



# YOUR RIGHTS AS A HOMEBUYER OR SELLER



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Congrats on your decision to pursue homeownership!

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## **CONGRATS ON YOUR DECISION TO PURSUE HOMEOWNERSHIP!**

Buying or selling a home is an important life event that requires many important decisions. This brochure explains the services you may expect from a licensed real estate agent and the duties these professionals owe to you under the law. Wisconsin law provides strong protections for all real estate consumers.

For more real estate information designed for you, the consumer, visit the WRA's consumer brochure webpage: [www.wra.org/consumerbrochures](http://www.wra.org/consumerbrochures).

# YOUR RIGHTS AS A HOMEBUYER OR SELLER

## Congrats on your decision to pursue homeownership!

### Part 1

## REALTOR® RELATIONSHIPS WITH CUSTOMERS AND CLIENTS

### WHAT IS A REAL ESTATE AGENT?

A real estate agent is a professional licensed by the state of Wisconsin to help you buy or sell your home. The agent's job is to bring buyers and sellers together and help them reach an agreement. An agent also provides other services.

A real estate agent may assist both parties in negotiating the purchase contract and in filling out certain legal contract forms. Forms such as the offer to purchase and counter-offer are typically used during a real estate transaction.

A real estate agent will explain the closing procedures in advance and make sure you are ready for closing. For example, if the agent provides closing services, the agent will ensure that the seller has the title insurance ordered and the deed prepared, and that the buyer has the insurance binder and a certified check for payment.

Not all real estate licensees provide the same services, nor do they charge the same fees. To ensure that you are getting the best value for your money, ask the real estate agents in your community what services they provide, what they charge, and what additional services are recommended or are necessary to complete the transaction. It is always recommended that you consider the services of an experienced real estate attorney as early in the transaction as possible.

If you experience problems with an agent, you may contact that agent's supervising broker, private legal counsel and/or the Wisconsin Department of Safety and Professional Services. If the agent is a member of the REALTOR® trade association, you may also contact the local association of REALTORS®.

### CLIENT-AGENT RELATIONSHIP

A client, by contract, engages the professional services of a real estate agent. It is the agent's job to use their knowledge about buying and selling real estate to protect the best interests of the client.

When you sell your home as a client of the real estate agent, you sign a contract with the agent called a listing contract. The listing agent then works for you. In this relationship, the agent guides you through the real estate transaction, providing information on issues such as pricing the home, which purchase offers are fair, and how to structure a purchase contract to your advantage. When the house is sold, the listing agent receives the commission agreed upon in the listing contract.

Buyers can also work with agents as clients. This relationship is referred to as "buyer agency." The buyer signs a contract with the agent, known as the buyer agency agreement. The buyer's agent works for you and receives a fee according to the buyer agency agreement.

In a buyer-client relationship, the agent helps you find a suitable property and guides you throughout the real estate transaction, providing information on issues such as how much to offer for the home and how to structure a purchase contract to your advantage. The agent may negotiate on behalf of a seller/client or a buyer/client. Although an agent works for you in a client-agent relationship and owes you additional services called fiduciary duties, an agent must also treat all customers fairly.

### CUSTOMER-AGENT RELATIONSHIP

In a customer-agent relationship, a customer receives services from a real estate agent who is performing on behalf of and for the benefit of the agent's client. In this customer type of relationship, there is no contract between you and the agent. If you are a buyer/customer, the seller's agent will show you properties you are interested in seeing, gather more information about houses of interest, and draft the purchase contract as you direct.

When the agent works with you as a buyer/customer, the agent cannot provide advice or opinions contrary to the interests of the seller/client. At the same time, the agent is required by law to treat you fairly and honestly even though you are not the agent's client. The agent must provide you with information about any known property defects and help identify situations when other expertise may be needed. The agent may suggest that you consult with a professional, such as a home inspector or roofing contractor to help you evaluate a property condition, or an attorney or accountant to advise you on legal or tax matters.

