relationships, if they were appointed to represent your clients, or if they received confidential information from you. Since it is likely your personal assistants will come into possession of confidential information and be bound by your agency relationships, it is probably best if your assistants are appointed to represent your clients. In that way, they can provide you with the full assistance you desire.

9) Q: If a buyer's agent in my brokerage tells me confidential information about his client, does that make me the buyer's agent?

A: You would become bound to represent the buyer if you learn confidential information from the buyer's agent. If that buyer later wants to purchase one of your listings, you must act as a dual agent and cannot share that information with the seller.

10) Q: From an outside source, I learned confidential information about a seller whose property is listed with another agent in our brokerage. Because I received this confidential information, am I now considered the seller's agent?

A: No. You would only be considered the seller's agent if you obtained the confidential information from the listing agent. If you learn it from a source outside the brokerage, you do not become the seller's agent.

11) Q: If an agent in my brokerage tells me confidential information about one of his clients, could I later be named in a lawsuit involving a subsequent transaction in which I am never involved?

A: It is extremely unlikely that you would be named in any litigation resulting from a transaction in which you were not involved.



Management-Level Licensees

Under Ohio law, management-level licensees in a brokerage are bound by the agency relationships established by the other licensees within the brokerage. This means that if an agent lists a property, the management-level licensees in that brokerage also represent the seller. If a different licensee in the brokerage agrees to represent a buyer, that management-level licensee represents that buyer as well.

For purposes of the license law, a licensee will be considered a management-level licensee if:

- The licensee has been assigned management duties that involve oversight responsibilities for the brokerage's main office, a branch office or a division within that brokerage; and
- Those management duties include the supervision of affiliated licensees whose agency duties to their clients may conflict with those of other licensees affiliated with the brokerage.

The Ohio Division of Real Estate & Professional Licensing has defined supervision as including the general oversight of activities or direction of activities conducted by another licensee.

In determining whether a licensee is management-level, the Ohio Division of Real Estate & Professional Licensing will apply the two-pronged test described above. A person holding either a sales or broker's license who meets both of these criteria will be considered management-level.

The significance of this is that on any in-company transactions where both buyer and seller are represented by the brokerage, the management-level licensees are considered to be dual agents. This is because the manage-

ment-level licensees are bound by the agency relationship established by both affiliated licensees, and thus represent both buyer and seller. (How the management-level licensee must function as a dual agent is discussed in the section titled "Scope of Agency Relationships within a Brokerage/'Split' Agency.")

There are two narrow exceptions to this general rule in the license law. The first is where the management-level licensee is selling his own property or purchasing property for himself. The other is where the management-level licensee is personally representing either a seller or a buyer. In either of these instances if the management-level licensee becomes involved in a transaction in which the other party is represented by an agent affiliated with the brokerage, the management-level licensee is not required to be a dual agent.

Instead, Ohio law provides that on a transaction in which the manager is either personally the seller or purchaser, he is permitted to represent just himself. In the situation where the manager is personally acting as the listing agent or buyer's agent and the other party to the transaction is represented by an affiliated agent, the manager is permitted to represent just his client. In these instances, however, the manager is not permitted to use or discuss any confidential information he may know about the other party to the transaction.

Under the licensee law the two above exceptions will only apply if there is another management-level licensee in the brokerage to supervise the salesperson involved in the transaction. If there is only one broker in the brokerage and no other management-level licensee, the above exceptions do not apply. Thus a broker who has no other managers must always be a dual agent on transactions involving himself and another agent in his brokerage.

FAQs

1) Q: I am affiliated with a brokerage as a broker, but I am not the principal broker or in any type of management position. Instead, I function as a sales agent. Am I automatically considered to be a management-level licensee because I hold a broker's license?

A: No. As long as you have not been assigned management duties that include overseeing a brokerage office or division and you do not supervise other licensees, you will not be considered a management-level licensee.

FAQs

2) Q: I have some ownership interest in the brokerage with which I am licensed. However, I do not hold a management position or supervise any other licensees. Am I considered management level because of my ownership interest?

A: No. Under rules issued by the Ohio Real Estate Commission, you would not be considered to fall within the definition of a management-level licensee. The only exception to this would be if, because of your ownership interest, you acted in a manner that was designed to influence or affect transactions in which you were not personally involved. If you do act in such a manner, you could be found to be a management-level licensee.

3) Q: I have licensed personal assistants who work for me. Because I supervise them, am I a management-level license?

A: No. Although you supervise other licensees, you would only be considered management level if you have also been assigned oversight duties for the main office, a branch office or division of the brokerage.

4) Q: I am a branch manager. Will I always be a dual agent on all in-company transactions involving the salespersons in the brokerage?

A: You will be a dual agent if your brokerage has the listing and an agent in your brokerage also represents the purchaser as a buyer's agent.

5) Q: What is my liability as a dual agent? Am I liable for transactions in which I never become involved, just because I am a manager?

A: It is unlikely that you would be named in a lawsuit or found liable in a transaction in which you never became involved. If you do become involved, you may have some possible exposure based on the nature and extent of your conduct.

6) Q: The listing agent on an in-company transaction works out of the branch office I manage. The agent in our firm that represents the buyer works out of a branch office managed by another licensee. Am I and the other branch manager still considered dual agents, even though neither of us supervises both of these agents?

A: Yes, even though you work out of different branch offices, both you and the other manager are dual agents.

7) Q: There is an agent in our brokerage to whom other salespersons go for advice on transactions. Is she management-level because of the mentoring role she plays in our firm?

A: Unless she has been assigned management duties and supervises licensees, she would not fall within the definition of a management-level licensee. The only exception to this would be if she is compensated for providing advice or assistance.

8) Q: I am the broker for my company. Our company practices "split agency." If I personally list a property for my neighbor and one of my agent's represents the buyer, am I a dual agent?

A: You are permitted to represent only the seller as the listing agent as long as there is another management-level licensee in the brokerage to supervise the salesperson in your office that is representing the buyer.

9) Q: Our brokerage policy is that we practice dual agency on any in-company transaction - even if there are two different agents involved in the transaction. If I list a property as a broker and the buyer is represented by one of my agents, are we both dual agents?

A: Yes. Because of the policy your brokerage has chosen you would both be dual agents.

10) Q: As the broker I listed a property that I personally own with my company. One of my agent's represents a buyer who wants to purchase it. Do I have to be a dual agent?

A: If your brokerage practices "split" agency and there is another management-level licensee to supervise the buyer's agent, then you can represent just yourself. If there is no other manager or you have chosen a policy of dual agency on all in-house transactions, then you would have to be a dual agent.

11) Q: My brokerage does practice split agency, but I am the only broker and have no other managers. If I personally list a property, the seller may see it as a disadvantage that I may have to be a dual agent if the buyer is represented by one of my agents. If that happens and the seller wants full representation, could I appoint another agent to represent the seller?

A: Yes, as long as the seller agrees, you could appoint another agent to be the seller's agent. As the sole broker you would, of course, still be a dual agent.



Appointment of Agent

As discussed in the "Scope of Agency Relationships Within a Brokerage/'Split' Agency" section of this manual, when an agency relationship is established with a buyer or seller that agency relationship is binding on the brokerage, the management-level licensees and the agent(s) who formed the relationship with the client. Ohio law, however, allows the brokerage to adopt a policy expanding the agency relationship beyond those noted above. For example, a brokerage may adopt a "dual agency" company policy requiring all licensees in the brokerage to represent all clients of the brokerage (see sample Policy D beginning on page 75). Brokers who choose this policy must include language in their listing and buyer agency agreements appointing all agents to represent the brokerage's clients.

Brokerages that practice "split agency" do not appoint all agents to represent brokerage clients. However, there may be times where another agent will be needed to represent a buyer or seller client. This may occur when the listing or buyer agent is on vacation or is ill. In that situation, another agent in the brokerage can be appointed to represent the client. The term of the appointment could be for a short time (i.e. just to cover the agent's vacation) or for the remaining term of the agency agreement.

Ohio law permits two options for an appointment of an agent. Clients can authorize their agent to make appointments on their behalf in their agency agreement or appointments can be authorized by the client when needed.

If the brokerage chooses the first option, clients will delegate to their agent the authority to appoint other agents within the brokerage to represent them. Ohio law requires that the delegation of authority be in writing, be signed by the client and include language notifying the client of his right to veto any appointment. If an

appointment is made by the agent, the agent must notify the client at the time of the appointment.

The best place to include language authorizing the agent to make appointments is in the listing or buyer agency agreement. Sample appointment language for an agency agreement is provided below:

Appointment of Licensees. Seller/Buyer agrees to delegate to listing agent/buyer agent the authority to appoint other licensees within the brokerage to represent Seller's/Buyer's interest. If an appointment is made Seller/Buyer will be notified at the time of the appointment. Seller/Buyer has the right to veto the appointment of any other licensee.

If an agent exercises this authority, Ohio law requires notification to the client of the appointment. Although the law does not require this notification to be made in writing, by doing so the agent has evidence that the notification was given. Sample "Notification of Appointment of Agent" forms for seller or buyer clients are provided on pages 18-19. The longer form informs the client of the appointed agent's position if the appointment is terminated prior to the agency agreement. This notification is required to be provided to the client at the time of the appointment.

If authority is not delegated to the agent, the client's authorization to appoint another agent to represent him must be obtained.

The law does not require the appointment to be in writing but it does require the client's "specific" consent to the appointment. Therefore, it is recommended that the agent obtain their client's written consent to the appointment. A sample "Appointment of Agent" form is provided on page 20.

FAQs

1) Q: Do I have to get my seller's authorization in writing to give me the authority to appoint other agents to represent them?

A: Yes.

2) Q: If my listing agreement contains language delegating to the listing agent the authority to appoint other agents to represent the seller, does the listing agent have to give the seller notice when an appointment is made?

A: Yes. The seller must be notified at the time of the appointment. It is recommended that this notification be in writing.

3) Q: What if the seller vetoes the appointment?

A: The appointment cannot be made or would terminate upon the agent's notification of the veto.

4) Q: Can I include language in my property management agreement that delegates authority to the managing agent to appoint other agents in our brokerage to represent the owner?

A: Yes. The sample agency agreement appointment language provided on page 16 could be used by replacing "Seller/Buyer" with "Owner" and "listing agent/buyer agent" with "managing agent." (The sample Notification of Appointment of Agent forms provided on pages 18-19 could also be used by indicating the agent has been appointed to represent the owner in the management of his property and have the managing agent sign the form.)

5) Q: Under my brokerage policy if another agent needs to be appointed to represent a client, the appointment will be authorized by the client when that occurs. Does the client's authorization have to be in writing?

A: No, but you must have the client's "specific" consent. Therefore, it is a good business practice and strongly recommended that you have it in writing.

6) Q: When I am on vacation, another agent in our brokerage covers my transactions. Should that agent be appointed to represent my clients?

A: In order to be able to provide agency-level service to your clients while you are gone, it is best that this agent be appointed to represent your clients.

7) Q: I am going on vacation and another licensee in our brokerage will be appointed to represent my seller. When I return will that agent still be considered the seller's agent?

A: Yes, unless the parties agree otherwise.

8) Q: Could the appointment be limited? For example, could it indicate that the agent is only appointed to be the seller's agent for the three weeks I am on vacation?

A: Yes, as long as the seller agrees that type of language could be written in the appointment. The appointment should specifically indicate when the agency relationship begins and ends, and should explain the agent's duty to maintain any confidential information even after the term of the appointment has ended.

9) Q: If the appointment were limited, could the agent later represent a buyer on that seller's property?

A: Yes, however, the agent could not disclose any confidential information to the buyer that was learned during the time the agent was appointed to represent the seller.

10) Q: Is it possible for a management-level licensee to cover for me when I'm not available so I don't have to go through this appointment process?

A: Yes, since management-level licensees are already bound by your agency relationship, no appointment would be necessary.

11) Q: If I hold an open house for another agent in our brokerage, will that automatically make me the seller's agent? Do I have to be appointed as the seller's agent to hold an open house for the listing agent?

A: You are not required to be appointed to represent the seller to hold an open house on behalf of the listing agent. You would only be found to represent the seller if such an appointment took place, if you hold a management position in the brokerage, if you received confidential information from the listing agent, or if you originally helped the listing agent get the listing.

12) Q: Should it be explained to the seller that the agent holding the open house is not the seller's agent?

A: Although not technically required, it is recommended, so the seller doesn't share confidential information with that agent.

Appointment of Agent

I hereby agree to the following agent(s): _____ being appointed to represent me in the (check one) _____ purchase of property or _____ sale of my property located at: _____ . This agent is authorized to represent me for (check one):

_____ the remaining term of my existing agency agreement with _____
(Brokerage Name)

including any extension(s); or

_____ for the period of time beginning on: _____ and ending on _____.

I understand that upon termination of this appointment, the agent named above will no longer represent me as my agent, and could potentially represent another party in a transaction involving me. If this occurs, this agent is prohibited from disclosing any confidential information that has been learned about me, my property, or any proposed transaction during the term of the appointment.

Client Date

Agent Date

Client Date

This form can be used by REALTORS[®] to obtain the consent of their client to have another agent appointed to represent them. This is **not** a mandatory form and is strictly being provided as an example. Please review both the form and details of the particular transaction to ensure that each section is appropriate for your transaction. The Ohio Association of REALTORS[®] is not responsible for the use or misuse of this form.

‘... there may be times where another agent will be needed to represent a buyer or seller client. This may occur when the listing or buyer agent is on vacation or is ill. In that situation, another agent in the brokerage can be appointed to represent the client. The term of the appointment could be for a short time (i.e. just to cover the agent's vacation) or for the remaining term of the agency agreement.’



Dual Agency

Dual agency is permitted in Ohio as long as both parties give their informed consent. The provisions contained in Ohio's license law are designed to:

- Identify when dual agency exists;
- Provide guidance to licensees on how to function as a dual agent;
- Achieve informed written consent to dual agency; and
- Explain dual agency to the public.

Who is a Dual Agent?

A single agent that has agreed to represent both the buyer and seller in the same transaction is a dual agent, as is the brokerage that agent works for and the affiliated management-level licensees. Before they can act as a dual agent, the parties must both have knowledge of the dual representation and consent to it in writing.

In some situations where there are two different agents from the same brokerage involved in a transaction they may act as dual agents as well. This would occur if the brokerage they work for has adopted a policy requiring both agents to be dual agents on all in-company transactions. In such companies even though there is one agent acting as the listing agent and a different agent representing the buyer, both agents are dual agents. In this situation the brokerage and management-level licensees are dual agents as well. (For more information on this policy option see page 75.)

Disclosure and Consent

The Agency Disclosure Statement serves as the vehicle for licensees to disclose if they are acting as dual agents. It also provides detailed information regarding how the licensee will function as a dual agent. This is necessary because Ohio law requires a licensee to disclose to both the buyer and seller all relevant information necessary for the buyer and seller to make an informed decision as to whether to consent to the dual agency relationship. An example of such information would be where one of the parties represented by the dual agent is the agent's family member.

If there is a material change in the information disclosed to the buyer and seller, the licensee must disclose that

change and give them an opportunity to revoke their consent.

Duties of a Dual Agent

The duties and limitations of a dual agent are outlined on the second page of the Agency Disclosure Statement. These provide that if a licensee is acting as a dual agent he must:

- Treat both clients honestly;
- Disclose latent, material defects to the purchaser, if known by the agent(s) or brokerage;
- Provide information regarding lenders, inspectors and other professionals, if requested;
- Provide market information available from a property listing service or public records, if requested;
- Prepare and present all offers and counteroffers at the direction of the parties; and
- Assist both parties in completing the steps necessary to fulfill the terms of any contract, if requested.

It also clarifies that a dual agent may not:

- Disclose information that is confidential, or that would have an adverse effect on one party's position in the transaction, unless such disclosure is authorized by the client or required by law;
- Advocate or negotiate on behalf of either the buyer or seller;
- Suggest or recommend specific terms, including price, or disclose the terms or price a buyer is willing to offer or that a seller is willing to accept; or
- Engage in conduct that is contrary to the instructions of either party and may not act in a biased manner on behalf of one party.

In fulfilling its duties, the brokerage (and its management-level licensees) may provide factual, non-confidential information that presents or suggests objective options or solutions. The brokerage also may help the parties in an unbiased manner to negotiate or fulfill the terms of the purchase contract or lease, as long as a client's confidential information is not used in any way in formulating suggestions or providing assistance. Management-level licensees and their role as dual agents are both discussed further in separate chapters.

FAQs

1) Q: Does Ohio law require that all in-company transactions result in dual agency for my brokerage?

A: Dual agency only occurs if your brokerage represents both the seller and buyer. This means the property is listed with your brokerage and your firm has an agency relationship with the buyer of the property as well.

2) Q: As an agent, am I always a dual agent when I sell my own listings?

A: Under Ohio law you would only be a dual agent if you represent the buyers as their agent and they want to buy your listing. If you did not agree to be the buyers' agent, then the seller is your only client and the buyers are customers. You should check your brokerage's policy on how they want you to handle this situation.

3) Q: As an agent, if I sell one of my listings to a buyer that I represent as a client, what do I need to do?

A: You are clearly a dual agent in this situation and must: 1) disclose all relevant non-confidential information to the parties; 2) have the buyer and seller sign the section of the Agency Disclosure Statement that discloses dual agency, and 3) perform your duties as a dual agent in accordance with the terms of that agreement.

4) Q: What would be an example of "relevant information" I would need to tell the parties?

A: An example of this would be if one of the parties is a family member or business associate.

5) Q: What happens if one of the parties refuses to consent to the dual agency?

A: If one of the parties refuses to consent, you cannot act as a dual agent. If your brokerage practices split agency you could offer to have another agent in the brokerage represent that party. If they will not agree to this, or your brokerage does not practice split agency, you will have to terminate your agency relationship with one of the two parties. You can continue to represent the other party.

6) Q: If they do agree to let another agent in the brokerage represent them, should we get that in writing?

A: Yes, a written appointment of the new agent should be signed.

7) Q: If a party refuses to consent to dual agency and we terminate our agency relationship with that party, can that party go to another brokerage to represent them? Do we have to recognize that other broker?

