

## General Information

Nebraska licensed real estate brokers and their associate brokers and salespersons are required by law to disclose the type of brokerage relationship they have with the buyers, tenants, sellers, or landlords to whom they are providing services in a real estate transaction. The buyers, tenants, sellers, or landlords may be either clients or customers of a licensee. A client of a licensee is a person or entity who has a brokerage relationship with that licensee. A customer of a licensee involved in a real estate transaction is a person or entity who does not have a brokerage relationship with that licensee, and who is not represented by any other licensee.

There are several types of brokerage relationships that are possible, and you, whether a client or a customer, should understand them at the time a licensee begins to provide brokerage services to you in a real estate transaction. They are: 1) Buyer Limited Agency; 2) Tenant Limited Agency; 3) Seller Limited Agency; 4) Landlord Limited Agency; 5) Dual Limited Agency; and 6) Common Law Agency.

The licensee who is offering brokerage services to you, or who is providing brokerage services for a particular property, must make certain disclosures regarding his/her brokerage relationship in the transaction. These disclosures must be made at the earliest practicable opportunity during or following the first substantial contact with a buyer, tenant, seller, or landlord who does not have a written agreement for brokerage services with another licensee.

All real estate licensees providing brokerage services are buyers or tenant's limited agents (NO WRITTEN AGREEMENT IS NECESSARY) unless:

1. the licensee has entered into a written agreement with a seller (a listing agreement) or a landlord (a management or leasing agreement) to represent the seller or landlord as their limited agent;
2. the licensee is providing brokerage services as a subagent of another broker who has an agency relationship with a client;
3. the licensee is providing brokerage services under a written consent to dual agency; or
4. the licensee is operating under a written common law agency agreement with a client.

At the end of each of the four sections in this brochure, brokers were given space to include information specifying those brokerage relationships their firms offer, and identifying the services they can provide within each relationship. Broker supplements to this brochure are distinguished by print type, and are in addition to the language prepared and approved by the Nebraska Real Estate Commission.

## Buyer Agency

A buyers limited agent is an agent who represents a buyer. A real estate licensee is a buyers limited agent unless one of the written agreements or consents described in this brochure is in place. A buyers agency may also be created by written agreement between you and a real estate broker. A buyers limited agent, in addition to performing under the terms of any written agreement made with the buyer, exercises reasonable skill and care for the buyer and promotes the interests of the buyer with the utmost good faith, loyalty, and fidelity. A buyers limited agent seeks a price and terms which are acceptable to the buyer; presents all written offers to and from the buyer in a timely manner; discloses, in writing, to the buyer all adverse material facts actually known by the limited agent; and advises the buyer to obtain expert advice on known matters beyond the limited agent's expertise. A buyers limited agent must account for all money and property received, and must comply with all applicable federal, state, and local statutes, rules, and ordinances.

A buyers limited agent shall not disclose any confidential information about the buyer unless required by statute or rule, or if failure to disclose would constitute fraudulent misrepresentation.

A buyers limited agent may retain and compensate other brokers as subagents only with the written agreement of the buyer. (Subagents have the same duties and obligations as the buyers limited agents.)

A buyers limited agent may show the same property to competing buyers, and assist competing buyers in attempting to purchase said property, without breaching any duty or obligation to their client.

A buyers limited agent owes no duty or obligation to a customer (seller) except to disclose, in writing, all adverse material facts actually known by the licensee. Adverse material facts may include adverse material facts concerning the buyers financial ability to perform the terms of the transaction.

A buyers limited agent must also act honestly and fairly in their dealings with a seller.

A buyers limited agent owes no duty to conduct an independent investigation of the buyers financial condition for the benefit of the seller, or to independently verify the accuracy or completeness of statements made by the buyer or any independent inspector.

A buyers limited agent must, if the seller is not represented by another licensee, provide a list of tasks that the buyers limited agent may perform for the seller (customer).