It is important for you to understand whom the agent works for and what services are provided. This is why Wisconsin law requires the agent to provide you with a Disclosure to Customers statement if the agent is going to negotiate on your behalf as a customer. This statement explains the duties owed to you as a customer. One agent may work with many customers and clients at one time.

## FAIR TREATMENT FOR ALL CLIENTS AND CUSTOMERS

Whether you are a customer or a client, you expect and deserve top-notch service from your real estate agent. This is why Wisconsin law requires real estate agents to treat all parties honestly and fairly in a real estate transaction. The law also provides that the agent has additional obligations with respect to his or her client, called fiduciary duties. This brochure explains the duties owed to all parties and the duties owed only to clients.

If you are a client, a Disclosure to Clients statement of the duties owed to you will either be included in your agency contract or provided to you by your agent in a separate form. If you are a customer, a Disclosure to Customers statement of the duties owed to you will be provided to you before the agent begins negotiating on your behalf.

If you have any questions, ask your agent or your attorney for additional information or legal advice, as appropriate. Your agent is prohibited by law from giving you legal advice.

## DUTIES AGENTS OWE ALL PARTIES IN A REAL ESTATE TRANSACTION

1. **Fair and honest treatment:** Every agent must provide services honestly and fairly. When answering your questions, the agent must be honest and accurate.
2. **Disclosure of material adverse facts:** Every agent must disclose material adverse facts that you do not already know and cannot discover through vigilant observation. Material adverse facts are facts that are of such significance that they would affect the party's decision to enter into a contract or the party's decision about the terms of such a contract or agreement.

Some examples of material adverse facts include:

- A septic system not large enough to serve the home based on the number of bedrooms.
- A toxic algae condition in the lake abutting a waterfront property.
- Persistent basement moisture after heavy rainfalls, despite the owner's prior corrective measures.
- Two sets of survey markers resulting in a description discrepancy and overlapping lots.
- Diseased trees, particularly after their leaves have fallen off.
- A buried fuel oil tank no longer in use.

3. **Confidentiality:** Every agent must keep confidential any information that you indicate to be confidential and any information that the agent knows a reasonable person would want kept confidential. When you receive the required Disclosure to Clients or Disclosure to Customers statement that the agent must give you before beginning negotiations on your behalf, you can list the information you consider confidential. You can also list information that might otherwise be considered confidential but that you are authorizing the agent to disclose. For example, you can permit the agent to reveal information about your financial qualifications to the seller to encourage the seller to accept your offer to purchase.
4. **Provision of accurate market condition information:** You may ask your agent to provide timely and accurate information about market conditions, and every agent must respond within a reasonable time with examples of sale prices for comparable properties and other market information. The agent cannot, however, give you an opinion about whether a particular house is priced too high or too low unless you are the agent's client.
5. **Reasonable skill and care:** Every agent must be knowledgeable concerning real estate laws, public policies, current market conditions and the physical characteristics of the property being sold. Every agent must use reasonable skill and care when:
  - Inspecting properties.
  - Preparing and giving a general explanation of the purchase contract and other documents or forms approved by the Real Estate Examining Board.
  - Monitoring deadlines and closing dates.
  - Making reasonable efforts to find a property meeting your criteria.
  - Recommending that you seek third-party advisers such as attorneys, accountants, home inspectors or basement contractors.
6. **Accounting:** Every agent must safeguard all funds, property or other things of value received from the parties to the transaction. Funds such as earnest money or cash advances are held in the agent's trust account where they are kept separate from the agent's money and where separate records are kept for each transaction.
7. **Objective presentation of offers:** Every agent must make an objective and unbiased presentation of all proposals and offers and indicate the advantages and disadvantages of each.