A: Once your agency relationship has been terminated, that party is free to hire another brokerage to represent their interests. You must present any offers written by that brokerage to the client you still represent and must handle all negotiations through the new brokerage that your former client has hired.

8) Q: Does Ohio law address entitlement to commissions between the brokerages in that situation?

A: No, commission matters in this situation are not addressed by the licensing laws. Any dispute between the two brokers must be arbitrated at their Local Board/Association of REALTORS®.

9) Q: Does this mean I can't tell my broker or manager the confidential information of my client?

A: You absolutely can share information of a confidential nature with your broker and manager. If you do, they must keep it in confidence and cannot disclose it or use it.

10) Q: If they are a dual agent, will I still be able to go to my broker or manager for help on transactions? What kind of help can they give me without violating their role as a dual agent?

A: Ohio law does not prohibit brokers or managers from assisting their agents or the parties they represent. They can still provide you with factual information, they can suggest objective options and solutions to problems and can help the parties in an unbiased manner to negotiate or fulfill the terms of a purchase contract or lease. The key in helping agents on this type of in-company transaction is that the broker and manager cannot use or disclose confidential information and must remain neutral and objective. This means they can't act in a biased manner or take sides.



Brokerage Company Policy

Ohio law requires each brokerage to develop and maintain a brokerage company policy. A copy of this policy must be made available to any clients or potential clients who request it.

The Ohio Real Estate Commission has established the following as the minimum information that brokerages must include in this policy:

- The types of agency relationships the affiliated licensees of the brokerage may establish, including an explanation of each agency relationship authorized, and whether dual agency is permitted;
 - A current list of positions in the brokerage, if any, which are designated by the brokerage as management-level;
 - The procedure to be followed for an affiliated licensee to be appointed to represent the client of another affiliated licensee. This must include the procedure for giving notification and obtaining approval of the client for this appointment;
 - The type of agency relationship that shall be established and the disclosures that shall be made when licensees are handling real estate transactions involving persons with whom they have a personal, business or familial relationship;
 - The type of agency relationship that shall be established and the disclosures that shall be made when licensees are handling real estate transactions involving themselves or any affiliated licensee as a party to the transaction;
 - The procedures to be followed to ensure that confidential information is not disclosed in violation of the licensee's agency duties. These procedures shall include those steps affiliated licensees are required to follow to protect confidential information from being disclosed to other licensees within the brokerage who are not bound by the agency relationship. This must include:
 1. Office files;
 2. Computerized records and messages;
 3. Office meetings and discussions;
 4. Facsimile transmissions;
 5. Telephone messages, inter-office messages and any kind of conversations; and
 6. Meetings and conversations with clients.
- If the brokerage practices dual agency, the procedures to be followed by a licensee in the event any of the following occurs:
 1. A party to a real estate transaction refuses to consent to dual agency;
 2. A party to a real estate transaction seeks to terminate an agency relationship as the result of an attempt to create a dual agency relationship; or
 3. There is a material change to any of the information that was previously disclosed to any party prior to obtaining full consent to the dual agency.
 - The procedures to be followed by a licensee who wishes to change an agency relationship. This must include procedures for securing the written consent of the client or clients to such change; and
 - The types of cooperation that are offered other brokerages, including:
 1. Whether the brokerage offers subagency;
 2. Whether the brokerage offers compensation to subagencies and buyer's brokerages;
 3. Whether the brokerage accepts compensation from other brokerages; and
 4. Whether the types of cooperation are offered on a consistent and equal basis to all brokerages.

A discussion of the various agency options available to brokers is found in the Section titled "Brokerage Policies and Consumer Guide Samples." Examples of policies that meet the above criteria are included.

FAQs

1) Q: I am a sole proprietor with no licensees affiliated with me. Do I need a brokerage company policy for myself?

A: Yes, there is no exemption for one-person offices. However, since you work alone, your policy will be simpler than it would be if you had salespeople and had to address confidentiality issues.

2) Q: Do I have to advise all clients that they have the right to review my brokerage company policy?

A: No, but if they request a copy, you must make it available.

3) Q: Do I have to give them my whole office policy manual, which may also contain internal office procedures on other matters, or just the sections that contain the minimum information required by the Real Estate Commission?

A: You are required to provide your policy that covers the minimum criteria set by the Ohio Real Estate Commission. You are not required to provide any additional sections of your office manual that outline other internal procedures or policies.

4) Q: Do I have to actually list in my policy the names of the persons who hold management-level positions within my brokerage?

A: No, you only need to identify the positions they hold. For example, you might list "office manager" and "branch managers of the Centerville and Kettering offices."

5) Q: In my policy I must address the relationships that my agents are to establish when they have a family relationship with a party. Does the rule define "family relationship?"

A: No. Therefore, you may wish to have your policy state that the agents must always act as the agent of their family member, unless you approve otherwise. That will give you the latitude to determine whether the relationship is so distant that perhaps the relative could be treated as a customer.

6) Q: In my policy, should I require my agents to disclose if they have a personal, family or business relationship with another *agent* in the transaction? For example, if the agent with the other brokerage is their cousin?

A: Yes, this type of relationship with another licensee in the transaction must be discussed in your policy as well.

7) Q: My office is very small, with just a handful of agents. We list properties and practice buyer's agency as well. I don't believe I can put into place policies to protect confidential information within my office. Can the agents just be dual agents on all in-company transactions?

A: Yes, Ohio agency law does not limit the brokerage company policy choices available to brokerages. However, in order to practice this policy you will have to take a few simple steps. Namely, you will need to have all agents in the brokerage appointed to represent the seller when you list property and do the same on your buyer agency agreements. Language accomplishing this can easily be incorporated into your listing agreement and buyer agency agreements. This type of policy option is discussed in greater detail in company policy D, beginning on page 75.

8) Q: My brokerage is going to practice "split" agency. To protect confidential information, am I going to have to start locking up my files?

A: That could be something brokerages do, but it is not specifically required. A less restrictive way would be to have general files that contain information that is not confidential. For example, on your listings this generic file would have in it information the seller would be willing to share with buyers and their agents. This could include the fact sheet, a picture of the property and other general information. This file would be available to all agents in the brokerage. The listing agent would then keep in a personal file information that is confidential in nature. This file would need to be kept in a manner so that it is not available to other licensees in the brokerage, who could potentially represent a buyer of that property. (The

see more FAQs on page 26

FAQs

FAQs • Continued from page 25

broker would probably want to require that a copy of the agent's complete file be provided to the broker at the conclusion of the transaction.)

9) Q: We have weekly sales meetings where agents share information about new or existing listings or buyer clients. Do they need to be careful about what they say?

A: Yes. If your brokerage practices "split" agency, the agents should be instructed not to share anything of a confidential nature at those meetings unless the client permits such disclosure. This would include the seller's motivation for selling, his reason for moving and the price he would be willing to accept. The same would be true of the buyer client information.

10) Q: We have a sales board on which we list the contract price of pending transactions. If we practice "split" agency, is this okay?

A: It is not a good idea to include the contract price on your sales board. This is because other agents in your office may represent buyers who might want to make a back-up offer. There is also the chance that the pending contract might fall apart and the property will be back on the market. By placing the sales price on the board, other buyer's agents in the brokerage are now aware of the sales price the seller was willing to accept. Unless the seller approved this disclosure, posting it on the sales board could be found to be a breach of the listing agent's duty of confidentiality.

11) Q: Sometimes clients leave messages with the receptionist that may contain confidential information. If we practice "split" agency, how should these be handled to protect this information?

A: There are different ways a broker could address this in the company policy. Rather than leave the message in a place where other agents in the brokerage could see it, the receptionist could be required to put it in an envelope in the agent's mailbox or on his desk.

12) Q: I require my agents to do floor time on the telephones. Should they be instructed not to take detailed messages from the clients of other licensees in the brokerage, in case those messages contain confidential information?

A: This is something you need to address if you practice "split" agency in your brokerage. Some of the options you have would be to eliminate floor time; to use a voice mail system so callers could leave messages in their own agent's confidential voice mail box; or have the agent on floor time refer the caller to a management-level licensee when the caller indicates he would like to leave a message beyond just a phone number.

13) Q: How can a brokerage that practices "split" agency handle faxes coming into the office that could be confidential?

A: One way to handle this would be to place your fax machine in the office or cubicle of the receptionist, an administrative assistant or office manager. That person would then deliver the faxes to the appropriate agent. Agents in the brokerage would be instructed not to take faxes off the machine.

14) Q: Do I have to file my brokerage company policy with the Ohio Division of Real Estate?

A: No. You would need to make it available for inspection, however, in the event you are audited.

15) Q: Can I send my policy to the Division of Real Estate or the Ohio Association of REALTORS® for approval?

A: Given the thousands of brokerages in Ohio, it would probably not be feasible for either the Division or OAR to approve each broker's policy. To make sure you've covered all of the areas required by the license law, you should compare it to the minimum criteria outlined in this section. You may also wish to have your personal attorney review it.

16) Q: What if one of the areas contained in the minimum criteria doesn't apply? For example, our brokerage only represents buyers. Therefore, we don't practice dual agency or "split" agency.

A: In this situation, you should merely indicate that your firm does not practice dual agency or "split" agency.

17) Q: I have adopted a company policy for my brokerage to comply with the license law requirements. Now that it's actually been implemented, there are a few things I'd like to change. Can I do that, and is there any limit to the number of times I can change my company policy?

A: There is nothing in the license law that would prohibit or limit you from changing your policy. Therefore, you can amend it as many times as you like.

18) Q: My brokerage practice is primarily in the residential area. However, I do have commercial and property management divisions. Can I have different sections and procedures in my company policy for those different divisions?

A: Yes, according to the Ohio Division of Real Estate, you can vary the policies and procedures for the different types of transactions handled by your brokerage.

19) Q: My brokerage has a main office in one town and a very small branch office twenty miles away. I want to try "split" agency in my main office, but the agents in the branch office do not. Could I have different policies for different offices within my brokerage?

A: No. Although the Division will allow you to vary your policies to fit the type of transaction, you cannot adopt different policies for different branch offices.

20) Q: Are there any sample policies I can use?

A: Yes. Beginning on page 49, there are five sample policies. Of course, since each brokerage is set up differently, you may need to modify some of the office procedures to fit your policies.



Disclosure of the Brokerage Agency Policy -- The 'Consumer Guide to Agency Relationships'

As of Jan. 1, 2005 new provisions regarding the content and timing for providing a brokerage's agency policy are effective. Under these provisions the brokerage's agency policy is the sole vehicle for delivering information regarding agency to buyers and sellers at first contact. The Agency Disclosure Statement is no longer required at that stage.

Statutory Requirements

Under Ohio license law, brokerages must develop their own brokerage policy on agency that meets certain statutory guidelines. The Division of Real Estate & Professional Licensing adopted rules that specify what must be contained in this policy. To assure uniformity, the Division rules require that the policy that brokers develop must be titled "Consumer Guide to Agency Relationships." Further, this title must be in a font no smaller than 14 point.

The following must be included by brokers in the "Consumer Guide:"

- The brokerage name (company logos, franchise names and logos and the REALTOR® or other trade group insignia may be included. The names of agents, teams or unlicensed persons may not);
- An explanation of the permissible types of agency relationships;
- The potential for other licensees within the same brokerage to act as a subagent, dual agent, buyer's agent or seller's agent on the same transaction;
- The fact that a buyer's agent represents the buyer's interests even if the seller's agent or seller compensates the buyer's agent;
- The possibility of a licensee acting as dual agent, along with the client's options and consequences if that situation occurs. Options might include terminating the agency relationship and seeking representation from another licensee;
- The brokerage's company policy regarding cooperation with other licensees acting as subagents, seller's agents or purchaser's agents. The policy must state whether the broker offers compensation to those agents or will seek compensation from those agents;
- The fair housing logo and statement. The fair housing language must be no smaller than 9 point font;

- A statement that the licensee is required to provide the consumer with the policy; and
- A place for the consumer to sign, acknowledging receipt of the "Consumer Guide."

Because these disclosures involve a brokerage's office policies, there is no mandated form to make these disclosures. Instead, each broker must choose how he wants to make these disclosures and develop his own disclosure piece.

Formatting the "Consumer Guide"

Ohio license law allows brokers to choose the format for this document. For example, brokers could opt to provide their policy as a pamphlet or as a traditional 8 ½ x 11-inch document. Except for the fair housing statement, the text must be in a font no smaller than 11 point. Whatever format is chosen, however, the consumer must be asked to sign, acknowledging receipt of this document. If the consumer will not do so, that fact must be noted, along with the date presentation was made.

The acknowledgement can be on a separate document, but cannot be included in any other contract the buyer or seller signs such as a listing agreement, buyer agency agreement or purchase contract.

Delivering the "Consumer Guide"

The "Consumer Guide to Agency Relationships" must be given to a seller by the listing agent before the property is shown or marketed. The most convenient way to comply with this requirement is for it to be included in an agent's listing packet.

With respect to buyers, the licensee is required to provide them with the "Consumer Guide to Agency Relationships" before the earliest of the following events:

- Pre-qualifying the buyer;
- Requesting specific financial information;
- Showing property (other than at an open house);
- Discussing the making of an offer; or
- Submitting an offer

Whichever of the above events occurs first will trigger the licensee's obligation to provide the "Consumer Guide" to the buyer.

Under Ohio law there are a few exceptions to this duty to provide the "Consumer Guide to Agency Relationships." It is not required to be given to tenants on residential leases of 18 months or less, in a referral situation, or if another licensee in the same brokerage already provided it to the buyer/seller.

Sample policies that comply with the above requirements, in an 8 ½ x 11-inch format, are included in this manual. Brokers may choose from several versions depending on the agency policy they have chosen for their company (i.e., split agency, dual agency, exclusive buyer agency only, etc.) These are found in the section titled "Brokerage Policies & Consumer Guide Samples."

Sample Receipt of "Consumer Guide to Agency Relationships"

At right is sample language for consumers to sign acknowledging receipt of the "Consumer Guide to Agency Relationships." It is to be used if a brokerage prefers having the acknowledgement on a separate document rather than included in its "Consumer Guide." This language may not be included in any other agreement to which the buyer or seller is a party.

Receipt of Consumer Guide

By signing below, I hereby acknowledge that I have received the "Consumer Guide to Agency Relationships" of

(brokerage name)

Print Name

Signature (date)

FAQs

1) Q: Is this requirement for a "Consumer Guide" something new?

A: Yes and no. Beginning in 1996 brokers were required to develop a brokerage agency policy and to provide it to clients at the beginning of their relationship. Therefore, all brokers should already have an agency policy they are providing to buyer and seller clients when they begin working with them.

In legislation that became effective Jan. 1, 2005 the content requirements for this policy were expanded and the timing for delivery were modified. Moreover, to provide consistency, the Division requires that all brokers title this existing policy "Consumer Guide to Agency Relationships."

2) Q: If I don't like that title, can I change it?

A: No.

3) Q: Is there a mandatory format?

A: The only mandatory formatting requirements are that it must be a separate document; it must include your

brokerage name; it must be titled "Consumer Guide to Agency Relationships;" the title must be in a font no smaller than 14 point; the text must be in a font no smaller than 11 point and the fair housing language must be no smaller than 9 point. Other than these requirements, a broker can choose how to deliver this information. For example, it could be produced as a pamphlet, a booklet or a traditional 8 ½ x 11 or 8 ½ x 14 inch document.

4) Q: Is the mandatory fair housing language that must be included the same language that is in our listing agreement?

A: Yes.

5) Q: I am a commercial broker. Do I have to put the fair housing language in my "Consumer Guide?"

A: The fair housing language and logo is only required if the buyer or seller's proposed transaction involves residential property or vacant land. If the property is commercial or industrial, the fair housing language and logo is not required to be included in the brokerage's "Consumer Guide."

see more FAQs on page 30

FAQs

FAQs • Continued from page 29

6) Q: Can I include my brokerage logo, my franchise name and logo and/or the REALTOR® term or the block "R" insignia?

A: Yes any of these may be included if you wish.

7) Q: Can salespersons, teams or personal assistants put their names on the "Consumer Guide?"

A: No.

8) Q: Can I get a pre-printed "Consumer Guide" from the Division, my Local Board of REALTORS® or OAR?

A: No. Because these disclosures involve a brokerage's individual policies, there is no pre-printed form that will work for each brokerage. However, the Ohio Association of REALTORS® and the Division of Real Estate & Professional Licensing have worked jointly to develop sample versions of a "Consumer Guide" to Agency Relationships." These are included within each Brokerage Policy section beginning on page 49 and are available on OAR's website at www.ohiorealtors.org.

9) Q: Can I reword the language contained in those samples or is that language mandatory?

A: Except for the fair housing statement, none of the language is mandatory. You may reword it if you wish.

10) Q: As a broker can I draft my own "Consumer Guide" if I don't like the samples?

A: Yes. You must make sure, however, that the "Consumer Guide" you draft contains all of the required information and meets the format requirements contained in the license law.

11) Q: Do buyers and sellers have to be asked to sign the "Consumer Guide?"

A: Yes, you must ask them to sign it, acknowledging that they have received it.

12) Q: If I provide the "Consumer Guide" as a pamphlet, how can I have the buyer and seller sign it, acknowledging their receipt?

A: This can be handled in one of two ways. Your pamphlet can have a tear-off panel that contains the

consumer's acknowledgement. They would sign that statement and your agents could tear off the panel and retain that portion for their records; the consumer would keep the rest of the pamphlet.

The second way to handle the acknowledgement is to have a separate document the consumer would sign.

13) Q: The license law requires that parties be given a copy of any document they sign at the time they sign it. If I use a pamphlet and have a "tear-off" for the signature, do I need to make them a copy of the "tear-off" panel that bears the consumer's signature?

A: No. The Division of Real Estate has taken the position that as long as the consumer has the pamphlet itself, they don't have to be given a copy of the "tear-off" panel with their signature.

14) Q: Can I include the parties' acknowledgement in a separate document? Could I put language in the purchase or listing agreement stating that they have received the "Consumer Guide?"

