



**STATE OF WISCONSIN
DEPARTMENT OF
REGULATION AND LICENSING**

Jim Doyle, Governor

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YOUR RIGHTS AS A HOME BUYER OR SELLER

Congratulations on deciding to pursue the dream of home ownership! Buying or selling a home is an important event in your life which requires you to make many important decisions during the process. Although buying or selling a home can be a rewarding and exciting adventure, at times it can also be hectic and confusing. You may have many questions about what will occur, when and why. If you decide to use a Wisconsin licensed real estate agent this brochure will explain what brokerage services you may expect and the duties that these professionals owe to you under the law. Wisconsin law provides strong protections for all real estate consumers. The Wisconsin Department of Regulation and Licensing, (DRL) is proud to assist you in fully understanding your rights and opportunities as a real estate consumer in Wisconsin.

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 real estate 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 transaction.

➤ A real estate agent will explain the closing procedures in advance and make sure everything you need for the closing is ready. For example, if the agent provides closing services, the agent makes sure 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, the Department of Regulation and Licensing, private legal counsel and, if the agent is a member of the REALTORS[®] trade association, the local association of REALTORS[®].

THE REAL ESTATE AGENT'S RELATIONSHIP WITH CLIENTS AND CONSUMERS

Real estate agents must treat all parties to a real estate transaction fairly. You can work with a real estate agent in a real estate transaction in two ways—as a client or as a customer.

Consumer Resources

Department of Financial Institutions website:

<http://www.wdfi.org/>

Provided by the Wisconsin REALTORS® Assn.

This section provides information on many of the complex issues found in a real estate transaction which your salesperson deals with on a daily basis. For party specific information go to:

The WRA Home Buyer's Guide:

http://www.wra.org/Consumer_Resources/Buy_Guide/default.htm

The WRA Home Seller's Guide:

http://www.wra.org/Consumer_Resources/Seller_Guide/default.htm

Other Consumer Resource Pages

All Wisconsin REALTORS ® Association resource pages can be accessed from: http://www.wra.org/Consumer_Resources/index.htm

Client-Agent Relationship

A client, by contract, engages the professional services of a real estate agent. It is the agent's job to use his or her knowledge about buying and selling real estate to protect the best interests of the client. When you sell your home, with the real estate agent as a client, you sign a contract with the agent, called a listing contract. The listing agent then works for you and receives the commission agreed upon in the listing contract when the house is sold. Buyers can also work with agents as clients. This is a relationship referred to as buyer agency. You sign a contract with the agent, called the buyer agency agreement, the buyer's agent works for you and receives commission according to the buyer agency agreement.

In a seller/client relationship, the agent guides you throughout the real estate transaction, providing information on such issues as pricing the home, which purchase offers are fair, and how to structure a purchase contract to your advantage. 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 homes you are interested in seeing, get more information about houses of interest, and draft the purchase contract as you direct. The agent represents the best interests of the seller/client at the same time that the agent works with a buyer/customer. You will be asked to sign an agency disclosure form stating you are aware of the agent's relationship with both you and the seller when the agent starts identifying and showing you properties. Although you are not the agent's client, the agent is required by law to treat you fairly and honestly. The agent must provide you with information about any known property defects and help identify those situations when other expertise should be sought. The agent may suggest that you consult with a professional, such as a home inspector or building contractor to help you evaluate a property condition, or an attorney or accountant to advise you on legal or tax matters.

CONSUMER ALERT FROM THE DEPARTMENT OF FINANCIAL INSTITUTIONS

It is important for you to understand whom the agent works for and what services are provided. This is why Wisconsin law requires that an agent who is going to work with you to ask you to initial a written agency disclosure statement. This disclosure statement explains the duties owed to all parties, the duties owed just to clients, and the confidentiality rights of all parties. Agents 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 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 at pages 5-6. Duties owed only to clients are explained at pages 6-7. The formal agency disclosure language required by law is included in all DRL-approved listing contracts and buyer agency agreements. The same language may also be delivered to you in a separate form called a Disclosure of Real Estate Agency. State law requires that real estate licensees ask you to acknowledge receipt of the disclosure of agency in whatever form it is delivered to you.

Please review this information carefully. If you have any questions please 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.

WHAT DUTIES DO ALL REAL ESTATE AGENTS OWE ALL PARTIES IN A REAL ESTATE TRANSACTION?

- 1. Fair and honest treatment.** Every agent must provide services honestly, fairly, and in good faith. When answering your questions, every 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 or that you cannot discover through vigilant observation. Material adverse facts are facts that a party indicates is of such significance, or that is generally recognized by

THE “GOOD FUNDS LAW” IN WISCONSIN

Loan Funds at Closings - Section 708.10 of the Wisconsin Statutes pertains to how loan funds are guaranteed at closings. By calling the law the “Good Funds Law,” we mean that loan funds must be guaranteed by the lender before a borrower is allowed to make a complete settlement on his or her loan. Specifically, s. 708.10(2) provides that if a settlement agent (the loan closer) is to deliver qualified loan funds to the borrower in a transaction, or to a third party on the borrower’s behalf, *a lender may not permit or require a borrower to complete a loan settlement unless the lender unconditionally delivers qualified loan funds to the settlement agent before or immediately upon completion of the loan settlement.*

“Loan Settlement” means the occurrence of all of the following:

1. The borrower signs a promissory note, mortgage, and other loan documents the lender requires.
2. Delivery of the loan funds to the borrower or a third party on behalf of the borrower, such as the loan closer.
3. The borrower’s three-day right to rescind the loan has expired, if there is a right to rescind that particular loan.

