



Guide for Properly Explaining and Completing the NYS Agency Disclosure Form with Sellers, Buyers, Landlords and Tenants

Agency Disclosure: Since 1991 the law requires Real Estate Licensees to present the New York State Agency Disclosure Form ("Form") to sellers, buyers, landlords and tenants for their signatures at the first substantive contact. (See Article 12A of the NYS Real Property Law, Section 443). If the parties to whom you present the Form refuse to sign it, you will then have to sign a document called a Declaration by Real Estate Licensee (at LIBOR it is Document #211 on Documents on Demand at LIRealtor.com) which is an affirmation that states you presented the Agency Disclosure Form to the buyer, seller, landlord or tenant, explained what it meant, and the party refused to sign. Under no circumstances should you write "Refused to sign" or anything similar on the Form itself!

The Form has places for you to disclose whether you are working for or working with the seller, buyer, landlord or tenant. There is also a section on the Form that, once properly explained, can enable clients to grant you a right to represent more than one party in a dual agency situation.

Dual Agency: Merely bringing the buyer and seller or landlord and tenant together in a transaction does not necessarily give rise to your working as a dual agent. Dual agency only occurs when the buyer and seller, or landlord and tenant, are both your clients! The word "dual" refers to two clients, not just two parties, only one of whom is a client while the other is a customer!

Before clients agree to your representing them both, you must clearly explain what dual representation entails! When you only represent one party, that party is your client and you owe that client your complete loyalty. When you represent two clients whose aims and goals may be the direct opposite of each other you have a divided loyalty. For instance, if you represent only the seller or landlord and a buyer or tenant tells you he may raise his offer, you have a duty to give that information to the seller or landlord. If, on the other hand, you represent only the buyer or tenant and the seller or landlord indicates he may take less than the asking price for the property, you must inform the buyer or tenant of that fact. When, however, you represent both the seller and the buyer, or both the landlord and the tenant, (now they are both your clients) you cannot tell either the seller or the buyer or the landlord or tenant anything you have not been clearly instructed by your clients to disclose. That is an example of divided loyalty, when you, as a dual agent, cannot be the eyes and ears of the parties, but can only disclose that which you are expressly directed to reveal. All parties should understand that a dual agent cannot favor the rights of one client above the rights of another client. Dual agency with designated agents is still dual agency, and has the same limitations and divided loyalty as explained above regarding



dual agency with one agent representing both buyer and seller or landlord and tenant. In dual agency with designated agent, both agents are agents of each of the clients and as such have fiduciary duties to both clients. Incidentally, under the statute, a broker or office manager may **never** be a designated agent under any circumstances.

How to Properly Fill out the Disclosure Form

Seller Client: When you take a listing from a seller, you put your name and the office name in the Disclosure Form and indicate that you are working for the seller as a seller's agent by checking the first two lines on the left side of the page. After you explain what the agency duties encompass, you should ask the seller if the seller wishes you to bring buyer clients to the home. If the seller wishes you to bring your buyer clients, you should ask the seller if the seller would like to check off the advanced informed consent to dual agency. If another agent in the listing office has a buyer client and the seller has stated those buyers can be brought to the home, you should ask the seller if he wishes to check the advanced informed consent to dual agency with designated agent. You will then fill in the blanks stating that another agent from the office will represent the buyer and you will represent the seller. Finally, you will ask the seller to sign and put a date on the bottom of the page

Buyer Client: When you take on a buyer client, put your name and the office name on the Disclosure Form and indicate that you are working for the buyer as a buyer's agent by checking the first two lines on the right side of the page. After you explain what the agency duties encompass, you should ask the buyer if the buyer wishes to view homes listed by you. If the buyer wishes to see your listings, you should ask the buyer if he would like to check off the advanced informed consent to dual agency. If another agent in the office has a listing and the seller has stated the office's buyer clients can be brought to the home, you should ask the buyer if he would like to check the advanced informed consent to dual agency with designated agent and put in the blanks that you will represent the buyer and another agent from the office will represent the seller. Finally, you will ask the buyer to sign and put a date on the bottom of the page.

Under no circumstances should you have sellers and buyers or landlords and tenants accept your acting as a dual agent unless you believe the sellers and buyers or landlords and tenants completely understand the ramifications and have agreed to allow the undivided loyalty from your office.

It is probably a good idea to have the sellers, buyers, landlords and tenants initial and date their original agency disclosure forms again, in the middle of the page where it merely states "Dual Agent," and, below that, "Dual agent with designated agent," at the time a dual agency event occurs, even though you had already received advanced informed consent for the dual agency when you originally took the listing or signed with the buyer client, in order to show that you



have discussed dual agency with the clients additionally at the time the situation actually arose and they had agreed for a second time!

Customers: When a buyer who is a customer wishes to see your office's listings, the agency disclosure should state that you are acting in the interest of the seller as a seller's agent.

When you are hosting an Open House, all your agency disclosures should state you are acting in the interest of the seller as a seller's agent. If the buyer at an Open House wants to purchase the house, you are not a dual agent! The seller is your client and the buyer is your customer! You **must** have two clients in order to be a dual agent!

If the buyer wants to see listings from other offices, the agency disclosure should state you are acting in the interest of the seller as a broker's agent.

You will never indicate you are acting in the interest of the buyer as a broker's agent unless the following were to occur: An agent from another office who represents a buyer asks you to help find houses for this buyer and to work in the buyer's interest, but you shall not deal directly with the buyer. You will therefore be an agent of the buyer, but only through the buyer's agent, so that, in this very limited circumstance, you will disclose to the sellers whose homes you find for that buyer to see, that you are working for the buyer as a broker's agent! As you can imagine, this circumstance rarely occurs!

Landlords and Tenants: When making disclosures to landlords and tenants you will follow the same procedures as you do when working with sellers and buyers.

Commission: Your commission may be paid by any party, whether a client or a customer, as long as that party has agreed to pay you. Agency is not determined by payment, but by the agreement of the parties involved in the transaction.