

## AND NOW A BIT ABOUT AGENCY.....



*Buying or selling a home is often one of the largest financial transactions a person makes. It is important to consider the kind of legal relationship you might be entering with the real estate agent you choose to assist you.*

*The term "agent" is often used interchangeably with a real estate salesperson, Broker, licensee or the real estate firm they are employed with. This brochure will refer to the individual representative as the "salesperson" and the real estate firm he/she works for as "the real estate firm" or "agent".*

### **YOUR RELATIONSHIP WITH THE SALESPERSON**

When you engage a salesperson to represent you or act on your behalf in a particular matter an agent/client relationship arises between you and his/her real estate firm. This relationship can be created by contract such as when you sign a listing contract for the sale of your home or a buyer's agency contract for representation in buying a home. It can also arise through the implied conduct and activity between you and the salesperson such as when the salesperson takes on the role of representing you in viewing properties, obtaining information, or assisting in negotiations.

Through these actions and conduct, it may become evident that the salesperson has undertaken to represent you even though your legal relationship has never been discussed. In the absence of any written listing or buying contract with the real estate firm, an agent/client relationship can be created when a salesperson undertakes to do something on your behalf which results in your reliance and acceptance of the salesperson's actions on your behalf.

### **THE SALESPERSON'S DUTIES AND OBLIGATIONS: FIDUCIARY RESPONSIBILITY**

Once an agent/client relationship is formed, the salesperson and his/her real estate firm is required to protect and promote your best interests in the transaction as they would their own. The following outlines some of their duties arising out of an agent/client relationship in a typical real estate transaction:

1. **Loyalty** to serve your best interests ahead of anyone else's, including their own and at all times to exercise good faith and to disclose all known facts and information which may influence your decision.
2. **Obedience** to follow all of your lawful instructions.
3. **Discretion** to keep confidential your private circumstances, motivations, and confidences which you shared with the salesperson or which the salesperson or the real estate firm has learned.
4. **Competence** to exercise reasonable care and skill in performing all assigned duties.
5. **Accounting** of all money, deposits, or other property entrusted to them.

## **TYPES OF AGENCY RELATIONSHIPS**

### **AGENT REPRESENTS ONE PARTY:**

In Manitoba, the approach to real estate agency relationships is one that reflects the general understanding and expectation of buyers and sellers. It is generally understood that whether selling or buying, the salesperson and his/her real estate firm that you engage and rely on for representation has formed an agency relationship with you whereby the agent/client duties arise. It is this approach that is reflected in your local real estate board's multiple listing contract for residential property and the statutory residential offer to purchase form that the salesperson is required to use for residential properties. It is assumed, that unless the parties otherwise agree, the salesperson and the firm representing the seller is the seller's agent and the salesperson and the real estate firm representing the buyer is the buyer's agent.

### **AGENT REPRESENTS BOTH PARTIES:**

It may arise that your salesperson or his/her real estate firm also represents the person who wishes to buy your home (or represents the owner of the home you are interested in buying). This may occur (even though the salespeople are different persons) when both salespeople are employed by the same firm. When this occurs, a conflict of interest arises and the real estate firm can only continue to represent both parties when both parties consent to the joint representation and acknowledge the impact that the joint representation will have on the agent's duties. You may be asked to sign an Acknowledgement of Limited Joint Representation. The terms of that acknowledgement will set out the agreed limits of the agency duties outlined earlier in this brochure. When both parties agree to limited joint representation, the salesperson and his/her firm's relationship to both parties is tempered by the requirement for fairness and evenhandedness resulting in the firm being unable to represent the interests of either party over the other. Subject to the terms of the Acknowledgement of Limited Joint Representation, the salesperson may no longer be able to keep confidential certain types of information relevant to the transaction from the other party and may be compelled to disclose these facts in an exercise of openness and fairness. Even though this conflict arises, if both seller and buyer consent to limited joint representation, the agent can continue. If you have any questions or concerns about joint representation and the impact it will have on the agency duties you should discuss your concern with the salesperson involved before entering an agent/client relationship. The terms of any listing or buying contract that you sign will include your consent to the real estate firm representing both parties jointly; if that is not your desire, the agreement should be amended accordingly.

## **NO AGENCY REPRESENTATION:**

Apart from a single agency relationship (where the firm represents one party) or joint agency relationship (where the firm represents both parties), it is possible to engage the services of a salesperson without you and the real estate firm establishing an agent/client relationship. An example of this might be when you call a salesperson in response to an ad or a sign on a property, or when you attend an open house and deal with the salesperson representing the seller. In these instances, the salesperson you ask to assist you should make it clear to you that in showing you a particular property he or she is representing the seller alone. Even though it is clear between you and the salesperson that the salesperson is not representing you, the salesperson will still owe certain legal and ethical responsibilities to you which include the following:

1. **Honesty and Fairness** in response to all of your questions concerning real property the salesperson is promoting.
2. **Care and Skill** in providing accurate information and assistance with the offer to purchase contract, in presenting the offer you submit, in dealing with conditions, in explaining legalities, and overall general assistance.

One of the disadvantages of dealing with the other party's agent or not having an agent/client relationship with the salesperson you have assisting you is that you cannot expect the salesperson to negotiate price and terms on your behalf or disclose all information that may influence your decision because such activity may be contrary to the best interests of the client whom the salesperson represents.

## **AGENCY DISCLOSURE**

A REALTOR® is required to abide by a strict code of ethics and standards of business practice which serve to protect the buying and selling public. One of the ethical obligations embodied in the standards of business practice requires that all REALTORS® disclose to all parties concerned who it is they are representing in a real estate transaction, i.e., seller or buyer. More precisely the requirement reads as follows:

A REALTOR® shall fully disclose in writing to, and is advised to seek written acknowledgement of disclosure from, his or her Clients and those Customers who are not represented by other Registrants regarding the role and the nature of the service the REALTOR® will be providing. This disclosure shall be made at the earliest possible opportunity and in any event prior to the REALTOR® providing professional services which go beyond providing information as a result of incidental contact by a consumer.

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