A: While you may have the parties sign a separate sheet acknowledging receipt of the "Consumer Guide," it may not be included in any other agreement to which the consumer is a party.

15) Q: If I am the listing agent, when do I have to give the sellers my "Consumer Guide?"

A: As the listing agent, you are required to provide the sellers with the "Consumer Guide" before you show or market the sellers' property. The most logical time to do this would be to incorporate it into your listing presentation.

16) Q: As a listing agent, will I ever have to give the buyers a "Consumer Guide?"

A: As the listing agent, you will only have to give the buyers a "Consumer Guide" if you are working directly with the buyers in a real estate transaction. If the buyers are working with a cooperating agent, that agent-not you-is required to provide the buyers with the "Consumer Guide" developed by their brokerage.

17) Q: If I am working directly with buyers, when do I have to give the buyers the "Consumer Guide?"

A: The buyers must be given a "Consumer Guide" before the earliest of the following events: initiating a

prequalification to determine whether the buyers have the financial ability to purchase or lease a particular property; requesting specific financial information from the buyers to determine their ability to purchase or finance real estate in a particular price range; showing the property to the buyers, other than at an open house; discussing with the buyers the making of an offer to purchase real property; or submitting an offer to purchase or lease real property on behalf of the buyers.

18) Q: How do I give a buyer a "Consumer Guide" if the first thing I do is to pre-qualify him over the telephone?

A: The law specifically addresses telephone conversations. It provides that if an event that normally triggers your obligation to provide the "Consumer Guide" happens on the telephone, then you must verbally disclose the nature of your agency relationship in that conversation. You are then required to give the buyer a "Consumer Guide" at the first meeting you have with him.

19) Q: Will I be required to give a buyer a "Consumer Guide" if a potential buyer calls to ask for basic information about a property, such as the price, address, number of bedrooms and the like?

A: No. This type of conversation does not trigger your duty to give the buyer a "Consumer Guide."

20) Q: Do I have to give every person who comes to an open house a "Consumer Guide?"

A: No. The open house situation is specifically exempted from those events that will trigger your duty to give the buyer a "Consumer Guide."

21) Q: If a buyer comes back at the end of the open house and I begin to pre-qualify him or ask him for financial information, will I have to give him a "Consumer Guide" at that time?

A: Yes. Since you are now going beyond just making the property available for him to tour at the open house and are doing a prequalification, your duty to provide a "Consumer Guide" would be triggered.

22) Q: I am showing a FSBO to a buyer that I represent. Do I have to give the seller a copy of my brokerage's "Consumer Guide?"

A: No. Only agents representing the seller must provide one to the seller. If you are acting as the buyer's agent,

you are not required to give the seller a "Consumer Guide."

23) Q: I manage property. Do I have to give a copy of my company's "Consumer Guide" to the owner? What about the tenant?

A: You are required to give the "Consumer Guide" to the owner before you market or show the rental property. The best time to do this is when you sign the property management agreement. As to the tenant, you would only be required to provide him with a "Consumer Guide" if the property is commercial, industrial, retail or involves a residential lease over 18 months.

If it is a residential lease of 18 months or less, you are not required to give the tenant a "Consumer Guide."

24) Q: I have a listing that is going to expire. If the seller agrees to extend it, do I need to give him another "Consumer Guide."

A: No. If you are extending an existing agency relationship, the disclosure does not need to be provided again.

25) Q: I represent a buyer and provided him with a "Consumer Guide." I am going on vacation. Another agent in my brokerage will be covering for me. If he shows the buyer property, does he have to give the buyer another "Consumer Guide?"

A: No. As long as you already provided one to the buyers you represent he is not required to give them another "Consumer Guide."

26) Q: I am a licensed personal assistant for another agent. If I show one of his listings, do I have to give the seller a "Consumer Guide" if he has already done so? What about the buyers?

A: Because the listing agent already gave the "Consumer Guide" to the seller you do not have to give the seller another one. As to the buyers, if they have not previously seen this property or another property with an agent in your brokerage, you are required to give them a "Consumer Guide" before the showing.

27) Q: Do these requirements apply to commercial, industrial or rental properties?

A: Yes.



The Agency Disclosure Statement and Procedures

Since 1989, real estate licensees have been required by Ohio law to disclose to buyers and sellers who they represent in a real estate transaction. Since its original passage, this requirement and the form for making this disclosure has been modified by the Ohio legislature twice, most recently in legislation passed in 2004.

Included in this manual on page 35 is the new Agency Disclosure Statement, which is effective Jan. 1, 2005. This form replaces not only the previous Agency Disclosure Statement, but also the Dual Agency Disclosure Statement that was used from 1996 to 2004. The new 2005 version incorporates all of the disclosures regarding the role of the licensees with whom the buyers and sellers are working, including whether they are acting as dual agents.

Providing the form to the buyer

Licensees working directly with a buyer, whether as a buyer's agent or the seller's agent, must provide the buyer with the Agency Disclosure Statement no later than the time the buyer is ready to make an offer to purchase or lease property. Unlike the previous form, the new Agency Disclosure Statement is now designed to be "transaction specific." This means the form is to be completed based upon the actual property on which the buyer is making an offer and the role(s) of the specific licensee(s) involved.

Completing the form

As explained above, the process for completing the Agency Disclosure Statement is initiated by the agent working with the buyer. The first step in completing the form is to fill in the address of the property on which the buyer is making an offer. The agent also must fill in the names of the buyer and seller. If the agent does not know the seller's name, it can be left blank and the listing agent can fill it in upon receipt of the form.

The agent must then complete Sections I, II or III of the form depending on which situation applies in that particular transaction. Section I should be completed if the transaction involves two separate brokerages—one that represents the seller and one that represents the buyer. This is usually referred to as a "co-op" or cooperative transaction.

Section II should be completed if the transaction involves two agents who are both licensed with the same brokerage: one who is acting as the listing agent and one who is

working with the buyer. Under Section II the agent should check the first box if the agents will be acting as "split agents." This means the listing agent is representing the seller and the other agent is representing the buyer as a buyer's agent. The second box under Section II applies to those brokerages which have instead adopted an office policy that even though there are two different agents, both agents in this scenario will be dual agents.

Section III is to be completed if only one agent is involved in the proposed transaction. If that agent is acting as a dual agent representing both the buyer and seller, the first box under Section III should be completed. If the agent is representing only one of the two parties, the second box should be checked. If the agent is representing only the seller as the listing agent, the box for "seller" should be marked. On the other hand, if the sole agent involved in the transaction is representing only the buyer on a "FSBO" or "for sale by owner property" the "buyer" box should be checked by the agent.

After completing the appropriate sections of the form the agent is required to ask the buyer to sign the form. Once it is signed the agent can then begin discussions with the buyer regarding the offer to purchase he wishes to make and assist the buyer with that process.

Delivery of the Agency Disclosure Statement to the Seller

After the Agency Disclosure Statement has been signed by the buyer, the agent working with that buyer must deliver the form, along with the offer to purchase, to the listing agent. If there is no listing agent or the agent also has the property listed, the agent must present the form directly to the seller. In any case, the Agency Disclosure Form must be given to the seller prior to presenting him with the offer to purchase.

Auctions

Auctions are a separate matter and are addressed specifically in the license law. Licensees selling property at auction must provide the seller with their "Consumer Guide" before they market or show the property. At the auction, they must verbally disclose to the audience that they represent the seller. Then the auctioneer/REALTOR® must provide a "Consumer Guide" and an Agency Disclosure Statement to the successful bidder, prior to the bidder's signing a purchase contract.

Exemptions

Licenses do not have to use an Agency Disclosure Statement in these situations:

- Rental or leasing of residential properties, if the rental or lease agreement can be performed in 18 months or less;

- Referral of a prospective buyer, tenant, seller or landlord to another licensee;
- Transactions involving the sale, lease or exchange of foreign real estate; and
- Transactions involving the sale of a cemetery lot or a cemetery interment right.

FAQs

1) Q: I am a listing agent. Do I still give the sellers an Agency Disclosure Statement at the time of listing?

A: No. Effective, Jan. 1, 2005 you are no longer required to provide the seller with an Agency Disclosure Statement at that time. Instead you will provide information regarding agency to the seller via your brokerage's "Consumer Guide to Agency Relationships."

2) Q: When will I give the Agency Disclosure Statement to the sellers as the listing agent?

A: Under Ohio law the Agency Disclosure Statement will be completed by the agent working with the buyer. It will then be delivered along with the offer to you as the listing agent. You are required to present the form to the sellers and obtain their signature before you begin presenting the offer to the sellers.

3) Q: I am working with buyers. When do I give them the Agency Disclosure Statement?

A: It must be given to the buyers no later than discussing making an offer to purchase.

4) Q: As the buyer's agent, I don't know the seller's name to fill in at the top. What should I do?

A: You can ask the listing agent for the seller's name(s). If the listing agent can't be reached, time doesn't allow or the listing agent will not give you the seller's name, you can leave that section blank. The listing agent can then fill in the seller's name(s).

5) Q: If I'm selling property at auction, how do I handle the Agency Disclosure Statement?

A: Before the actual auction begins, you must verbally announce to the audience that you represent the seller. After the auction, the successful bidder must then be provided with your company's "Consumer Guide" and the Agency Disclosure Statement before he signs the purchase contract.

6) Q: How do I complete the Agency Disclosure Statement if I represent a buyer who wants to keep his identity confidential?

A: As the buyer's agent, you have a duty to keep the buyer's identity confidential if he so directs. In this situation, provide the buyer with a statement and have him sign his name. Maintain that statement in your file to show that you did provide a statement to the buyer. Do not give a copy of the statement to the listing agent, however, as it would reveal the buyer's identity. Instead, complete another form with the same information and sign it as "an agent for an undisclosed principal." Provide this statement to the listing agent, along with any offer the buyer makes. Another option would be to have the buyer appoint an attorney or a trustee to represent him in the purchase, and then have that attorney or trustee sign the statement.

7) Q: After the buyer signs the statement, at what point do I give it to the listing agent?

A: After it has been signed by the buyer, it will be delivered along with the offer to the seller.

9) Q: What if it's a for-sale-by-owner property?

A: If the property is not listed, you deliver the Agency Disclosure Statement to the seller with the offer.

10) Q: Do I have to give the listing broker or seller the original Agency Disclosure Statement the buyer signed?

A: No, the new law provides that you can give them a copy.

11) Q: As the listing agent, what are my obligations when I receive the Agency Disclosure Statement from a cooperating agent with an offer?

A: You must present the Agency Disclosure Statement, signed by the buyer, to the seller before you present the offer to purchase. To document that you did this, have the seller sign and date the statement.

FAQs

FAQs • Continued from page 33

12) Q: Can I refuse to present an offer if the cooperating agent fails to give me an Agency Disclosure Statement with the offer?

A: No. If time permits—for example, if the offer is not going to expire soon—you may wish to contact the cooperating agent to request the statement. However, you may not refuse or fail to present it until you receive the statement, as this may result in the seller losing a possible sale. Make sure you disclose to the seller the fact that you have not received the statement. Also, put notes in your file to document what has happened.

13) Q: What do I do if the seller or buyer refuses to sign the Agency Disclosure Statement?

A: In this situation you are required to note on the bottom of the statement the following: 1) the parties to whom the statement was presented; 2) the date and time the form was presented; 3) the fact that they declined to sign it; and 4) the reason they refused to sign it if you know. You must also communicate what has occurred to either your principal broker or another management-level licensee in the brokerage that supervises you.

14) Q: What do I do if the reason the buyer or seller won't sign the form is because they don't agree to dual agency?

A: You must have the consent of both the buyer and seller to act as a dual agent. If either of the parties won't sign the Agency Disclosure Statement consenting to dual agency, then you cannot represent both parties. As an agent you need to notify your broker or manager immediately. Your broker/manager has a few options. Usually the broker retains representation of the seller and notifies the buyer that they will be treated as a customer. If the buyer wants representation and your brokerage practices "split agency," the buyer can be referred to another agent in your brokerage. If they will not agree to that or your brokerage does not permit split agency, then the buyer will have to be referred to another brokerage or an attorney for representation.

15) Q: I engage in commercial sales and leasing. Are these agency disclosure requirements any different for me?

A: No. You should treat agency disclosure requirements the same in the sale and leasing of commercial real estate as you would in the sale of residential real estate.

16) Q: I practice property management. What are my agency disclosure responsibilities?

A: Under Ohio law, the lease of residential real estate is exempt from the agency disclosure requirement if the lease is for 18 months or less. Again, this exemption only applies to residential leasing. Therefore, you are not required to provide an Agency Disclosure Statement to the landlord or tenant if the property you manage is residential in nature and the subject lease is 18 months or less.

17) Q: I am a manager and have a property listed. The buyer is represented by an agent in our brokerage. Our company practices split agency and there is another manager in the company. What section of the Agency Disclosure Statement do I complete?

A: Because there is another manager to supervise the agent representing the buyer, you are permitted in this situation to represent the seller. (See the section on Management-Level Licensees for more information about this exception.) Therefore, you and your agent can act as split agents and you would complete the first box under Section II.

18) Q: Assume the same facts as question #17, but I am the only broker and there is not another manager to supervise the buyer's agent. How would I complete the disclosure form?

A: As the sole broker you would have to be a dual agent. Again you would check the first box under Section II. You would fill in your name on both lines indicating you represent both the seller and the buyer. The buyer's agent's name would only be filled in as the agent of the buyer.

19) Q: Can I make any changes to the Agency Disclosure Statement?

A: No.

20) Q: Can I put my company name or logo on the Agency Disclosure Statement?

A: No.



AGENCY DISCLOSURE STATEMENT



The real estate agent who is providing you with this form is required to do so by Ohio law. You will not be bound to pay the agent or the agent's brokerage by merely signing this form. Instead, the purpose of this form is to confirm that you have been advised of the role of the agent(s) in the transaction proposed below. (For purposes of this form, the term "seller" includes a landlord and the term "buyer" includes a tenant.)

Property Address: _____

Buyer(s): _____

Seller(s): _____

I. TRANSACTION INVOLVING TWO AGENTS IN TWO DIFFERENT BROKERAGES

The buyer will be represented by _____, and _____.
AGENT(S) BROKERAGE

The seller will be represented by _____, and _____.
AGENT(S) BROKERAGE

II. TRANSACTION INVOLVING TWO AGENTS IN THE SAME BROKERAGE

If two agents in the real estate brokerage _____ represent both the buyer and the seller, check the following relationship that will apply:

- Agent(s) _____ work(s) for the buyer and Agent(s) _____ work(s) for the seller. Unless personally involved in the transaction, the broker and managers will be "dual agents", which is further explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information.
- Every agent in the brokerage represents every "client" of the brokerage. Therefore, agents _____ and _____ will be working for both the buyer and seller as "dual agents". Dual agency is explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information. Unless indicated below, neither the agent(s) nor the brokerage acting as a dual agent in this transaction has a personal, family or business relationship with either the buyer or seller. *If such a relationship does exist, explain:*

III. TRANSACTION INVOLVING ONLY ONE REAL ESTATE AGENT

Agent(s) _____ and real estate brokerage _____ will

- be "dual agents" representing both parties in this transaction in a neutral capacity. Dual agency is further explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information. Unless indicated below, neither the agent(s) nor the brokerage acting as a dual agent in this transaction has a personal, family or business relationship with either the buyer or seller. *If such a relationship does exist, explain:*

- represent only the (check one) seller or buyer in this transaction as a client. The other party is not represented and agrees to represent his/her own best interest. Any information provided the agent may be disclosed to the agent's client.

CONSENT

I (we) consent to the above relationships as we enter into this real estate transaction. If there is a dual agency in this transaction, I (we) acknowledge reading the information regarding dual agency explained on the back of this form.

BUYER/TENANT _____ DATE _____

SELLER/LANDLORD _____ DATE _____

BUYER/TENANT _____ DATE _____

SELLER/LANDLORD _____ DATE _____

DUAL AGENCY

Ohio law permits a real estate agent and brokerage to represent both the seller and buyer in a real estate transaction as long as this is disclosed to both parties and they both agree. This is known as dual agency. As a dual agent, a real estate agent and brokerage represent two clients whose interests are, or at times could be, different or adverse. For this reason, the dual agent(s) may not be able to advocate on behalf of the client to the same extent the agent may have if the agent represented only one client.

As a dual agent, the agent(s) and brokerage shall:

- Treat both clients honestly;
- Disclose latent (not readily observable) material defects to the purchaser, if known by the agent(s) or brokerage;
- Provide information regarding lenders, inspectors and other professionals, if requested;
- Provide market information available from a property listing service or public records, if requested;
- Prepare and present all offers and counteroffers at the direction of the parties;
- Assist both parties in completing the steps necessary to fulfill the terms of any contract, if requested.

As a dual agent, the agent(s) and brokerage shall not:

- Disclose information that is confidential, or that would have an adverse effect on one party's position in the transaction, unless such disclosure is authorized by the client or required by law;
- Advocate or negotiate on behalf of either the buyer or seller;
- Suggest or recommend specific terms, including price, or disclose the terms or price a buyer is willing to offer or that a seller is willing to accept;
- Engage in conduct that is contrary to the instructions of either party and may not act in a biased manner on behalf of one party.

Compensation: Unless agreed otherwise, the brokerage will be compensated per the agency agreement.

Management Level Licensees: Generally the broker and managers in a brokerage also represent the interests of any buyer or seller represented by an agent affiliated with that brokerage. Therefore, if both buyer and seller are represented by agents in the same brokerage, the broker and manager are dual agents. There are two exceptions to this. The first is where the broker or manager is personally representing one of the parties. The second is where the broker or manager is selling or buying his own real estate. These exceptions only apply if there is another broker or manager to supervise the other agent involved in the transaction.

