

Brokers: Do you know where your agents are?!

*As representation diversifies and agency definitions evolve,
brokers must define their relationship with buyer's reps*

By Marcie Roggow, ABR®

The relationship between brokers and listing agents is long-established and familiar. The broker relationship with buyer's reps, however, is still emerging. While reviewing the results of an ABR® course I taught recently, it became clear to me that the questions asked during the class had exhibited a basic lack of understanding of the legal responsibility of a buyer's rep to his or her broker. Then I received an E-mail message from a student. It said, "Thanks so much for your knowledge. I still have one question. If I give client level service to a buyer customer, is it illegal?" This convinced me that, as our numbers increase and we evolve the field of buyer representation, the relationship between buyer's reps and their brokers must be better defined.

Brokers are ultimately responsible, and could actually be held legally liable, for the actions of the agents practicing within their firms, whether they represent buyers or sellers. It follows, therefore, that the broker should be aware of everything that agent does—or doesn't do. Whether you are a broker or an agent, there are some basics of the broker-agent relationship in today's real estate business. Right now, because it's still in its infancy, buyer representation may call for additional vigilance. Here are some things you should consider.

**Congratulations,
your agents are calling
themselves buyer's reps.**

You and your agents may know the obligations of a listing agent to a broker, but do you know the obligations of a buyer's rep to the broker? The broker's duties vary depending on state laws. Make it your business to find out what they are. In my marketplace today, Megan's Law and the registration of convicted sex offender is a huge issue. As a buyer's rep, what am I responsible for disclosing to my client? As a broker, to what degree are my agents held responsible for this information as provided by the seller or the seller's agent? In a recent case in Idaho the buyer's broker was held liable for the inaccuracy of the square footage accuracy on the seller's fact sheet. As a broker, are you taking the time to review all of this information with your buyer's reps as it pertains to your company's clients?

**All listings (buyer or seller)
typically belong to the broker.**

When an agent signs a buyer to a buyer representation agreement, that document should be treated just like a listing agreement signed by a seller. Right now, as I travel around the country teaching, I'm seeing that most brokers are still unaware of whether buyer representation agreements are signed or not. Even in states that require an agency disclosure document to be signed before any real estate services are provided, this document is not being signed until the purchase agreement is signed. In cases where an agency disclosure document is signed as required, the broker doesn't see it or the buyer representation agreement until the file is turned in after closing. If the buyer doesn't buy, the buyer representation agreement never crosses the

broker's desk. Most states require that listing agreements be maintained for a number of years. In many states, those contracts must also include an agency disclosure statement.

Brokers must be aware of the potential liabilities in Buyer Representation.

Buyer's reps provide counsel to buyers over and above the actual details of the purchase contract. Brokers must be aware of every recommendation made to the client. For example, are your agents referring clients to third party companies for services without your knowledge? If the buyer perceives that the recommendation is coming from the company and not just the buyer's rep, you can be held accountable along with the agent if the services provided by that third party company are not what the buyer expected them to be. Real estate offices that have developed concierge services for clients are careful with their recommendations. The benefit of the service is that the recommendations are coming from the brokerage company—not an individual agent. Clients should be able to assume that brokers agree with recommendations made by agents.

Designated Agency presents special challenges.

Brokers and buyer's reps in states where designated or appointed agency exists must be particularly careful to take the steps necessary to reduce the potential for conflict in dual agency transactions. Brokers should be the single advisor to both the seller agent and the buyer's rep, and monitor the preservation of confidential information on both sides of transaction. To maintain this objective status, supervising brokers should not designate themselves to represent either side. In North Carolina, the statute specifies "if you are the supervising broker, you cannot be the designated agent for one of the parties when the salesperson is the designated agent for the other party. If the other agent is an associate broker, then the supervising broker can act as a designated agent." The theory here is that a broker cannot fairly supervise the actions of a licensee while acting as a designated agent for an opposing party

The preservation of confidential information is critical in Designated Agency.

Are your files locked or secured? Are you monitoring fax machine exchanges? Are your agents making confidential phone calls behind closed doors instead out in the open bullpen environment? Are you monitoring the conversations of the agents to ensure that confidential information is not being revealed? In the designated agency environment, the agents in the office are often in opposing positions. This impacts the natural flow of information within your office. Potential liability can occur, for instance, when the designated agent of the seller or the buyer simply goes on vacation and hands off a transaction in progress to a fellow agent to tend while he or she is away from the office. Many states require that this assignment be executed in writing, with the approval of both the client and the broker. When the original designated agent returns to the office, what happens to the confidential information that the substitute agent may have acquired? Does the substitute agent still remain an agent of the client? Is the broker even aware that when this circumstance exists?

If you are not up to date on the agency and disclosure requirements in your state, get in touch with your state licensing authority and get the most current information. Then, put office policies

in effect to protect yourself and all the agents working in your firm. If you haven't already done so, invest in some education for your agents to improve your client services and reduce your risk. If you're not an ABRM, consider becoming one. Call the REBAC licensed course providers in your area (see page 7) or call REBAC at 800 / 648-6224 for more information on ABR® and ABRM courses.

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