## AGENTS OWE A CLIENT ADDITIONAL FIDUCIARY DUTIES IN ADDITION TO DUTIES OWED TO ALL PARTIES

When you sign a listing contract or a buyer agency agreement, you become the client of the firm named in the contract. That firm and its agents owe you additional client-level duties that include:

1. **Loyalty:** An agent must loyally represent the client, avoid all conflicts of interest and put the client's best interests ahead of the agent's interests and the interests of any other party.
2. **Advice:** An agent must, when requested by a client, provide information and advice to the client on real estate matters that are material to the client's transaction.
3. **Disclosure:** An agent is obligated to disclose to the agent's client all information known by the agent that is material to the transaction and that the client doesn't already know and cannot discover through reasonably vigilant observation, provided that disclosure is not otherwise prohibited by law. Material information is information that a reasonable person might feel is important in choosing a course of action.

Examples of material information include:

- The existence of other offers.
- The reason the seller is selling, provided the seller permits this information to be shared with others and does not require that it be kept confidential.
- The buyer is seeking financing even though the offer appears to be a cash offer.

4. **Obedience:** The agent must carry out the obligations stated in the listing contract or the buyer agency agreement and must obey all of your lawful orders that relate to the agent's duties as stated in that contract. For example, the agent must order a survey or appraisal on your behalf if you ask the agent to do so, provided this function lies within the scope of the agency agreement. However, an agent may not honor your request if it causes the agent to violate the law.
5. **Negotiation:** The agent is required to act as an intermediary by facilitating or participating in communications between parties to a transaction, completing forms or other documents requested by a party, or presenting to a party the proposals of other parties to the transaction and giving a general explanation of the proposal's provisions. A client may agree to waive in part or in full the agent's duty to negotiate.

## Part 2 BUYER AGENCY

**Just because you're a buyer does not mean you have to be a customer. You can choose to work with the agent as a client. This relationship is referred to as "buyer agency." If you work with a buyer's agent, you will engage the agent to find you a home by signing a WB-36 Buyer Agency Agreement. The buyer's agent owes the buyer client the fair treatment duties owed to all parties plus the higher level of agent-client duties.**

### SELLING AGENT VS. BUYER'S AGENT

Wisconsin law does not allow real estate agents to be adversarial to either the seller or the buyer. They are legally required to treat all parties fairly.

If you work with a selling agent, there is no contract between you and the agent, and you are not the agent's client. You will, however, receive a Disclosure to Customers statement before the agent may begin to negotiate on your behalf. That disclosure statement lists the fair treatment duties owed by all agents to all parties, and the statement will inform you that the selling agent is either the seller's agent or is the agent of the listing firm. The selling agent will show you properties you are interested in seeing, get more information about properties of interest, and draft the purchase contract as you direct. The selling agent must provide you with information about any known or potential property defects and help identify those situations when you should consult a professional.

If you work with a buyer's agent, you and the buyer's agent will sign a WB-36 Buyer Agency Agreement and a Disclosure to Clients statement. This disclosure statement lists the fair treatment duties owed by all agents to all parties and the duties owed to clients. You are the client of the buyer's agent, and the buyer's agent receives a fee when you find a property and negotiate a purchase contract in accordance with your buyer agency agreement. You have the right to negotiate the fee with the buyer's agent and determine whether the fee may be paid by the listing firm, the seller, by you, or by a combination of these. A buyer's agent owes you the fair treatment duties owed to all parties plus the higher level of agent-client fiduciary duties described earlier.

### MULTIPLE REPRESENTATION

A multiple representation relationship exists when two or more of a real estate firm's clients are parties in the same transaction – for instance when the seller has a listing contract and the buyer has a buyer agency agreement with the same real estate firm. There are two types of multiple representation: one with designated agency and one without

designated agency. As a client, you are free to choose either type of multiple representation, or none at all.

A firm may not provide brokerage services in any multiple representation relationship without the written consent of all of the firm's clients participating in that multiple representation relationship.