Responsibilities of the Parties: The duties of the agent and brokerage in a real estate transaction do not relieve the buyer and seller from the responsibility to protect their own interests. The buyer and seller are advised to carefully read all agreements to assure that they adequately express their understanding of the transaction. The agent and brokerage are qualified to advise on real estate matters. **IF LEGAL OR TAX ADVICE IS DESIRED, YOU SHOULD CONSULT THE APPROPRIATE PROFESSIONAL.**

Consent: By signing on the reverse side, you acknowledge that you have read and understand this form and are giving your voluntary, informed consent to the agency relationship disclosed. If you do not agree to the agent(s) and/or brokerage acting as a dual agent, you are not required to consent to this agreement and you may either request a separate agent in the brokerage to be appointed to represent your interests or you may terminate your agency relationship and obtain representation from another brokerage.

Any questions regarding the role or responsibilities of the brokerage or its agents should be directed to an attorney or to:

Ohio Department of Commerce
Division of Real Estate & Professional Licensing
77 S. High Street, 20th Floor
Columbus, OH 43215-6133
(614) 466-4100





Disclosure of Status as a Buyer Broker

A buyer's agent must disclose to a listing agent that he represents the buyer in a transaction. This disclosure must take place at the first contact the buyer's agent has with any employee or licensee of the listing brokerage.

If the seller is not represented, a buyer's agent must disclose his status directly to the seller. This disclosure

must be made at the buyer agent's first contact with the seller. The buyer's agent must also must disclose any intention of seeking compensation from the seller.

This section of the Ohio law mirrors a REALTOR'S® ethical duties under Standards of Practice 16-10 and 16-11 of the NAR Code of Ethics.

FAQs

1) Q: If I am a buyer's agent, when do I have to notify the listing agent of that?

A: Ohio's agency law contains language regarding disclosure of your status as a buyer's agent that is almost identical to the National Association of REALTORS® Code of Ethics. It requires you to disclose your status as a buyer's agent to the listing brokerage at first contact. This would generally be when you call for information regarding the property or to schedule an appointment.

2) Q: What if the property isn't listed?

A: If the property is not listed, you must disclose your status as a buyer's agent at your first contact with the seller. You are also required to disclose any intention to seek your compensation from the seller at that time.

‘When a licensee obtains confidential information concerning another client of the brokerage in a dual agency relationship as a result of a breach of confidentiality of another affiliated licensee, he shall not, under any circumstances, disclose that information to or use that information for the benefit of the licensee's client.’



Confidential Information

The law defines confidential information as any information that the client directs a salesperson to keep confidential; information that would negatively affect the client's negotiating position if it were disclosed; and any information required by law to be kept confidential.

If a brokerage determines confidential information from a client has become known by a licensee representing the other party as a result of the failure of the brokerage, its licensees or its employees to maintain confidentiality, the brokerage shall:

- Immediately notify both clients in writing about the breach; and
- Offer to resign representation of both clients.

If either client decides to accept the resignation, the brokerage is not entitled to any compensation from that

client. If both clients refuse such resignation, the brokerage may continue to represent both clients.

When a licensee obtains confidential information concerning another client of the brokerage in a dual agency relationship as a result of a breach of confidentiality of another affiliated licensee, he shall not, under any circumstances, disclose that information to or use that information for the benefit of the licensee's client.

A client of a brokerage who is involved in a dual agency relationship may bring an action against a brokerage and any licensee who has failed to comply with the notification procedure to recover actual damages and to rescind the agency agreement with the brokerage.

FAQs

1) Q: What are some examples of information that I should realize is confidential without the seller or buyer telling me?

A: In general, confidential information includes anything that could have an adverse effect on the client's position in a transaction. For example, the seller may tell you that he may be willing to accept less than list price, or mention his motivation to sell. This information, if learned by a buyer, could result in the buyer offering less than full price. Because it could negatively impact the seller's position, this would be considered information you must keep confidential even if the seller doesn't specifically state that it is confidential.

2) Q: What should I do if I'm not sure if my client considers something to be confidential?

A: It is best to assume that everything your client tells you is confidential unless he specifically authorizes you to disclose it. If you aren't sure, you should check with him. To avoid problems in this area, some brokerages use an addendum or form on which the client checks off from a list those items that he permits his agent to disclose. Such a list might include the seller's reason for selling, the price the seller originally paid for the house or informa-

tion regarding the buyer's credit report. Examples of such forms are included on pages 41-42.

3) Q: If my client authorizes me to disclose something, do I have to get that in writing?

A: It is not required that you obtain your client's permission in writing, but it is strongly recommended that you somehow document that authorization was given.

4) Q: What would be an example of information that is required by law to be kept confidential?

A: An example of this would be information pertaining to the buyer or seller's race, sex, color, religion, familial status, ancestry, disability or national origin. Under the fair housing laws, this type of information cannot be considered in a real estate transaction and therefore would be confidential.

5) Q: If I accidentally leak confidential information to an agent in my firm who represents the other party to the transaction, what should I do?

see more FAQs on page 40

FAQs

FAQs • Continued from page 39

A: First, you should notify your principal broker or other management-level licensee in the brokerage who supervises you. Both parties to the transaction must be notified in writing that this breach of confidentiality has occurred and given the opportunity to terminate their agency relationship.

6) Q: What happens if one of the parties wants the brokerage to resign from representing them?

A: If this occurs, the brokerage cannot represent that individual and is not entitled to any compensation from that client. The brokerage can continue to represent and be paid by the client that chooses to continue the agency relationship with the brokerage.

7) Q: What if the person in the brokerage who improperly disclosed the confidential information to me wasn't another affiliated agent, but rather an unlicensed employee, for example, a secretary or personal assistant who works for the brokerage?

A: The same procedures would apply. The parties would have to be notified in writing and given the opportunity to terminate their agency relationships.

8) Q: If my client elects to terminate our agency relationship because of a breach of confidentiality, and I refer them to another brokerage, can I receive a referral fee from that brokerage?

A: Ohio law specifically states that you cannot be paid by that client, but it does not address whether you can receive a fee from another brokerage to whom you refer that client. It would be recommended that due to the circumstances, the brokerage receiving the referral should not pay any referral fee to you without the knowledge and consent of its new client and that you should not accept it without that consent.

9) Q: If I receive confidential information as a result of the breach of confidentiality of another agent in my brokerage, can I pass it along to my client?

A: No. Ohio license law specifically prohibits you from disclosing that information to or using that information for the benefit of your client.

10) Q: I represent the buyer on property listed with another agent in my firm. What if I receive confidential information, not from the listing agent, but from a source outside the brokerage? Can I disclose that to my client?

A: Yes. The only time you would be prohibited from disclosing that information is if you received it as a result of a breach of confidentiality by the brokerage, its affiliated licensees or employees. If you received it from a source outside of the brokerage, not only are you able to disclose it to your client, but your duty of full disclosure of material facts to your client would require you to do so.

11) Q: Can the parties elect to terminate the relationship even if they weren't harmed by the breach of confidentiality?

A: Yes, it is not necessary for them to demonstrate actual harm or damages to terminate the agency relationship and their obligation to pay the brokerage.

12) Q: If neither of the parties decide to terminate the relationship, can the brokerage continue to represent them both? Do I need to get that in writing from them?

A: Yes, you can continue to represent them. It may be prudent to have the parties acknowledge in writing that they waive their right to terminate that agency relationship as a result of the breach of confidentiality.

13) Q: If both parties elect to terminate their agency relationship with the brokerage, can they still complete the transaction?

A: Yes. Nothing in Ohio law precludes the parties from completing any real estate transaction that was pending.

14) Q: Is forfeiting your commission the only remedy buyers or sellers have for breach of confidentiality?

A: No. They could also sue you for any actual damages they suffered as a result of the breach.

Seller's Consent to Disclosure

Agents have a duty to their client to maintain the client's confidential information, unless the client authorizes disclosure of the information or disclosure is required by law. Confidential information includes information that you direct to be kept confidential or information that if disclosed could have an adverse effect on your position in the transaction.

The buyer's agent or buyer will often request information about the matters listed below. To ensure that only information you authorize is provided, you are requested to indicate those facts that you permit your agent to provide to buyers or their agents. This will allow your agent to provide this information without contacting you at each request. This consent shall remain in effect unless withdrawn by you in writing.

Information your agent can provide to buyers or their agents:

- The original purchase price you paid for your home, which was _____.
- Your motivation for selling. Specify: _____.
- How long your property has been for sale.
- Information on comparable sales.
- That you would entertain an offer for less than the list price.
- That you would agree to financing terms other than those offered.
- That you would agree to make repairs or improvements to the property as a condition of sale. Specify: _____.
- That you would agree to other concessions that would have an economic impact on the transaction. Specify: _____.
- The existence of or the potential for multiple offers.

Additional information your agent can provide:

Seller (date) Agent (date)

Seller (date)

This form can be used by REALTORS® to assist them in determining what information a seller will allow his agent to disclose. It also creates written documentation that the seller gave his consent to disclosure. This form is **not required** by Ohio license law and is strictly optional. Please review both the form and details of the particular transaction to ensure that each section is appropriate for your transaction. The Ohio Association of REALTORS® is not responsible for the use or misuse of this form.

Buyer's Consent to Disclosure

Agents have a duty to their client to maintain the client's confidential information, unless the client authorizes disclosure of the information or disclosure is required by law. Confidential information includes information that you direct to be kept confidential or information that if disclosed could have an adverse effect on your position in the transaction.

The listing agent or seller will often request information about you on the issues listed below. To ensure that only information you authorize is provided, you are requested to indicate the facts listed below that you permit your agent to provide to sellers or their agents. This will allow your agent to provide this information without contacting you at each request. This consent shall remain in effect unless withdrawn by you in writing.

Information your agent can provide to sellers or their agents:

- _____ Your motivation for purchasing. Specify: _____
- _____ That you would consider increasing the price offered.
- _____ That you would agree to financing terms other than those offered.
- _____ That you would agree to other concessions that would have an economic impact on the transaction. Specify: _____
- _____ Information on your ability to obtain financing.
Specify: _____

Additional information your agent can provide:

Buyer (date)

Agent (date)

Buyer (date)

This form can be used by REALTORS[®] to assist them in determining what information a buyer will allow his agent to disclose. It also creates written documentation that the buyer gave his consent to disclosure. This form is not required by Ohio license law and is strictly optional. Please review both the form and details of the particular transaction to ensure that each section is appropriate for your transaction. The Ohio Association of REALTORS[®] is not responsible for the use or misuse of this form.

‘The law defines confidential information as any information that the client directs a salesperson to keep confidential; information that would negatively affect the client's negotiating position if it were disclosed; and any information required by law to be kept confidential.’



Changing an Agency Relationship

Although changing your agency relationship is discouraged, Ohio law does not prohibit it. Instead, it imposes two requirements on licensees before they can change their agency relationship. These procedures must be followed if the change occurs after an Agency Disclosure Statement has been signed or after the agent has verbally established an agency relationship with a client.

To change the agency relationship, licensees must:

- Obtain written consent from the party originally represented to represent another party in the transaction; and
- Promptly disclose the change to everyone who had been told about the original relationship.

Following this process to change an agency relationship is crucial for brokerages who have adopted Company

Policy E (see page 83). Under this policy, a brokerage allows its agents to represent buyers and sellers and to practice "split" agency on in-company transactions involving two salespersons. However, it does not permit a listing agent to also represent a buyer and function as a dual agent. Instead the agent represents only the seller and the buyer is treated as a customer.

Under this policy, if buyers with whom an agent has already established an agency relationship decide to make an offer to purchase property that is listed with that same agent, the listing agent must notify the buyers that he is no longer representing them. Instead the agent will only represent the seller. As stated above, the buyers must consent to this in writing and all parties must be notified. A sample form for obtaining the necessary consent and providing notice is found on the following page.

FAQs

1) Q: Our company policy is that we never act as a dual agent. If an agent represents a buyer who wants to make an offer on property listed with that agent, the relationship with the buyer is terminated and we just represent the seller. Do we still need to get this in writing, if it was disclosed to the buyer as part of our company policy?

A: Yes, you need to obtain the buyer's consent in writing to now represent the seller. The seller should also be told that you previously represented the buyer and that none of the confidential information that was learned from the buyer can be disclosed to the seller.

2) Q: If I am switching from a buyer's agent as described above, at what point do I need to get the buyer's consent to act as a seller's agent? When I merely show the buyer property I have listed or when the buyer wants to make an offer?

A: It is not necessary to obtain written consent until such time as the buyer determines that he wants to make an offer on property listed with you.

Change of Agency Relationship Consent Form

I am currently being represented as a buyer by the following agent(s) _____
_____ and his/her brokerage. I am interested in making an offer to
purchase property that is listed for sale with this agent and brokerage that is located
at: _____ (property address).

I am aware that it is the policy of _____ (brokerage name) to only allow
its agents to represent the seller of properties they have listed for sale. Therefore, I understand and agree that
_____ (agent's name) and _____ (brokerage)
will no longer represent me as a buyer and will instead be representing only the seller in the proposed
transaction.

I also understand that _____ (agent's name) is prohibited from
disclosing to the seller any confidential information that was learned about me during our agency relationship.

I further understand that I will be representing my own best interests in this transaction. If I wish to
be represented, another agent at _____ (brokerage name) can be appointed to
represent me or I can seek representation from another brokerage.

_____ (buyer's name) _____ (date)

This form can be used by REALTORS® to notify a buyer client who is making an offer on one of the agent's listings that he is terminating this agency relationship with the buyer and will represent only the seller. Brokers may want to adopt a policy that a copy of this document is provided to the seller after it is signed by the buyer.

The Ohio Association of REALTORS® is not responsible for the use or misuse of this form.



Termination of an Agency Relationship

Ohio license law addresses the issue of what duties are owed to a client after an agency relationship has ended, either because it expires, the transaction closes, or it terminates for another reason.

Duties that continue after termination of an agency relationship are:

- To provide the client with an accounting of all money and property relating to the transaction; and
- To keep confidential all information received during the course of the transaction, unless:

1. The client permits disclosure;
2. Disclosure is required by law or by court order;
3. The information becomes public from a source other than the licensee;
4. The information is necessary to prevent a crime the client intends to commit; or
5. Disclosure is necessary to defend the brokerage or its licensees against accusations of wrongful conduct or to establish or defend a claim that a commission is owed.

FAQs

1) Q: Can I disclose confidential information in an ethics hearing or arbitration at my Local Board/Association of REALTORS®? What about in a lawsuit to collect a commission owed to me?

A: It can be disclosed in these situations as long as the disclosure of the confidential information is necessary to defend yourself from an accusation of wrongful conduct or to establish your claim for a commission.

2) Q: I had a listing that expired. Now I represent a buyer who wishes to purchase that property. Am I prohibited from disclosing to my buyer/client any information that I learned from the seller during the listing?

A: Yes. Ohio law provides that your duty of confidentiality continues even after your listing has expired. Therefore, you cannot share this information with the buyer if it is confidential.

3) Q: What if the seller didn't specifically tell me it was confidential, but I think it might be?

A: Even though the seller didn't specifically tell you it was confidential, if the information would negatively impact the seller's position if disclosed, it is considered to be confidential. If you aren't sure, it is best to ask the seller for permission to disclose it to the buyer. Make sure you document any consent you are given.

4) Q: Aren't I breaching my fiduciary duty of disclosure to my new client, the buyer, by not telling them the information?

A: No. Ohio law specifically states that while you have a duty to disclose material facts, this does not include information that is confidential under a previous agency relationship.

5) Q: Should I tell the buyer that I previously represented the seller and that I know information that may be material to them, but I can't disclose it because it is confidential?

A: Yes, it is probably advisable for you to explain this to your new client.

6) Q: Couldn't I just be a dual agent in that situation?

A: Yes, as long as both parties agree, that would be one way of handling it. However, if you act as a dual agent, you cannot actively negotiate or advocate on behalf of your buyer or the seller.



Citation Authority

Under Ohio license law, the Superintendent of Real Estate has the discretion to issue a "citation" to a licensee who is believed to have violated the license law provisions involving agency. This citation will notify the licensee of the charge against him and offer him the option of paying a \$200 fine. If the licensee wishes to contest the charge, he

may request a full administrative hearing before a hearing officer. If a licensee is issued more than three citations in a 12-month period, the Superintendent must handle any subsequent alleged license violations by means of a formal administrative hearing.

FAQs

1) Q: If I don't think I violated the agency provision the Division alleges, can I contest the citation?

A: Yes, you can request a hearing. The burden will be on the Division to prove you have violated the provision alleged. You have the right to introduce evidence and have legal counsel represent you at this hearing.

2) Q: Will all agency violations result in a \$200 citation?

A: Under Ohio license law, the Superintendent has discretion to determine whether to issue a citation or file formal charges against a licensee that is believed to have violated agency laws.



Effective Date of SB 106 & Implementation Issues

Several provisions of Ohio's agency law were amended effective Jan. 1, 2005. These include: the requirements for the "Consumer Guide to Agency Relationships"

(the brokerage's agency policy); the Agency Disclosure Statement; provisions regarding management-level licensees and the citation process for agency violations.

FAQs

1) Q: I listed a property in November, 2004 and gave the seller our brokerage policy on agency at that time. If the property is still on the market after Jan. 1, 2005, do I need to give the seller our company's "Consumer Guide to Agency Relationships?"

A: No, as long you gave the seller your previous policy at the time of listing you don't need to give them your "Consumer Guide."

2) Q: I signed a listing in June, 2004. It is going to expire on Jan. 31, 2005. If the seller agrees to extend it or signs a whole new listing after Jan. 1, 2005 should I give the seller a "Consumer Guide?"

A: Yes.

3) Q: I began showing property to buyers in 2004 and gave them the old Agency Disclosure Statement and our brokerage policy on agency. After Jan. 1, 2005 if I am still showing the buyers houses, do I need to give them our "Consumer Guide to Agency Relationships?"

A: No, since you complied with the agency requirements in place in 2004, the Division of Real Estate does not require you to give them a "Consumer Guide."

4) Q: If the buyer wants to make an offer after Jan. 1, do I give them the new Agency Disclosure Statement or deliver the old one they signed in 2004 with the offer?

A: You must use the new form that becomes effective Jan. 1, 2005.

5) Q: A purchase contract was written in 2004, but will not close until 2005. Do I need to give the parties a "Consumer Guide" or the new Agency Disclosure Statement after Jan. 1?

A: No.