“Qualified Loan Funds” can be any of the following:

1. A wire transfer.
2. Cashier’s check or teller’s check.
3. A check that is legally negotiable, and on which the lender or lender’s affiliate is the drawee (See s. 403.103(1)(b) and 403.104(1), Wis. Stats.).
4. The lender transfers the loan funds into an account maintained by the lender or lender’s affiliate that is for the settlement agent or borrower.

The loan transactions covered under the Good Funds law are defined in s. 706.001(1), Wis. Stats., including the refinancing of an existing loan that is secured by a mortgage on real property. This does not include open-end credit. For more information regarding this law, review the above mentioned statutes, which can be found on the Wisconsin Legislature’s home page at www.legis.state.wi.us. Click on “Wisconsin Law,” then “Statutes.” You may also wish to consult with private legal counsel.

What is multiple representation?

Multiple representation (formerly known as dual agency) exists when one real estate agent or brokerage company represents both the seller and the buyer as clients in the same transaction. 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 those situations where the agent's or company's duties of loyalty to one party are in conflict with the duties of loyalty owed to the other party, the agent or company will take on a more neutral role in the negotiations. For example, the agent or company will prepare contract proposals as directed by either party, rather than providing one party advice 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 agent or company is not able to show its buyer clients the agent's or company's listings. Ask your real estate agent or attorney for more information about all of these agency relationships.

Agency Disclosure Forms.

As either a customer or client you will receive the agency disclosure required under Wisconsin law. As a seller client, the disclosure will be included in your listing contract. As a buyer client the disclosure will be included in the buyer agency contract. If you are a customer it will be on an independent agency disclosure form provided to you by the agent.

Loan Funds at Closings.

If you are a buyer, any loan funds due at closing must be guaranteed by the lender before you can make a complete settlement on your loan. So ask your lender or closing agent about the status of loan funds due at closing to insure qualified loan funds will be available.

a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

3. Confidentiality. Every agent must keep confidential any information which you indicate to be confidential and any information that the agent knows a reasonable person would want to be kept confidential. When you receive the required agency disclosure statement that the agent must give you before beginning to work with you, you can list the information you consider to be confidential. You can also list information that might be considered confidential but which 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 with examples of sale prices for comparable properties. The agent cannot, however, give you an opinion about whether a particular house is priced too high or 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;
- 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 building contractors)

6. Accounting. Every agent must account for all funds 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.

REAL ESTATE AGENTS OWE A CLIENT ADDITIONAL FIDUCIARY DUTIES IN ADDITION TO THE DUTIES OWED TO ALL PARTIES

When you sign a listing contract or a buyer agency agreement you become the client of the broker named in the contract. That broker owes you additional client level duties which are:

1. Loyalty. An agent must loyally represent the client, avoid all conflicts of interest, and put the client's best interests ahead of the interests of any other party.

2. Disclosure. An agent is obligated to make a full, fair and timely disclosure to their client of all known facts that are material to the transaction. A material fact is one that a reasonable person might feel is important in choosing a course of action. Examples of material facts are:

- 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 it to be kept confidential.

3. 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 which 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 him or her to do so, provided this function lies within the scope of the agency agreement. However, an agent may not violate the law if you ask the agent to.

Although the buyer/customer and seller/client relationships are the most common relationships in a real estate transaction, there are other ways that you can interact with a real estate agent, depending on the circumstances and type of service you want and need. Such other agency relationships might include buyer agency and multiple representation.

What is Buyer Agency?

Just because you are 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.

How are selling agents and buyer's agents different?

The first thing to remember is that Wisconsin law does not allow real estate agents to be adversarial for or against the seller or the buyer. They are legally required to treat all parties fairly.

If you work with a selling agent, there is not a contract between you and the agent, and you are not the agent's client. You will, however, receive a Disclosure of Real Estate Agency form that lists the fair treatment duties owed by all agents to all parties, and indicates that the selling agent is the seller's agent. 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 sign a WB-36 Exclusive Buyer Agency Agreement which includes a Disclosure of Real Estate Agency. This disclosure lists the fair treatment duties owed by all agents to all parties and the duties owed to clients, and indicates that the buyer's agent is the agent of the buyer. You are the buyer's agent's client, 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 broker, the seller, by you, or by some combination of these. A buyer's agent helps you negotiate for beneficial contract terms, and generally assists you throughout the transaction. 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.