## **MULTIPLE REPRESENTATION AND DESIGNATED AGENCY**

### **With designated agency**

In multiple representation with designated agency, a listing firm represents the seller. That same firm will also have a buyer agency agreement with the buyer. That firm may assign two agents: one to represent the seller as a seller's agent, and one to represent the buyer as a buyer's agent. Each agent will provide full negotiation services to each respective client.

Other features of designated agency include:

- All parties in a transaction must consent in writing to create designated agency.
- Any or all of the parties may thereafter withdraw consent, in writing, at any time.
- Each designated agent will keep the confidential information of the clients confidential.
- Each designated agent is allowed to provide advice and opinions to assist the client the agent is working with in negotiations, even if that advice and those opinions favor the interests of that client over the interests of the firm's other client in the transaction.

### **Without designated agency**

In multiple representation without designated agency, one agent or brokerage company represents both the seller and the buyer as clients in the same transaction, but there is no designated agency.

Because the buyer and seller will likely, at some point, have opposing interests in the transaction, it is impossible for the agent or company to provide the fullest client-level services at all times. In multiple representation without designated agency, the agent or company will take on a neutral role in the negotiations. For example, the agent or company will prepare contract proposals as directed by either party but may not provide either party with advice or opinions on how to gain an advantage over the other.

While this multiple representation relationship may limit the services provided to a particular client — and therefore must be consented to in advance in writing, it does increase the likelihood of the right buyer and seller finding each other. Without consent to the multiple representation relationship, the firm is not able to show its buyer clients the listings of the firm's seller clients. Ask your real estate agent or attorney for more information about all of these agency relationships.

There are primarily four ways in which multiple representation without designated agency is created:

1. The same firm represents a seller client (listing agreement) and a buyer client (buyer agency agreement) in the same transaction, and one of these clients consented to designated agency while the other consented to multiple representation without designated agency in respective agency agreements.
2. Since both clients did not consent to designated agency, this becomes a multiple representation without designated agency relationship. In this instance, the firm represents both clients but cannot place the interests of either client ahead of the interests of the other client in the transaction.
3. The same firm represents a seller client (listing agreement) and a buyer client (buyer agency agreement) in the transaction, but one or both of the clients have withdrawn consent to designated agency after previously consenting.  
  
Thus when the agency contracts were first entered into, both of the clients consented to multiple representation with designated agency, but later one or both clients withdrew their consent to designated agency. This then becomes a multiple representation relationship without designated agency, and the firm cannot thereafter place the interests of one client ahead of the interests of the other client in the transaction.
4. All clients consented to multiple representation without designated agency in their agency contracts with the same firm.

This means that when the agency contracts were first entered into by the buyer and the seller, typically via a buyer agency agreement and a seller listing agreement, both of the clients consented to multiple representation but without designated agency. The firm represents both clients but cannot put the interests of one client ahead of the interests of the other client in the transaction.

Ask your real estate agent for more information about these agency relationships.

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## RESOURCES

### Equal Opportunity in Housing

Federal, state and local laws and the REALTOR® Code of Ethics require sellers and REALTORS® to provide all buyers an equal opportunity to purchase a home. Under Wisconsin law, it is illegal to discriminate in renting or selling because of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, age, lawful source of income and ancestry. If you feel you may have been a victim of discrimination, contact:

- **Wisconsin Department of Workforce Development Equal Rights Division:** [dwd.wisconsin.gov/er](http://dwd.wisconsin.gov/er)
- **HUD Office of Fair Housing and Equal Opportunity:** [hud.gov/fairhousing](http://hud.gov/fairhousing)

### REALTOR® Complaints

If you would like to file a complaint regarding a violation of the REALTOR® Code of Ethics, the WRA's "Have a Complaint?" webpage outlines various options you can use to resolve your dispute, including filing with the DSPS, contacting the broker and more: [www.wra.org/complaint](http://www.wra.org/complaint)