Brokerage Policies & 'Consumer Guide' Samples

Ohio license law requires that every brokerage have a brokerage company policy and develop a "Consumer Guide to Agency Relationships" to give to the public. Besides satisfying the license law, having a brokerage company policy will serve other vital functions. First, it will allow brokerages to set the types of agency relationships it will allow its agents to establish and the manner in which they are created. It can also serve as a tool to educate and train affiliated licensees on how to make required disclosures and how the brokerage wants certain situations handled.

Developing such a policy, along with the specific forms and procedures you want your affiliated agents to use, will result in more uniformity and in better trained agents.

In this section of the manual, various brokerage company policy options are discussed, along with the pros and cons of each option. Regardless of the policy you choose for your brokerage, it must meet the minimum criteria established by the Ohio Real Estate Commission. These criteria are set forth and discussed on page 24 of this manual.

Examples of policies that meet the Ohio Real Estate Commission requirements are included for each option. These sample policies are set up so that brokers may insert their brokerage names and the management-level licensee positions and use these samples. To do so, however, there are also a few places in each sample where the broker must choose between one of two suggested clauses. Brokers who want to use one of the samples must make sure to include only the clause they pick and delete the other from their policy.

It should be stressed that these sample policies are merely suggested formats. Brokerages are free to modify and probably should modify them to fit their particular office. There are certainly several ways to handle some of the issues involved, especially in the area of procedures to protect confidential information. Those

indicated are merely an example of how each area could be addressed.

Each broker should adopt procedures that fit his office. Brokers may also wish to augment these samples to address how they want other matters handled in their office. For the most part, these examples address only the minimum criteria required by the Ohio Real Estate Commission. There may be other procedures brokers want their agents to follow that can be included.

These sample policies are available in an interactive format at OAR's website: www.ohiorealtors.org. If brokers develop their own policy, it is recommended that brokers have their personal attorney review it to determine compliance with the license law.

Besides adopting its brokerage company policy, each brokerage must also develop a "Consumer Guide to Agency Relationships" that must be given to buyers and sellers. The requirements for this "Consumer Guide" and the procedures for providing it to buyers and sellers are discussed beginning on page 28. The "Consumer Guide" that a brokerage develops must explain the brokerage company policy the brokerage has selected. Samples of the "Consumer Guide" for each option are found along with the corresponding brokerage company policy.

These sample "Consumer Guides" comply with the license law requirements, but are merely examples. Again brokerages are free to modify these if they wish. The examples provided are in an 8 ½ x 11-inch traditional document. This version, as well as a tri-fold pamphlet format are available in an interactive format on OAR's website: www.ohiorealtors.org.

Note: The Ohio Association of REALTORS is not responsible for the use or misuse of the brokerage company policies and "Consumer Guide" samples provided.

Company Policy A: Exclusive Seller Agency

As its name implies, under this policy a brokerage chooses to always act as a seller's agent and still practice sub-agency.

Brokerages who practice this way do not allow their agents to act as buyer's agents except in very rare circumstances. These would probably include where the agent is purchasing property for himself, or working with a close family member or business associate who is purchasing property.

Except in these rare instances, the buyer is always treated as a customer--not a client. This is even true on properties the brokerage has listed. On properties listed with another brokerage, the salesperson acts as a subagent representing the seller and again the buyers are treated as customers.

Ohio license law requires brokers to take a few steps in order to follow this policy. Under Ohio law, when a listing is taken agents in the brokerage will not be considered the seller's agent unless: they personally have the listing; are a management-level licensee; were appointed to represent the seller; helped establish the listing; or receive confidential information from the seller's agent. What this means is that in most cases, the other agents in your brokerage will not be considered to be the seller's agent. Therefore, in order for one agent in the brokerage to act as the seller's agent on property listed with another agent in the firm, that selling agent needs to be appointed to represent the seller and the seller needs to agree to that.

While this may sound complicated at first, it can be easily addressed upfront in a brokerage listing agreement by

including language appointing all licensees in the brokerage to represent the seller. By doing this in your listing agreement, the seller's consent is obtained at the beginning of the listing and the other agents in the brokerage will be considered seller's agents when showing and writing offers on any property listed with the brokerage.

As with each of the policies discussed in this manual, there are pros and cons to adopting the seller-only option. These are outlined below:

Pros:

- It is less complicated to explain to sellers.
- Because the brokerage does not represent buyers, it does not need to worry about dual agency or the problem of confidentiality on in-company transactions.
- Sellers may prefer to be represented by a brokerage whose agents will never act as a buyer's agent or dual agent.

Cons:

- Brokers in the area may not offer subagency on their listings.
- It may be difficult to explain subagency to buyers.
- The brokerage is exposed to possible liability if an agent implies an agency relationship with a buyer who the agent doesn't truly represent.
- Buyers who want representation may choose to go to another brokerage that practices buyer agency.
- If other brokers in your area offer buyer representation, it may place you at a competitive disadvantage.
- You must still address the situation of buyer agency and dual agency when your agents are working with family members or buying for themselves.

Sample Policy A: Exclusive Seller Agency

(Note: This policy is available online at www.ohiorealtors.org in the Legal Issues section)

SECTION A: GENERAL POLICY ON AGENCY

- 1) It is the policy of (brokerage name) to only represent sellers. Affiliated licensees may only act as a seller's agent when they list property or sell property listed with our brokerage to buyers. On properties listed with another brokerage, all licensees affiliated with (brokerage name) must act as subagents.
- 2) (Brokerage name) does not represent buyers or act as a dual agent except as provided in Sections D and E.
- 3) 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.
- 4) When salespersons are functioning as a subagent on another broker's listing, (brokerage name) and its salespersons represent the seller. As a subagent, they have all of the same duties as the seller's agent, including a duty of confidentiality and a duty to disclose material facts to the seller. In subagency, the buyer is not represented in any agency capacity.
- 5) Agents shall consider buyers with whom they are working to be customers. Although they are customers, buyers should be treated by agents with honesty and agents should disclose all material facts pertaining to the physical condition of the property that the buyers could not discover on their own. The agent can also provide buyers with information concerning lenders, inspectors, attorneys and the like, as well as market information that is from a public source. Agents cannot disclose to the buyer confidential information about the seller without the seller's permission.

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 used by agents contains language that appoints all agents in the brokerage to represent that seller. Thus, no further appointment is necessary in the event an agent wants to sell a property listed with another agent in our brokerage.

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

- 1) If a family member, business associate or other person with whom an agent has a personal relationship wants to sell property, that agent shall act as a listing agent. Any family, business or personal relationship shall be disclosed in writing to the buyer, or to any agent with whom the buyer is working, prior to entering into a purchase contract. (Note: This is required by Article 4 of the National Association of REALTORS® Code of Ethics.)
- 2) If a relative, business associate or other person with whom an agent has a personal relationship wishes to purchase property through the agent, that agent shall immediately notify (broker or another management-level licensee).
- 3)
 - a) If (brokerage name) deems it appropriate, the agent, in that limited instance, can act as a buyer's agent. (Note: This sample policy is written based on the assumption that if the buyer eventually purchases property listed with our brokerage, the brokerage will want both agents to function as dual agents. It would be feasible, however, for a brokerage choosing policy A to allow the listing agent in this instance to solely represent the seller without being a dual agent. The buyer's agent would have to be a dual agent, unless the seller agreed otherwise.)
 - b) The buyers must acknowledge receiving a "Consumer Guide to Agency Relationships" before the agent can show them property, pre-qualify them or perform other typical agent duties. The buyers must also sign a buyer agency agreement. (Note: A brokerage is not required to use a buyer agency agreement. However, in the rare situation where a buyer is represented, if the brokerage adopts a policy that the buyer agency relationship is binding on all licensees in the brokerage, a buyer agency agreement should be used which includes language appointing all licensees in the brokerage to represent the buyer.)

4) On properties listed with other brokerages, the agent shall notify them on first contact that they are representing the buyers. If an offer is made, the Agency Disclosure Statement must accompany that offer when it is delivered to the listing agent. The nature of any family, business or personal relationship shall be indicated in the offer.

5) On properties listed with our brokerage, the buyers must be notified immediately that this is a dual agency situation. If it is the agent's own listing, the sellers must be notified immediately of the dual agency and of the nature of the agent's relationship with the buyers. If it is listed with another agent in our brokerage, that agent shall be notified of these facts before showing.

6) If the buyers want to make an offer on the agent's own listing, Section III on the Agency Disclosure Statement must be completed and signed by both buyers and sellers. If two agents are involved they are both dual agents and Section II on the Agency Disclosure Statement must be completed and signed. The personal, family or business nature of the relationship with the buyers shall be disclosed on the form.

7) Any agent acting as a dual agent must remain neutral, objective, unbiased and must maintain the confidential information of both the buyers and sellers.

8) 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 entering into a contract. *(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) An agent selling his own property must list it with (brokerage name). His ownership interest must be disclosed to the buyer or his agent in writing prior to entering into a purchase contract.

2) An agent buying property must also handle these transactions through the brokerage.

3) If the property the agent wishes to purchase is listed with another brokerage, that agent shall act as a buyer's agent representing himself. The listing brokerage must be notified at first contact of the fact the licensee is acting for himself and confirmed in any subsequent purchase contract.

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

5) If the property is not listed (a FSBO), the agent shall represent himself as a buyer's agent. The agent shall disclose at first contact his status as a licensed real estate agent, his intention to purchase for himself and any intention to seek compensation from the seller. The agent shall not list the property as this would result in dual agency. It shall be noted that the buyer is a licensed agent on any subsequent purchase contract that is entered into.

SECTION F: DUAL AGENCY

1) (brokerage name) and its agents shall only act as a dual agent in those situations described in Sections D and E.

2) When this occurs, all agents involved are considered dual agents and therefore must all maintain confidential information of both parties.

3) Agents acting as a dual agent in this situation 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,

Policy A continues on page 54

the nature of the personal, business or family relationship the agent(s) 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.

4) 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 shall not act as dual agents. Depending on the circumstances, (broker/manager) shall determine which agency relationship shall be terminated.

SECTION G: CHANGING AGENCY RELATIONSHIPS

1) As discussed in Section A, all agents shall represent the seller, unless approved by (broker/manager).

2) 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. *(Note: Brokers may want to indicate here if there is a specific form they want agents to use in this situation.)*

SECTION H: CONFIDENTIAL INFORMATION

1) Since all licensees in (brokerage name) represent the seller, all information can be shared within the office, including confidential information. All licensees must keep such information confidential.

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

3) Agents, of course, must recognize their obligation not to disclose such information to buyers or to licensees affiliated with other brokerages.

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 broker does not offer such cooperation to all brokerages on an equal and consistent basis, the brokerage 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 should also indicate what compensation the brokerage will offer.)

3) Unless approved by (broker/manager), only subagency compensation shall be accepted from another brokerage.

4) (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, the compensation it offers cooperating brokers may not always be equal or consistent.

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, inform the seller of our policy to only represent the seller. Use the “Consumer Guide to Agency Relationships” to explain how other brokerages may function. Explain to the seller that we do not represent buyers and instead will only act as his agent. Show the seller the language in the listing agreement that states that all licensees in our brokerage are appointed to represent him.
- 2) Explain the two instances where you and the brokerage would be a dual agent. These would include where you or another agent in our brokerage have a personal, family or business relationship with the buyer, or if you or another agent in our brokerage buys his listing.
- 3) Have the seller sign and date acknowledging receipt of the “Consumer Guide to Agency Relationships.”
- 4) The agent shall have the seller check on the listing agreement whether he authorizes (brokerage name) to offer sub-agency 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 WORKING WITH BUYERS

- 1) Unless you have a family, business or personal relationship with the buyer and are authorized to act as a buyer's agent, explain our company policy of always representing the seller. Review the services you can provide to the buyer as a customer.
- 2) 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.
- 3) Have the buyer sign and date acknowledging receipt of the “Consumer Guide to Agency Relationships.”
- 4) On any properties you show the buyer, provide the buyer with a copy of the residential property disclosure form, the lead-based paint disclosure and acknowledgement form, and the EPA lead paint pamphlet if these are required on the property. Have the buyer sign these forms before signing the offer.
- 5) Have the buyer sign the Agency Disclosure Statement prior to signing the offer and deliver this form along with the offer.

Consumer Guide to Agency Relationships

Brokerage Name

We are pleased you have selected (brokerage) to help you with your real estate needs. Whether you are selling, buying or leasing real estate, (brokerage) can provide you with expertise and assistance. Because this may be the largest financial transaction you will enter into, it is important to understand the role of the agents and brokers with whom you are working. Below is some information that explains the various services agents can offer and their options for working with you.

For more information on agency law in Ohio you can also contact the Ohio Division of Real Estate & Professional Licensing at (614) 466-4100, or on its website www.com.state.oh.us.

Representing Sellers

Most sellers of real estate choose to list their home for sale with a real estate brokerage. When they do so, they sign a listing agreement that authorizes the brokerage and the listing agent to represent their interests. As the seller's agent, the brokerage and listing agent must: follow the seller's lawful instructions, be loyal to the seller, promote the seller's best interests, disclose material facts to the seller, maintain confidential information, act with reasonable skill and care and, account for any money they handle in the transaction. In rare circumstances, a listing broker may offer "subagency" to other brokerages which would also represent the seller's interests and owe the seller these same duties.

Representing Buyers

When purchasing real estate, buyers usually choose to work with a real estate agent as well. Often the buyers want to be represented in the transaction. This is referred to as buyer's agency. A brokerage and agent that agree to represent a buyer's interest in a transaction must: follow the buyer's lawful instructions, be loyal to the buyer, promote the buyer's best interests, disclose material facts to the buyer, maintain confidential information and, account for any money they handle in the transaction.

Dual Agency

Occasionally the same agent and brokerage who represents the seller also represents the buyer. This is referred to as dual agency. When a brokerage and its agents become "dual agents," they must maintain a neutral position between the buyer and the seller. They may not advocate the position of one client over the best interests of the other client, or disclose any personal or confidential information to the other party without written consent.

Representing Both the Buyer & Seller

On occasion, the buyer and seller will each be represented by two different agents from the same brokerage. In this case the agents may each represent the best interest of their respective clients. Or, depending on company policy, the agents may both act as dual agents and remain neutral in the transaction. When either of the above occurs, the brokerage will be considered a dual agent. As a dual agent the brokerage and its managers will maintain a neutral position and cannot advocate for the position of one client over another. The brokerage will also protect the confidential information of both parties.

Working With (brokerage)

(brokerage) only represents sellers. It does not represent buyers of real estate. Therefore, (brokerage) will never act as a dual agent representing both parties in a transaction. Instead it will only act as the seller's agent in the sale of real estate. Even though (brokerage) only lists properties for sellers, it can still work with buyers as customers. (brokerage) can provide such buyers with non-confidential information and write offers at the buyer's direction, but will not act as the agent of these buyers. Instead such buyers will represent their own best interests. It is also important for buyers to understand that because the listing agent has a duty of full disclosure to the seller, buyers should not share any information with the listing agent that they would not want the seller to know.

Working With Other Brokerages

When (brokerage) lists property for sale it also cooperates with, and offers compensation to, other brokerages that represent buyers. (brokerage) does reserve the right, in some instances, to vary the compensation it offers to other brokerages. As a seller, you should understand that just because (brokerage) shares a fee with a brokerage representing the buyer, it does not mean that you will be represented by that buyer's brokerage. Instead that company will be looking out for the buyer and (brokerage) will be representing your interests.

Fair Housing Statement

It is illegal, pursuant to the Ohio Fair Housing Law, division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

We hope you find this information to be helpful to you as you begin your real estate transaction. When you are ready to enter into a transaction, you will be given an Agency Disclosure Statement that specifically identifies the role of the agents and brokerages. Please ask questions if there is anything you do not understand.

Because it is important that you have this information, Ohio law requires that we ask you to sign below, acknowledging receipt of this Consumer Guide. Doing so will not obligate you to work with our company if you do not choose to do so.

Name (Please Print)

Name (Please Print)

Signature Date

Signature Date



Company Policy B: Exclusive Buyer Agency

Although not common, some brokerages choose to exclusively act as buyer's agents. Their brokerage does not list property and never acts as a subagent of the seller or a dual agent. Instead, licensees affiliated with these brokerages only act as a buyer's agent on properties listed with other firms or for-sale-by-owner properties.

Although this buyer-exclusive brokerage does not practice dual agency, it must still establish procedures to protect confidential information within the office. This is because agents in the brokerage could be representing buyers who could be competing against one another for the same property. Therefore, steps must be taken to protect each buyer's confidential information.

To avoid this the brokerage could adopt a policy that all agents would be appointed to represent the buyers of another agent in the brokerage and include language to this effect in its buyer agency agreement. If this were done, all affiliated agents in the brokerage would have a fiduciary duty to all buyers represented by the brokerage, including a duty of confidentiality. Thus it would not be necessary to keep the confidential information of one buyer from an agent within the brokerage working with another buyer. They would all have a duty to maintain such confidential information.

Many believe that this option will grow in popularity in the future. The pros and cons of this policy are:

Pros:

- Buyers may prefer to work with a brokerage that specializes in the needs of buyers.
- Because it does not represent sellers, the brokerage will not practice dual agency.
- Listing brokers may prefer to compensate buyer's agents rather than assume the risk of liability for the acts of subagents.
- You don't have the expense of advertising properties for sale.
- You may be able to set yourself apart as unique and different from what the rest of the brokers are doing.

Cons:

- The brokerage will not take listings, and therefore will have to refer sellers to another brokerage.
- You lose the name recognition that comes from for-sale signs and other forms of advertising.
- You probably must still address confidentiality issues within your office.
- Sellers who are selling their property as a for-sale-by-owner may not agree to pay you, requiring the buyer to do so. Buyers may not be willing to agree to this.

Sample Policy B: Exclusive Buyer Agency

(Note: This policy is available online at www.ohiorealtors.org in the Legal Issues section)

SECTION A: GENERAL POLICY ON AGENCY

1) It is the policy of (brokerage name) to only represent buyers. Affiliated licensees may not list property, act as a sub-agent of the seller, or practice dual agency. On properties listed with another brokerage, licensees affiliated with (brokerage name) must act as buyer's agents. On properties that are not listed--for-sale-by-owner properties--the agents shall represent buyers as well.