## Berkshire Real Estate offers a Buyer Agency brokerage relationship.

Berkshire Real Estate may perform the following tasks with an unrepresented Seller, to include but not limited to:

### ***Tasks for unrepresented Seller by Buyer's Agent:***

1. *Explain the home selling process.*
2. *Provide background information relating to the buyer's ability to perform under The proposed terms of an offer, except that required to be confidential.*
3. *Provide estimate of closing costs based on the proposed terms of an offer.*
4. *Provide market data that justifies the buyer's offer.*
5. *Present and explain clauses in the offer.*
6. *Present seller counter-offers to the buyer.*
7. *Provide follow-up services, including coordinating inspections, appraisals, surveys, etc.*
8. *Assist with utilities changes.*
9. *Assist with preparation and filing of documents.*
10. *Provide referral services, if relocating.*

## Seller Agency

A sellers limited agent is an agent who has entered into a written agreement to represent a seller. A sellers limited agent performs under the terms of the written agreement; exercises reasonable skill and care for the seller; and promotes the interests of the seller with the utmost good faith, loyalty, and fidelity. A sellers limited agent seeks a price and terms which are acceptable to the seller; presents all written offers to and from the seller in a timely manner; discloses, in writing, to the seller all adverse material facts actually known by the limited agent; and advises the seller to obtain any necessary expert advice on known matters beyond the limited agent's expertise. A sellers limited agent must account for all money and property received, and must comply with all applicable federal, state, and local statutes, rules, and ordinances.

A sellers limited agent shall not disclose any confidential information about the seller unless required to do so by statute or rule, or if failure to disclose would constitute fraudulent misrepresentation.

A sellers limited agent may retain and compensate other brokers as subagents only with the written agreement of the seller. (Subagents have the same duties and obligations as the sellers limited agent.)



A seller's limited agent may show and list alternative or competing properties without breaching any duty or obligation to the seller.

A seller's limited agent owes no duty or obligation to a customer (buyer) except to disclose, in writing, all adverse material facts actually known by the seller's limited agent. An adverse material fact may include:

1. environmental hazards affecting the property required by law to be disclosed;
2. physical condition of the property;
3. material defects in the property;
4. material defects in the title to the property; and
5. material limitations on the seller's ability to perform under a contract.

A seller's limited agent must also act honestly and fairly in his or her dealings with a buyer.

A seller's limited agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer, or to independently verify the accuracy or completeness of any statement made by the seller or an independent inspector.

A seller's limited agent must, if the buyer is not represented by another licensee, provide a list of tasks that the seller's limited agent may perform for the buyer (customer).

### ***Berkshire Real Estate offers a Seller Agency brokerage relationship.***

*Berkshire Real Estate may perform the following tasks with an unrepresented buyer, to include but not limited to:*

#### ***Tasks for unrepresented Buyer by Seller's Agent:***

1. *Explain the home buying process. Assess your wants and needs in a property*
2. *Assist in determining financial ability to purchase.*
3. *Provide The information on available financing.*
4. *Provide estimate of total investment and monthly investment required, based on the offer.*
5. *Provide estimate of closing costs at the time of completing the offer to purchase.*
6. *Review and explain clauses in the sales contract.*
7. *Provide background information you wish given to the seller regarding the terms of the offer.*
8. *Present offers to the seller and counter-offers from the seller.*
9. *Provide follow-up services, including arranging inspections, appraisal, delivering documents and copies.*
10. *Keep in contact with lenders, inspectors and sellers while awaiting closing and report progress.*

## **Limited Dual Agency**

A limited dual agency is an agent who, *with the written, informed consent* of all parties to a contemplated real estate transaction, represents both the seller and the buyer. Both parties are clients of the licensee.

A limited dual agent has the same duties and obligations of a limited agent to a seller *and* the same duties and responsibilities of a limited agent to a buyer except as set out below.

A limited dual agent may disclose any information to one client that is gained from the other, if the information is relevant to the transaction or the client, except that a limited dual agent *cannot* disclose the following without the informed written consent of the client to whom the information pertains:

1. the buyer is willing to pay more than the purchase price offered;
2. the seller is willing to accept less than the asking price;
3. the motivating factors for any client; or
4. a client will agree to financing terms other than those offered.

The limited dual agent cannot disclose to one client any confidential information about the other unless required by statute or rule, or if failure to disclose would constitute fraudulent misrepresentation.

*Berkshire Real Estate does offer this type of brokerage relationship in accordance with a completely executed "Berkshire Real Estate Dual Agency Agreement".*

## **Common Law Agency**

The duties and obligations of an agent under a common law agency agreement exceed the duties and obligations of a limited agent as described in this pamphlet and in Nebraska Statutes, Neb. Rev. Stat. § 76-2401 through 76-2430. For example, a licensee who is authorized by the principal to bind the principal to terms or conditions in a real estate transaction would be a common law agent. A buyer or seller and the real estate broker must enter into this type of agency through a written agreement which specifies the agent's duties and responsibilities, including the duty of confidentiality and the terms of compensation. An agreement such as this will be subject to the common law requirements of agency applicable to real estate licensees.

Berkshire Real Estate does not offer this type of brokerage relationship except in specific situations which have received written approval of the designated broker.