2) When representing a buyer, (brokerage name) and its agent owe the buyer the duties of loyalty, obedience, confidentiality, accounting and reasonable skill and care in performing our duties, and any other duties contained in our buyer agency agreement. We are required to act solely on behalf of the buyer's interest to seek the best price and terms for the buyer. Finally, as a buyer's agent, we also have a duty to disclose to the buyer all material information obtained from the seller or from any other source.

3) At first contact with a listing agent or owner of a for-sale-by-owner property, the agent shall notify the listing office or FSBO that they are a buyer's agent. To a FSBO, the agent shall also disclose their intent, if any, to seek compensation from the seller.

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

In the event an agent wants another agent in the brokerage to represent his client, that buyer must agree in writing to this agent being appointed to represent him. Such written appointments must be maintained in the brokerage file. (*Here brokers should specify how appointments will be handled. A buyer can authorize his agent to make appointments in the buyer agency agreement or appointments can be authorized by the buyer when needed on an appointment of agent form*).

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

1) If a relative, business associate or other person with whom an agent has a personal relationship wishes to purchase property through the agent, that agent shall act as a buyer's agent. When showing a property, the listing agent, or if there is none, the seller, shall be notified of the family, business or personal relationship the agent has with the buyer. This relationship shall be disclosed in writing before any offer that is made. (*Note: This disclosure is required by Article 4 of the National Association of REALTORS® Code of Ethics.*)

2) Agents licensed with (brokerage name) cannot list properties owned by relatives, personal friends or business associates. Such persons shall instead be referred to other brokerages.

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 buy or sell property through their brokerage, but this requirement can be imposed by the brokerage. This must be addressed in the policy. Below is sample language.*)

1) Agents selling their own property must either list it with another brokerage or sell it as a FSBO. It cannot be listed for sale with (brokerage name). If it is sold as a FSBO, the agent must advertise in his name and indicate his status as a real estate agent, but not include the brokerage name. On any purchase contract that is entered into, the fact that the agent/seller is a licensed agent must be noted.

2) Agents buying property for themselves must handle this transaction through the brokerage.

3) If the property the agent wishes to purchase is listed with another brokerage, the agent shall act as a buyer's agent representing himself. The listing brokerage must be notified at first contact of the fact the agent is acting for himself as a buyer's agent and this must be confirmed on any subsequent purchase contract.

4) If the property is not listed, the seller must be notified at first contact that the agent is representing himself as a buyer's agent and of any intent to seek compensation from the seller. The agent must also indicate his status as a licensed agent on any purchase contract.

SECTION F: DUAL AGENCY

Since it is the policy of (brokerage name) to only represent buyers, it will not act as a dual agent in any situation.

SECTION G: CHANGING AGENCY RELATIONSHIPS

As discussed in Section A, agents shall represent the buyer only. Therefore, agents are prohibited from changing that relationship to represent the seller.

SECTION H: CONFIDENTIAL INFORMATION

(Note: The procedures outlined below are merely an example of how to address confidentiality issues. Brokers are free to modify these, or adopt other procedures. If a brokerage includes language in its buyer agency agreement appointing all other agents in the brokerage to represent the buyer, this section on confidentiality is not necessary.)

Since all agents within (brokerage name) only act as buyer's agents, it is possible that one agent could potentially represent a buyer who is competing for a property against another buyer represented by a different agent in our brokerage. Therefore, it is necessary for the following steps to be followed to protect the confidential information of one buyer/client from being disclosed to another agent in our brokerage who could be representing a different, competing buyer:

1) **Office files.** Each agent shall maintain in his file cabinet all documents relating to a purchaser he represents. Correspondence, credit reports, offers, addendums, inspection reports and the like shall not be kept on desks or left out where they could be viewed by other agents. Agents shall keep their file cabinets locked when they are not in the office. The broker shall have keys to the agent's file cabinet in the event it is necessary for the broker to access this information.

2) **Computerized records and messages.** All computer documents maintained by agents shall be password-protected so that other agents in the brokerage cannot retrieve or view this information. Agents shall not share their passwords with one another for any reason.

3) **Office meetings and discussions.** Agents shall not share confidential information regarding their clients at office meetings or discuss such information with others in the office unless the client specifically permits such disclosure. If the client so authorizes, this authorization should be obtained in writing or noted by the agent in his file. Confidential information includes, but is not limited to, the buyer's motivation to purchase, his reason for moving, his financial situation, the amount of any offer or counter-offer the buyer has made or is considering making or the amount of any pending contract. Office meetings involving such confidential information shall take place in private, so as not to be overheard by others.

4) **Facsimile transmissions.** When faxing documents that contain confidential information such as offers and counter-offers, agents must not leave the original documents on the fax machine where they could be viewed by others. Incoming faxes shall only be retrieved by (name individuals such as the office manager or receptionist). The fax shall then be personally delivered to the agent, if the agent is in the office, or sealed in an envelope and placed in the agent's mailbox. Clients and cooperating agents should be directed not to fax you confidential information during non-working hours unless it is confirmed that you will be there to retrieve it.

5) **Telephone and inter-office messages and conversations.** Telephone and inter-office messages that contain confidential information shall be hand-delivered in writing to the appropriate agent or placed in an envelope on either the agent's desk or in his mailbox. Conversations with management-level licensees or other staff concerning clients shall be held in private if the conversation involves confidential information.

Policy B continues on page 62

6) **Meetings and conversations with clients.** All meetings with clients shall take place in *(brokers should denote a private meeting room or other similar space within the office)*. Telephone conversations with clients that involve confidential information shall take place only in the agent's office. *(Note: If the agent does not have a private office, the brokerage shall designate some location within the office where the agent could have a private telephone conversation.)* Agents shall not utilize the speaker phone when having conversations of a confidential nature, unless the conversations take place in a closed office.

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 provide non-confidential information 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) It is the policy of (brokerage name) to accept the compensation offered in the multiple listing service to buyer brokerages.

3) *(Here the broker should indicate how he wants agents 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 section is 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 PROCEDURES WHEN REPRESENTING BUYERS

1) Explain our policy of only representing buyers.

2) Provide the buyer with the "Consumer Guide to Agency Relationships." This must be given to the buyer before the earliest of the following events:

- Showing 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.

3) Review the "Consumer Guide to Agency Relationships" with the buyer, including your policy on cooperation and compensation. Explain that we accept compensation from listing brokers or sellers, but also explain how it will be handled if the seller or listing broker won't pay us. Buyers must sign and date acknowledging receipt of the "Consumer Guide to Agency Relationships."

4) Have the buyer sign the buyer agency agreement.

5) Disclose your status as a buyer's agent to any listing office at first contact.

6) On FSBOs, disclose at first contact your status as a buyer's agent and also disclose any intention to seek compensation from the seller.

7) On any properties you show the buyer, provide the buyer with a copy of the residential property disclosure form, the lead-based paint disclosure and acknowledgement form, and the EPA lead paint pamphlet if these forms are required on the property. Have the buyer sign these forms before signing the offer.

8) Have the buyer sign the Agency Disclosure Statement prior to signing the offer and deliver this form along with the offer.

Consumer Guide to Agency Relationships

Brokerage Name

We are pleased you have selected (brokerage) to help you with your real estate needs. Whether you are buying or leasing real estate, (brokerage) can provide you with expertise and assistance. Because this may be the largest financial transaction you will enter into, it is important to understand the role of the agents and brokers with whom you are working. Below is some information that explains the various services agents can offer and their options for working with you.

For more information on agency law in Ohio you can also contact the Ohio Division of Real Estate & Professional Licensing at (614) 466-4100, or on its website www.com.state.oh.us.

Representing Sellers

Most sellers of real estate choose to list their home for sale with a real estate brokerage. When they do so, they sign a listing agreement that authorizes the brokerage and the listing agent to represent their interests. As the seller's agent, the brokerage and listing agent must: follow the seller's lawful instructions, be loyal to the seller, promote the seller's best interests, disclose material facts to the seller, maintain confidential information, act with reasonable skill and care and, account for any money they handle in the transaction. In rare circumstances a listing broker may offer "subagency" to other brokerages which would also represent the seller's interests and owe the seller these same duties.

Representing Buyers

When purchasing real estate, buyers usually choose to work with a real estate agent as well. Often the buyers want to be represented in the transaction. This is referred to as buyer's agency. A brokerage and agent that agree to represent a buyer's interest in a transaction must: follow the buyer's lawful instructions, be loyal to the buyer, promote the buyer's best interests, disclose material facts to the buyer, maintain confidential information and, account for any money they handle in the transaction.

Dual Agency

Occasionally the same agent and brokerage who represents the seller also represents the buyer. This is referred to as dual agency. When a brokerage and its agents become "dual agents," they must maintain a neutral position between the buyer and the seller. They may not advocate the position of one client over the best interests of the other client, or disclose any personal or confidential information to the other party without written consent.

Representing Both the Buyer & Seller

On occasion, the buyer and seller will each be represented by two different agents from the same brokerage. In this case the agents may each represent the best interest of their respective clients. Or, depending on company policy, the agents may both act as dual agents and remain neutral in the transaction. When either of the above occurs, the brokerage will be considered a dual agent. As a dual agent the brokerage and its managers will maintain a neutral position and cannot advocate for the position of one client over another. The brokerage will also protect the confidential information of both parties.

Working With (brokerage)

(brokerage) only represents buyers. It does not represent sellers or list property for sale. Therefore, (brokerage) will never act as a dual agent representing both parties in a transaction. Instead it will only act as the buyer's agent in the purchase of real estate.

When acting as a buyer's agent, (brokerage) will seek its compensation from the listing broker. If the property is not listed with any broker, or the listing broker does not offer compensation, we will attempt to negotiate for a seller-paid fee. However, even if the listing broker or seller pays us, (brokerage) still represents only the buyer. If (brokerage) is not compensated by the listing broker or the seller, its compensation will be paid by the buyer, pursuant to a written agreement with the buyer.

Fair Housing Statement

It is illegal, pursuant to the Ohio Fair Housing Law, division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

We hope you find this information to be helpful to you as you begin your real estate transaction. When you are ready to enter into a transaction, you will be given an Agency Disclosure Statement that specifically identifies the role of the agents and brokerages. Please ask questions if there is anything you do not understand.

Because it is important that you have this information, Ohio law requires that we ask you to sign below, acknowledging receipt of this Consumer Guide. Your signature will not obligate you to work with our company if you do not choose to do so.

Name (Please Print)

Name (Please Print)

Signature Date

Signature Date



Company Policy C: 'Split' Agency

This brokerage allows the agents to list property and to act as buyer's agents on other company's listings. In-company transactions are handled as follows:

- If one agent has the listing and a different agent in the brokerage represents the buyer of that property, each agent represents their separate client. The brokerage and any management-level licensees are dual agents. This situation has been referred to as "split" agency.
- If a listing agent is selling his own listing to a buyer he represents, the agent must act as a dual agent.
- Generally if a management-level licensee becomes involved on an in-company transaction, the management-level licensee must be a dual agent. However, if there is more than one management-level licensee in the brokerage and the management-level licensee either personally represents the buyer or seller or is the buyer or seller on an in-company transaction, the management-level licensee will not be a dual agent, but will only represent his client or himself.

In order to follow this policy, the brokerage must be able to put procedures in place within its office to make sure that confidential information is protected. This is because the confidential information of the seller cannot be disclosed to the buyer or his agent--and vice versa.

The rules adopted by the Ohio Real Estate Commission require brokerages to adopt procedures to protect confidential information that might be contained in office files, faxes, computer records, messages, discussed in telephone conversations, sales meetings, agent tours and the like. Thus, before selecting this policy, brokers must make sure they can address these issues.

The pros and cons of this policy are:

Pros:

- This policy gives buyers and sellers the greatest opportunity for full representation even on in-company transactions.
- The concept of "split" agency reflects what buyers and sellers think anyway and how your agents probably act on an in-company transaction.
- There is a reduced risk of liability because the agents involved will be acting more naturally.
- The instances of dual agency will be limited and so will the brokerage's liability.

Cons:

- This policy may be difficult to explain to consumers.
- There is greater burden of protecting confidential information and risk of liability if it is leaked.
- It involves more paperwork and monitoring by the broker to protect confidential information.

Sample Policy C: "Split" Agency

(Note: This policy is available online at www.ohiorealtors.org in the Legal Issues section)

SECTION A: GENERAL POLICY ON AGENCY

1) It is the policy of (brokerage name) to represent both sellers and buyers. Affiliated agents shall represent the seller when they list the property and shall act as a buyer's agent when working with a buyer.

2) When representing a seller, (brokerage name) and its agent 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.

3) When representing a buyer, (brokerage name) and its agent 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.

4) (Choose Option A if brokerage has only one management-level licensee and Option B if brokerage has more than one management-level licensee)

Option A) On in-company transactions where both buyer and seller are represented by separate, non-management-level licensees, each party will be represented by their respective agent and those agents must not share confidential information with each other.

The brokerage and its management-level licensee are dual agents. In this situation, the brokerage's role is to do the following:

- Objectively supervise the agents involved so they can each fulfill their duties, as outlined above, to each of their clients.
- Assist the parties in an unbiased manner to negotiate a contract.
- Assist the parties in an unbiased manner to fulfill the terms of any contract.

As a dual agent, the brokerage cannot:

- Advocate or negotiate on behalf of either the buyer or seller.
- Disclose confidential information to any party or any other employee or agent of the brokerage.
- Use confidential information of one party to benefit the other party to the transaction.

Option B) On in-company transactions where both buyer and seller are represented by separate licensees, each party will be represented by their respective agent and those agents must not share confidential information with each other.

The brokerage and its management-level licensees who are not personally representing the buyer or seller are dual agents. In this situation, the brokerage's role is to do the following:

- Objectively supervise the agents involved so they can each fulfill their duties, as outlined above, to each of their clients.
- Assist the parties in an unbiased manner to negotiate a contract.
- Assist the parties in an unbiased manner to fulfill the terms of any contract.

As a dual agent, the brokerage cannot:

- Advocate or negotiate on behalf of either the buyer or seller.
- Disclose confidential information to any party or any other employee or agent of the brokerage.
- Use confidential information of one party to benefit the other to the transaction.

5) (Choose Option A if brokerage has only one management-level licensee and Option B if brokerage has more than one management-level licensee)

Option A) If the management-level licensee represents a party, either buyer or seller, on an in-company transaction, that management-level licensee must act as a dual agent. The other agent in the transaction, who represents the other party, is considered to only be the agent of the party he represents. The buyer and seller will acknowledge this relationship on the Agency Disclosure Statement.

Option B) If a management-level licensee either personally represents the buyer or seller or is the buyer or seller on an in-company transaction, the management-level licensee will only represent his client or himself. The buyer and seller will acknowledge this relationship on the Agency Disclosure Statement.

6) If an agent sells his own listing to a buyer client, the agent is a dual agent. The agent may only act as a dual agent if both buyer and seller agree. 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:

- That a buyer is willing to pay more than the price offered;
- That a seller is willing to accept less than the asking price;
- Motivating factors of either party for buying or selling; or
- 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

In the event an agent wants another agent in the brokerage to represent his client, that client must agree in writing to this agent being appointed to represent him. Such written appointments must be maintained in the brokerage file. *(Here the broker should specify how appointments will be handled. A client can authorize his agent to make appointments in the agency agreement or appointments can be authorized by the client when needed on an appointment of agent form.)*

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 that person. In the event the agent acts as a dual agent and sells the property to a buyer he represents, the nature of the agent's relationship with the seller must be disclosed to the buyer before the buyer consents to the dual agency and the relationship also must be disclosed on the Agency Disclosure Statement. Any other agent in our brokerage or a cooperating brokerage representing a buyer must be notified of the relationship, and the relationship must be disclosed in writing prior to a contract being entered into. *(Note: This is required by Article 4 of the National Association of REALTORS® Code of Ethics.)*

2) If a person with whom an agent has a personal, family or business relationship wants to purchase property, the agent shall act as a buyer's agent. Any family, business or personal relationship must be disclosed to the listing agent, or if there is none, to the seller, and disclosed on the purchase contract. *(Note: this disclosure is required by Article 4 of the National Association of REALTORS® Code of Ethics.)* In the event the agent acts as a dual agent because the property the buyer wants to purchase is listed with him, the nature of the agent's relationship with the buyer must be disclosed to the seller before the seller consents to the dual agency and it must be disclosed on the Agency Disclosure Statement as well.

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.

Policy C continues on page 68

a) If the agent's property is shown to a buyer represented by another brokerage, or another agent in (brokerage name), that buyer's 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, that buyer shall be treated as a customer, and told the property is owned by the listing agent, and this must be confirmed in any subsequent purchase contract. The buyer shall be given the Agency Disclosure Statement indicating that the listing agent represents the seller. If the buyer wants representation he will be referred to another agent in the brokerage who can represent him.

c) If the listing agent/seller already has an agency relationship with a buyer who now wants to see his property, he must disclose the fact that he is the owner. If the buyer decides to make an offer, the agent must act as a dual agent. The buyer must be presented with the Agency Disclosure Statement prior to signing the offer. The fact that the agent is the seller must be disclosed on the Agency Disclosure Statement as a "material relationship." If the buyer does not agree to the dual agency, the procedures set forth in section G shall be followed.

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 that the licensee 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 wants to purchase is listed with him, the circumstances must be disclosed to the seller immediately and the seller must consent to the agent acting as a dual agent. The Agency Disclosure Statement must be given to the seller before any offer to purchase is presented to the seller. The fact that the buyer is a licensed agent with (brokerage name) must be disclosed on the Agency Disclosure Statement as a "material relationship." If the seller does not consent to the dual agency, the procedures set forth in section G shall be followed.

c) If the property the agent wants to see is listed with another agent in (brokerage name), the agent must immediately inform the listing agent that he is interested in buying the property for himself. The listing agent shall not share any confidential information with the buyer/agent unless expressly authorized by the seller. If the buyer/agent wishes to make an offer to purchase, he shall indicate on the offer that he is a licensed agent with (brokerage name) and submit an Agency Disclosure Statement indicating that he is acting as a buyer's agent.

d) 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 any intention 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 he 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

(Note: The procedures outlined below are merely an example of how to address confidentiality issues. Brokers are free to modify these, or adopt other procedures.)

Since agents within (brokerage name) act as buyer's and seller's agents, it is possible that one agent could potentially be representing a buyer who is buying property listed with a different agent in our brokerage. In this instance, each agent has separate duties to his respective client. Therefore, it is necessary for the following steps to be followed to protect the confidential information of the buyer from being disclosed to another agent in our brokerage who could be representing the seller, and vice versa.

1) **Office files.** Each agent shall maintain in his file cabinet all documents relating to a client he represents. Correspondence, offers, addendums, inspection reports and the like shall not be kept on desks or left out where they

could be viewed by other agents. Agents shall keep their file cabinets locked when they are not in the office. The (broker/manager) shall have a key to the agent's file cabinet in the event it is necessary for the (broker/manager) to access this information. The agent shall place in the general office file only those documents that are non-confidential such as listing information.

2) **Computerized records and messages.** All computer documents maintained by agents shall be password-protected so that other agents in the brokerage cannot retrieve or view this information. Agents shall not share their passwords with one another for any reason.

3) **Office meetings and discussions.** Agents shall not share confidential information regarding their clients at office meetings or discuss such information with others in the office unless the client specifically permits such disclosure. If the client so authorizes, this authorization should be noted by the agent in his file. Confidential information includes, but is not limited to, a client's motivation to purchase or sell, a client's financial information, the amount of any offer or counter-offer that a client has made or is considering making or the amount of any pending contract. Office meetings involving such confidential information shall take place in private, so as not to be overheard by others.

4) **Facsimile transmissions.** When faxing documents that contain confidential information such as offers and counter-offers, agents must not leave the original documents on the fax machine where they could be viewed by others. Incoming faxes shall only be retrieved by (name individuals such as the office manager or receptionist). The fax shall then be hand-delivered to the agent, if the agent is in the office, or sealed in an envelope and placed in the agent's mailbox. Clients and cooperating agents shall be directed not to fax you confidential information during non-working hours unless it is confirmed that you will be there to retrieve it.

5) **Telephone and inter-office messages and conversations.** Telephone and inter-office messages that contain confidential information shall be hand-delivered in writing to the appropriate agent or placed in an envelope on either the agent's desk or in his mailbox. Conversations between agents, with management-level licensees or other staff concerning clients shall be held in private if the conversation involves confidential information.

6) **Meetings and conversations with clients.** All meetings with clients shall take place in *(brokers should denote a private meeting room or other similar space within the office)*. Telephone conversations with clients that involve confidential information shall take place only in the agent's office. *(If the agent does not have a private office, the brokerage shall designate some location within the office where the agent could have a private telephone conversation.)* Agents shall not utilize the speaker phone when having conversations of a confidential nature, unless the conversations take place in a closed office.

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 the agents 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 attempt to obtain the objecting party's consent to another agent in the (brokerage name) being appointed to represent him. If this cannot be agreed upon, 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 wish to indicate any form they want agents 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 brokerage must indicate whether it will offer compensation to subagents only, to buyer brokers only, to both or neither. The brokerage should also indicate what compensation it 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, the compensation it offers cooperating brokers may not always be equal and consistent.
- 4) When acting as a buyer's agent, (brokerage name) also accepts compensation offered by the listing broker through 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 management-level licensees will represent him.
- 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 your role as a dual agent if one of your buyer/clients purchases your seller's listing. Explain how the transaction will be handled if the buyer is represented by another agent in our brokerage.
- 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 management-level licensees will represent him.
- 2) Explain to the buyer that you also take listings, as do other agents, and therefore represent those sellers. Use the “Consumer Guide to Agency Relationships” to help explain your role as a dual agent if he buys your listing, and how it will work if he buys property listed with a different agent in our brokerage.
- 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 buyers 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 these are required on the property. Have the buyer sign these forms before signing the offer.
- 8) When you write an offer on property you do not have listed, 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 you have listed, tell this to the buyer and disclose to both buyer and seller any material facts about your representation of these two clients--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. You must have the seller sign the Agency Disclosure Statement before you present the offer to the seller.

Consumer Guide to Agency Relationships

Brokerage Name

We are pleased you have selected (brokerage) to help you with your real estate needs. Whether you are selling, buying or leasing real estate, (brokerage) can provide you with expertise and assistance. Because this may be the largest financial transaction you will enter into, it is important to understand the role of the agents and brokers with whom you are working. Below is some information that explains the various services agents can offer and their options for working with you.

For more information on agency law in Ohio you can also contact the Ohio Division of Real Estate & Professional Licensing at (614) 466-4100, or on its website www.com.state.oh.us.

Representing Sellers

Most sellers of real estate choose to list their home for sale with a real estate brokerage. When they do so, they sign a listing agreement that authorizes the brokerage and the listing agent to represent their interests. As the seller's agent, the brokerage and listing agent must: follow the seller's lawful instructions, be loyal to the seller, promote the seller's best interests, disclose material facts to the seller, maintain confidential information, act with reasonable skill and care and, account for any money they handle in the transaction. In rare circumstances, a listing broker may offer "subagency" to other brokerages which would also represent the seller's interests and owe the seller these same duties.

Representing Buyers

When purchasing real estate, buyers usually choose to work with a real estate agent as well. Often the buyers want to be represented in the transaction. This is referred to as buyer's agency. A brokerage and agent that agree to represent a buyer's interest in a transaction must: follow the buyer's lawful instructions, be loyal to the buyer, promote the buyer's best interests, disclose material facts to the buyer, maintain confidential information and account for any money they handle in the transaction.

Dual Agency

Occasionally the same agent and brokerage who represents the seller also represents the buyer. This is referred to as dual agency. When a brokerage and its agents become "dual agents," they must maintain a neutral position in the transaction. They may not advocate the position of one client over the best interests of the other client, or disclose any confidential information to the other party without written consent.

Representing Both the Buyer & Seller

On occasion, the buyer and seller will each be represented by two different agents from the same brokerage. In this case the agents may each represent the best interest of their respective clients. Or, depending on company policy, the agents may both act as dual agents and remain neutral in the transaction. When either of the above occurs, the brokerage will be considered a dual agent. As a dual agent the brokerage and its managers will maintain a neutral position and cannot advocate for the position of one client over another. The brokerage will also protect the confidential information of both parties.

Working With (brokerage)

(brokerage) does offer representation to both buyers and sellers. Therefore the potential exists for one agent to represent a buyer who wishes to purchase property listed with another agent in our company. If this occurs each agent will represent their own client, but (brokerage) and its managers will act as a dual agent. This means the brokerage and its managers will maintain a neutral position and not take any actions that will favor one side over the other. (brokerage) will still supervise both agents to assure that their respective clients are being fully represented and will protect the parties' confidential information.

In the event that both the buyer and seller are represented by the same agent, that agent and (brokerage) will

act as dual agents but only if both parties agree. As dual agents they will treat both parties honestly, prepare and present offers at the direction of the parties, and help the parties fulfill the terms of any contract. They will not, however, disclose any confidential information that would place one party at an advantage over the other or advocate or negotiate to the detriment of either party.

If dual agency occurs you will be asked to consent to it in writing. If you do not agree to your agent acting as a dual agent, you can ask that another agent in our company be assigned to represent you or you can seek representation from another brokerage.

As a buyer, you may also choose to represent yourself on properties (brokerage) has listed. In that instance (brokerage) will represent the seller and you would represent your own best interests. Because the listing agent has a duty of full disclosure to the seller you should not share any information with the listing agent that you would not want the seller to know.

Working With Other Brokerages

When (brokerage) lists property for sale it also cooperates with, and offers compensation to, other brokerages that represent buyers. (brokerage) does reserve the right, in some instances, to vary the compensation it offers to other brokerages. As a seller, you should understand that just because (brokerage) shares a fee with a brokerage representing the buyer, it does not mean that you will be represented by that brokerage. Instead that company will be looking out for the buyer and (brokerage) will be representing your interests. When acting as a buyer's agent, (brokerage) also accepts compensation offered by the listing broker. If the property is not listed with any broker, or the listing broker does not offer compensation, we will attempt to negotiate for a seller-paid fee.

Fair Housing Statement

It is illegal, pursuant to the Ohio Fair Housing Law, division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

We hope you find this information to be helpful to you as you begin your real estate transaction. When you are ready to enter into a transaction, you will be given an Agency Disclosure Statement that specifically identifies the role of the agents and brokerages. Please ask questions if there is anything you do not understand.

Because it is important that you have this information, Ohio law requires that we ask you to sign below, acknowledging receipt of this Consumer Guide. Your signature will not obligate you to work with our company if you do not choose to do so.

Name (Please Print)

Signature Date

Name (Please Print)

Signature Date



Company Policy D: Dual Agency

Under this policy, a brokerage still lists properties and represents buyers. However, the brokerage prefers that on in-company transactions, regardless of whether there is one agent involved or two, the agent(s) and brokerage always function as dual agents.

This policy is the one that may be attractive to a brokerage that wants to offer buyer and seller representation, but does not believe that it can put into place practices that would protect confidential information in the event one agent in the brokerage represents a purchaser who wants to buy property listed with another agent in the brokerage. Therefore, the brokers may feel it is better to just have both salespersons be dual agents and have the parties acknowledge this on the Agency Disclosure Statement. If this is agreed upon by the parties, the agents involved must be careful to make sure they act as dual agents. In other words, both agents must refrain from actively negotiating on behalf of the clients they formerly represented, must remain neutral in the event of any dispute and must not disclose any confidential information.

Ohio law requires the brokerage to include a provision in its agency agreements to accomplish the goal of making all licensees dual agents on in-company transactions. Basically, the brokerage will need to include language in its listing agreement that states that when the seller lists property with this brokerage, all licensees in the firm are appointed to act as the seller's agents. The same type of language would need to be included in the brokerage's

buyer agency agreement. By doing this, all licensees are bound by the agency relationships of other licensees. As a result, all salespersons will be dual agents on in-company transactions.

The pros and cons involved with Office Policy D are:

Pros:

- The brokerage has the flexibility of offering both buyer and seller representation.
- Because the brokerage doesn't allow "split" agency, it doesn't need to worry about protecting confidential information within the office. Even if the agents learn it, they can't disclose it.
- A management-level licensee who lists and sells in a one management-level licensee brokerage is placed on the same footing as other agents in the brokerage on in-company transactions. All are dual agents.

Cons:

- Neither buyer nor seller receives full representation on in-company transactions.
- Brokerages practicing "split" agency may try to use this fact to put your brokerage at a competitive disadvantage.
- The brokerage still has a risk of liability if the agents involved do not act as required of dual agents. For example, if the listing agent actively negotiates on behalf of the seller, or the agent working with the buyer discloses confidential information about the seller to the buyer, the brokerage could face liability risks.

Sample Policy D: Dual Agency

(Note: This policy is available online at www.ohiorealtors.org in the Legal Issues section)

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.

Consumer Guide to Agency Relationships

Brokerage Name

We are pleased you have selected (brokerage) to help you with your real estate needs. Whether you are selling, buying or leasing real estate, (brokerage) can provide you with expertise and assistance. Because this may be the largest financial transaction you will enter into, it is important to understand the role of the agents and brokers with whom you are working. Below is some information that explains the various services agents can offer and their options for working with you.

For more information on agency law in Ohio you can also contact the Ohio Division of Real Estate & Professional Licensing at (614) 466-4100, or on its website www.com.state.oh.us.

Representing Sellers

Most sellers of real estate choose to list their home for sale with a real estate brokerage. When they do so, they sign a listing agreement that authorizes the brokerage and the listing agent to represent their interests. As the seller's agent, the brokerage and listing agent must: follow the seller's lawful instructions, be loyal to the seller, promote the seller's best interests, disclose material facts to the seller, maintain confidential information, act with reasonable skill and care and, account for any money they handle in the transaction. In rare circumstances, a listing broker may also offer "subagency" to other brokerages which would also represent the seller's interests and owe the seller these same duties.

Representing Buyers

When purchasing real estate, buyers usually choose to work with a real estate agent as well. Often the buyers want to be represented in the transaction. This is referred to as buyer's agency. A brokerage and agent that agree to represent a buyer's interest in a transaction must: follow the buyer's lawful instructions, be loyal to the buyer, promote the buyer's best interests, disclose material facts to the buyer, maintain confidential information and account for any money they handle in the transaction.

Dual Agency

Occasionally the same agent and brokerage who represents the seller also represents the buyer. This is referred to as dual agency. When a brokerage and its agent become "dual agents," they must maintain a neutral position between the buyer and the seller. They may not advocate the position of one client over the best interests of the other client, or disclose any personal or confidential information to the other party without written consent.

Representing Both the Buyer & Seller

On occasion, the buyer and seller will each be represented by two different agents from the same brokerage. In this case the agents may each represent the best interest of their respective clients. Or, depending on company policy, the agents may both act as dual agents and remain neutral in the transaction. When either of the above occurs, the brokerage will be considered a dual agent. As a dual agent the brokerage and its managers will maintain a neutral position and cannot advocate for the position of one client over another. The brokerage will also protect the confidential information of both parties.

Working With (brokerage)

(brokerage) does represent both buyers and sellers. When (brokerage) lists property for sale all agents in the brokerage represent the seller. Likewise when a buyer is represented by a (brokerage) agent, all of the agents represent that buyer. Therefore, when a buyer represented by a (brokerage) agent wishes to purchase property listed by our company, the agent(s) involved act as dual agents. This is true whether one agent is representing both parties or two separate agents are involved.

In the event that both the buyer and seller are represented by (brokerage) agents these agents and (brokerage) will act as dual agents but only if both parties agree. As dual agents they will treat both parties honestly, prepare and present offers at the direction of the parties, and help the parties fulfill the terms of any contract. They will not, however, disclose any confidential information that will place one party at an advantage over the other or advocate or negotiate to the detriment of either party.

If dual agency occurs you will be asked to consent to it in writing. If you do not agree to your agent acting as a dual agent, you can seek representation from another brokerage.

As a buyer, you may also choose to represent yourself on properties (brokerage) has listed. In that instance (brokerage) will represent the seller and you would represent your own best interests. Because the listing agent has a duty of full disclosure to the seller you should not share any information with the listing agent that you would not want the seller to know.

Working With Other Brokerages

(brokerage) does offer representation to both buyers and sellers. When (brokerage) lists property for sale it also cooperates with, and offers compensation to, other brokerages that represent buyers. (brokerage) does reserve the right, in some instances, to vary the compensation it offers to other brokerages. As a seller, you should understand that just because (brokerage) shares a fee with a brokerage representing the buyer, it does not mean that you will be represented by that buyer's brokerage. Instead that company will be looking out for the buyer and (brokerage) will be representing your interests. When acting as a buyer's agent, (brokerage) also accepts compensation offered by the listing broker. If the property is not listed with any broker, or the listing broker does not offer compensation, we will attempt to negotiate for a seller-paid fee.

Fair Housing Statement

It is illegal, pursuant to the Ohio Fair Housing Law, division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

We hope you find this information to be helpful to you as you begin your real estate transaction. When you are ready to enter into a transaction, you will be given an Agency Disclosure Statement that specifically identifies the role of the agents and brokerages. Please ask questions if there is anything you do not understand.

Because it is important that you have this information, Ohio law requires that we ask you to sign below, acknowledging receipt of this Consumer Guide. Doing so will not obligate you to work with our company if you do not choose to do so.

Name (Please Print)

Signature Date

Name (Please Print)

Signature Date



Company Policy E: 'Split' Agency, But Never Dual Agency

Like policies C and D, brokerages that choose this option list properties and represent buyers. These brokerages practice split agency, allowing the buyer and seller in a transaction to each be represented by separate agents in the brokerage. However, the brokerage will not permit one agent to represent both parties as a dual agent. Therefore, a listing agent working directly with a buyer will represent only the seller.

The difficult part of this policy occurs when a buyer who is already represented by an agent, then decides to make an offer on property that same agent has listed. This would occur if a buyer contacts an agent about one of their listings. Under this policy, the listing agent would represent the seller and treat the buyer as a customer. However, if the buyer wanted to look at other properties not listed with this agent, the agent would then represent the buyer and have the buyer sign a buyer agency agreement. If the buyer decided to go back to the agent's own listing, the agent would terminate their agency relationship with the buyer and represent the seller only. If the agent learned confidential information during the course of representing the buyer, the agent is required to keep that information in confidence and cannot disclose it to the seller.

Another problem that can arise under this policy is where an agent represents a buyer with whom they have a family, personal or business relationship. In this situation, it is really impossible to terminate the agency relationship with the buyer if the buyer wants to purchase property listed with that agent. Therefore, in this limited situation, the brokerage must practice dual agency. The same problem arises when an agent wants to buy property he has listed.

To make sure both the buyer and seller understand this policy it is important for brokerages that wish to use this company policy to do the following:

- Use a buyer agency agreement that includes language which discloses that the salesperson's agency relationship with the buyer will terminate if the buyer decides to purchase one of the agent's own listings. It should also explain that the agent and the brokerage will represent the seller only and obtain the buyer's consent to this. If the buyer wants representation, he will be referred to another agent in the brokerage.

- Include language in the brokerage's listing agreement explaining to the seller that if a buyer/client wants to purchase the seller's property, the agent will only represent the seller but that the agent will not be able to disclose confidential information previously learned from a buyer while the buyer was a client.

- Train agents that when an agent's buyer/client wants to purchase property listed with him, the agent must provide notice to the buyer that he is terminating his agency relationship with the buyer. If the buyer wants representation, he will be referred to another agent in the brokerage. Notify the seller that this buyer is a former client.

- Make sure the listing agent who previously represented the buyer but will now only represent the seller understands that he must stop treating the buyer as a client and instead must act as the seller's agent only. However, he must keep confidential any information he learned from the buyer while representing the buyer.

If these steps are taken, the brokerage will lessen the risks involved with this policy. The pros and cons of Office Policy E are:

Pros:

- The brokerage can still offer both buyer and seller representation.
- Since an agent will only represent the seller when selling his own listing, the risks associated with one agent representing both parties is eliminated.
- Sellers will be attracted to this policy because they will always receive full representation from the agent.

Cons:

- A buyer may not want to be represented by an agent if he understands that he will lose that representation if he buys one of the agent's listings.
- The brokerage still has exposure to liability for undisclosed dual agency if the agent who formerly represented the buyer still acts as a buyer's agent, even though they are now a seller's agent.
- Sellers may be upset that the agent is not disclosing material facts about the buyer because they are confidential under the agent's previous agency relationship with the buyer.
- The brokerage must still address dual agency when representing buyers with whom an agent has a family, personal or business relationship, or when an agent buys his own a listing.

Sample Policy E: "Split Agency," But Never Dual Agency

(Note: This policy is available online at www.ohiorealtors.org in the Legal Issues section)

SECTION A: GENERAL POLICY ON AGENCY

1) It is the policy of (brokerage name) to represent both sellers and buyers. Affiliated agents shall represent the seller when they list property and shall act as buyer's agents when working with buyers on any property not listed with the agent.

2) When representing a seller, (brokerage name) and its agent 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.

3) When representing a buyer, (brokerage name) and its agent 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.

4) In the event a purchaser wishes to buy property listed with his agent, the agent will not represent the buyer. If the agent has already established an agency relationship with the buyer, the agency relationship with the buyer will be terminated and the agent with whom the buyer was working must represent the seller. Language explaining this is contained in our brokerage's buyer agency agreement, as well as our listing agreement. Any confidential information learned about the buyer prior to termination must remain confidential and cannot be disclosed to the seller.

The only instances where the agency relationship with the buyer will not be terminated are those set forth in sections D and E. In these instances dual agency occurs. The agent can act as a dual agent if both the buyer and seller agree. The parties must sign the Agency Disclosure Statement agreeing to this. 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.

5) (*Choose Option A if brokerage has only one management-level licensee and Option B if brokerage has more than one management-level licensee*)

Option A) On in-company transactions where both buyer and seller are represented by separate, non-management-level licensees, each party will be represented by their respective agent and those agents must not share confidential information with each other.

The brokerage and its management-level licensee are dual agents. In this situation, the brokerage's role is to do the following:

- Objectively supervise the agents involved so they can each fulfill their duties, as outlined above, to each of their clients.
- Assist the parties in an unbiased manner to negotiate a contract.
- Assist the parties in an unbiased manner to fulfill the terms of any contract.

As a dual agent, the brokerage cannot:

- Advocate or negotiate on behalf of either the buyer or seller.
- Disclose confidential information to any party or any other employee or agent of the brokerage.
- Use confidential information of one party to benefit the other party to the transaction.

Option B) On in-company transactions where both buyer and seller are represented by separate licensees, each party will be represented by their respective agent and those agents must not share confidential information with each other.

The brokerage and its management-level licensees who are not personally representing the buyer or seller are dual agents. In this situation, the brokerage's role is to do the following:

- Objectively supervise the agents involved so they can each fulfill their duties, as outlined above, to each of their clients.
- Assist the parties in an unbiased manner to negotiate a contract.
- Assist the parties in an unbiased manner to fulfill the terms of any contract.

As a dual agent, the brokerage cannot:

- Advocate or negotiate on behalf of either the buyer or seller.
- Disclose confidential information to any party or any other employee or agent of the brokerage.
- Use confidential information of one party to benefit the other party to the transaction.

6) (Choose Option A if brokerage has only one management-level licensee and Option B if brokerage has more than one management-level licensee.)

Option A) If the management-level licensee represents either the buyer or seller on an in-company transaction, that management-level licensee must act as a dual agent. The other agent in the transaction, who represents the other party is considered to only be the agent of the party he represents. The buyer and seller will acknowledge this relationship on the Agency Disclosure Statement.

Option B) If a management-level licensee either personally represents the buyer or seller or is the buyer or seller in an in-company transaction, the management-level licensee will only represent his client or himself. The buyer and seller will acknowledge this relationship on the Agency Disclosure Statement.

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

In the event an agent wants another agent in the brokerage to represent his client, that client must agree in writing to this agent being appointed to represent him. Such written appointments must be maintained in the brokerage file. (*Here the broker should specify how appointments will be handled. A client can authorize his agent to make appointments in the agency agreement or appointments can be authorized by the client when needed on an appointment of agent form.*)

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 that person. In the event a buyer who is represented by the listing agent wants to buy this property, the nature of the listing agent's relationship with the seller must be disclosed to the buyer and the agency relationship with the buyer must be terminated. The agent shall not disclose to the seller any confidential information learned about the buyer during their relationship.

2) If any other agent in our brokerage or a cooperating brokerage represents the buyer, the buyer's agent must be notified of the relationship and the relationship must be disclosed in writing prior to entering into the purchase contract. (*Note: This is required by Article 4 of the National Association of REALTORS® Code of Ethics.*)

3) If a person with whom an agent has a personal, family or business relationship wants to purchase property, the agent shall act as a buyer's agent and represent the buyer. If the buyer purchases property not listed with their agent, any family, business or personal relationship must be disclosed to the listing agent or if there is none to the seller and disclosed on the purchase contract. (*This is required by Article 4 of the National Association of REALTORS® Code of Ethics.*)

4) In the event the purchaser wants to buy property listed with their agent, due to the relationship that exists between the buyer and agent, the agency relationship with the buyer shall not be terminated in this limited circumstance. Instead, the agent must act as a dual agent. The nature of the agent's relationship with the buyer must be disclosed to the seller

Policy E continues on page 86

before the seller consents to the dual agency and it must be disclosed as a "material relationship" on the Agency Disclosure Statement.

5) 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 represented by another brokerage or another agent in (brokerage name), that buyer's 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 directly, that buyer shall be treated as a customer and told the property is owned by the listing agent and this must be disclosed in any subsequent purchase contract. The buyer shall be given the Agency Disclosure Statement indicating that the listing agent represents the seller. If the buyer wants representation, he will be referred to another agent in the brokerage who can represent him.

c) If the listing agent already has an agency relationship with a buyer who now wants to buy property owned by the agent, it must be disclosed that the listing agent is the owner and the agency relationship with the buyer must be terminated.

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 licensee 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, the circumstances must be disclosed to the seller immediately and the seller must consent to the agent acting as a dual agent. The Agency Disclosure Statement must be given to the seller before any offer to purchase is presented to the seller. The fact that the buyer is a licensed agent with (brokerage name) must be disclosed on the Agency Disclosure Statement as a "material relationship."

c) If the property the agent wants to see is listed with another agent in (brokerage name), the agent must immediately inform the listing agent of the fact that he is interested in buying the property for himself. The listing agent shall not share any confidential information with the buyer/agent unless expressly authorized by the seller. If the buyer/agent wishes to make an offer to purchase, he shall indicate on the offer that he is a licensed agent with (brokerage name) and submit an Agency Disclosure Statement indicating that he is acting as a buyer's agent.

d) 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 any intent 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 he 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

(Note: The procedures outlined below are merely an example of how to address confidentiality issues. Brokers are free to modify these, or adopt other procedures.)

Agents in (brokerage name) can act as buyer or seller agents. Our brokerage does not permit one agent to represent both the buyer and seller in the same transaction but does permit the buyer and seller to be represented by two agents in the brokerage. If this occurs, each agent has separate duties to their respective client. Therefore, it is necessary for steps to be taken to protect the confidential information of the buyer from being disclosed to another agent in our brokerage who could be representing the seller, and vice versa.

- 1) **Office files.** Each agent shall maintain in his file cabinet all documents relating to a client he represents. Correspondence, offers, addendums, inspection reports and the like shall not be kept on desks or left out where they could be viewed by other agents. Agents shall keep their file cabinets locked when they are not in the office. The (broker/manager) shall have a key to the agent's file cabinet in the event it is necessary for the (broker/manager) to access the file. The agent shall place in the general office file only those documents that are non-confidential such as listing information.
- 2) **Computerized records and messages.** All computer documents maintained by agents shall be password-protected so that other agents in the brokerage cannot retrieve or view this information. Agents shall not share their passwords with one another for any reason.
- 3) **Office meetings and discussions.** Agents shall not share confidential information regarding their clients at office meetings or discuss such information with others in the office unless the client specifically permits such disclosure. If the client so authorizes, this authorization should be noted by the agent in his file. Confidential information includes, but is not limited to, a client's motivation to purchase or sell, a client's financial information, the amount of any offer or counter-offer that a client has made or is considering making or the amount of any pending contract. Office meetings involving such confidential information shall take place in private, so as not to be overheard by others.
- 4) **Facsimile transmissions.** When faxing documents that contain confidential information such as offers and counter-offers, agents must not leave the original documents on the fax machine where they could be viewed by others. Incoming faxes shall only be retrieved by (name individuals such as the office manager or receptionist). The fax shall then be hand-delivered to the agent, if the agent is in the office, or sealed in an envelope and placed in the agent's mailbox. Clients and cooperating agents shall be directed not to fax you confidential information during non-working hours unless it is confirmed that you will be there to retrieve it.
- 5) **Telephone and inter-office messages and conversations.** Telephone and inter-office messages that contain confidential information shall be hand-delivered in writing to the appropriate agent or placed in an envelope on either the agent's desk or in his mailbox. Conversations between agents, with management-level licensees or other staff concerning clients shall be held in private if the conversation involves confidential information.
- 6) **Meetings and conversations with clients.** All meetings with clients shall take place in (*brokers should denote a private meeting room or other similar space within the office*). Telephone conversations with clients that involve confidential information shall take place only in the agent's office. (*If the agent does not have a private office, the brokerage shall designate some location within the office where the agent could have a private telephone conversation.*) Agents shall not utilize the speaker phone when having conversations of a confidential nature, unless the conversations take place in a closed office.

SECTION G: DUAL AGENCY

1) The only instance in which an agent shall act as a dual agent is where the agent is personally buying property they have listed or a buyer/client with whom the agent has a personal, business or family relationship, is purchasing property the agent has listed.

a) (*Include this section only if your brokerage has only one management-level licensee*). (Management-level licensee position or title) will be a dual agent when they represent a buyer or seller on an in-company transaction.

Policy E continues on page 88

2) Agents acting as a dual agent in those situations 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 limited to, the nature of the relationship the agents have with a party to the transaction or the fact that they are a party to the transaction. This must be disclosed 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.

3) 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 attempt to obtain the objecting party's consent to another agent in the (brokerage name) being appointed to represent him. If this cannot be agreed upon, 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 who represent the seller shall not change that relationship. If an agent represents a buyer and that buyer is interested in purchasing property listed with that agent, the buyer shall be reminded of our policy to only represent sellers in this situation. In the event the buyer wants to make an offer on that property the buyer's consent to terminate the agency relationship must be obtained in writing. The listing agent must notify the seller of the fact this buyer was previously represented by them. *(Note: Here the broker should specify the form he wants agents to use to obtain the buyer's consent to terminate the agency relationship.)*

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 should also indicate what compensation the brokerage will offer such brokerages.)*

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, the compensation it offers cooperating brokers may not always be equal or consistent.

4) When acting as a buyer's agent, (brokerage name) also accepts compensation offered by the listing broker through 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 management-level licensees will represent him.

2) Explain to the seller our brokerage policy of also representing buyers. Disclose the fact that if you have a buyer/client that wants to purchase his property, the agency relationship with the buyer will be terminated, but no confidential information that was learned prior to termination can be disclosed. Point out the language in our brokerage's listing agreement that discusses this.

3) Explain the instances where you and the brokerage would be a dual agent. Use the "Consumer Guide to Agency Relationships" to help explain your role as a dual agent. Explain how the transaction will be handled if the buyer is represented by another agent in our brokerage.

- 4) Have the seller sign and date acknowledging receipt of the "Consumer Guide to Agency Relationships."
- 5) The agent shall have the seller check on the listing agreement whether he authorizes (brokerage name) to offer sub-agency and/or compensation to buyer brokerages. Have the seller sign and date the listing agreement.
- 6) Unless exempt, on property built before 1978, have the seller complete the lead-based paint disclosure and acknowledgement form, sign and date it.
- 7) 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 management-level licensees will represent the buyer on all properties except those you have listed.
- 2) Explain to the buyer that you also take listings, and therefore represent those sellers. Review the fact that unless you have a personal, family or business relationship with the buyer, if the buyer wants to purchase property you have listed, you will terminate the agency relationship with the buyer and represent only the seller. Reassure the buyer that no confidential information learned during your agency relationship will be disclosed. Point out the language in the buyer agency agreement that discusses this.
- 3) If you have a personal, family or business relationship with the buyer, explain that you will be a dual agent if he buys your listing, and how it will work if he buys property listed with another agent in our brokerage.
- 4) 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.
- 5) Have the buyer sign and date acknowledging receipt of the "Consumer Guide to Agency Relationships."
- 6) Have the buyer sign our buyer agency agreement.
- 7) 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 to the seller any intent to seek compensation from the seller.
- 8) 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. These must be given to the buyer and signed before an offer is written.
- 9) Prior to writing an offer, give the buyer an Agency Disclosure Statement and have him sign it. Deliver a copy of the Agency Disclosure Statement the buyer signed along with the offer.
- 10) If the buyer wishes to purchase property you have listed, and you have no personal, family or business relationship with the buyer, you must terminate the relationship with the buyer. Follow the procedures set forth in section H on changing an agency relationship.
- 11) If you have a personal, family or business relationship with the buyer, or are buying the property for yourself, follow the procedures in sections E and F respectively.

Consumer Guide to Agency Relationships

Brokerage Name

We are pleased you have selected (brokerage) to help you with your real estate needs. Whether you are selling, buying or leasing real estate, (brokerage) can provide you with expertise and assistance. Because this may be the largest financial transaction you will enter into, it is important to understand the role of the agents and brokers with whom you are working. Below is some information that explains the various services agents can offer and their options for working with you.

For more information on agency law in Ohio you can also contact the Ohio Division of Real Estate & Professional Licensing at (614) 466-4100, or on its website at www.com.state.oh.us.

Representing Sellers

Most sellers of real estate choose to list their home for sale with a real estate brokerage. When they do so, they sign a listing agreement that authorizes the brokerage and the listing agent to represent their interests. As the seller's agent, the brokerage and listing agent must: follow the seller's lawful instructions, be loyal to the seller, promote the seller's best interests, disclose material facts to the seller, maintain confidential information, act with reasonable skill and care and, account for any money they handle in the transaction. In rare circumstances, a listing broker may offer "subagency" to other brokerages which would also represent the seller's interests and owe the seller these same duties.

Representing Buyers

When purchasing real estate, buyers usually choose to work with a real estate agent as well. Often the buyers want to be represented in the transaction. This is referred to as buyer's agency. A brokerage and agent that agree to represent a buyer's interest in a transaction must: follow the buyer's lawful instructions, be loyal to the buyer, promote the buyer's best interests, disclose material facts to the buyer, maintain confidential information and, account for any money they handle in the transaction.

Dual Agency

Occasionally the same agent and brokerage who represents the seller also represents the buyer. This is referred to as dual agency. When a brokerage and its agents become "dual agents," they must maintain a neutral position between the buyer and the seller. They may not advocate the position of one client over the best interests of the other client, or disclose any personal or confidential information to the other party without written consent.

Representing Both the Buyer & Seller

On occasion, the buyer and seller will each be represented by two different agents from the same brokerage. In this case the agents may each represent the best interest of their respective clients. Or, depending on company policy, the agents may both act as dual agents and remain neutral in the transaction. When either of the above occurs, the brokerage will be considered a dual agent. As a dual agent the brokerage and its managers will maintain a neutral position and cannot advocate for the position of one client over another. The brokerage will also protect the confidential information of both parties.

Working With (brokerage)

(brokerage) does offer representation to both buyers and sellers. Therefore, the potential exists for one agent to represent a buyer who wishes to purchase property listed with another agent in our company. If this occurs each agent will represent their own client, but (brokerage) and its managers will act as a dual agent. This means the brokerage and its managers will maintain a neutral position and not take any actions that will

favor one side over the other. However, (brokerage) will still supervise both agents to assure that their clients are being fully represented.

While it is the policy of (brokerage) to allow a buyer and seller in the same transaction to be represented by two agents in our brokerage, it does not permit one agent to represent both parties. Therefore, a listing agent working directly with a buyer will represent only the seller's interests. In this situation the agent will still be able to provide the buyer with non-confidential information, prepare and present offers at their direction and assist the buyer in the financing and closing process. However, the buyer will be a customer, representing their own interests. Because the listing agent has a duty of full disclosure to the seller, a buyer in this situation should not share any information with the listing agent that they would not want the seller to know. If a buyer wishes to be represented, another agent in (brokerage) can be appointed to act as their agent or they can seek representation from another brokerage.

Working With Other Brokerages

(brokerage) does offer representation to both buyers and sellers. When (brokerage) lists property for sale it also cooperates with, and offers compensation to, other brokerages that represent buyers. (brokerage) does reserve the right, in some instances, to vary the compensation it offers to other brokerages. As a seller, you should understand that just because (brokerage) shares a fee with a brokerage representing the buyer, it does not mean that you will be represented by that buyer's brokerage. Instead that company will be looking out for the buyer and (brokerage) will be representing your interests.

When acting as a buyer's agent, (brokerage) also accepts compensation offered by the listing broker. If the property is not listed with any broker, or the listing broker does not offer compensation, we will attempt to negotiate for a seller-paid fee.

Fair Housing Statement

It is illegal, pursuant to the Ohio Fair Housing Law, division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services. It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

We hope you find this information to be helpful to you as you begin your real estate transaction. When you are ready to enter into a transaction, you will be given an Agency Disclosure Statement that specifically identifies the role of the agents and brokerages. Please ask questions if there is anything you do not understand.

Because it is important that you have this information, Ohio law requires that we ask you to sign below, acknowledging receipt of this Consumer Guide. Doing so will not obligate you to work with our company if you do not choose to do so.

Name (Please Print)

Name (Please Print)

Signature Date

Signature Date

