

NORTH DAKOTA DISCLOSURE OF AGENCY RELATIONSHIPS IN REAL ESTATE TRANSACTIONS PAGE 1 of 2

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North Dakota law requires that, early in a relationship (at first substantive contact), real estate Brokers discuss with consumers what type of agency representation or relationship they desire (unless otherwise specified, the term “Broker”, as used in this form, includes both Brokers and Broker’s Salespersons). The available agency options are listed on this form.

This is not a contract. This is an agency disclosure form only. If you desire representation, you must have a written contract according to state law (a Listing Agreement if you are a Seller, or a Buyer Representation Agreement if you are a Buyer). Until such time you choose to enter into a written contract for representation, you will be a Customer and will not receive any representation from Broker (See Non Representation Acknowledgement Form).

I. Customer: A Seller, Buyer, lessor, or lessee, who is not represented by a Broker in a transaction, is considered a *customer*. Brokers are not agents of a *customer* and owe *customer* only limited legal duties. **However, Brokers must deal honestly with any party to a real estate transaction, regardless of whether the party is represented by that Broker.** These limited legal duties are to perform the customary acts typically performed by Brokers in assisting a transaction to the transaction’s closing or conclusion with honesty and good faith and to disclose to *customer* any adverse material facts actually known by Broker which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. Brokers do not owe the agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, and accounting to a *customer*. *Customers* should be aware that any information shared with any Broker may be disclosed. If Broker represents another party in the same real estate transaction, Broker is required to place the interest of the represented client first.

II. Seller’s Broker: A Broker who lists a property, represents the Seller, and acts on behalf of the Seller. A Seller’s Broker owes to Seller the agency duties described on lines 70-77. Seller’s Broker must also disclose to Buyer material facts, as defined by state law, of which Broker is aware that could adversely and significantly affect Buyer’s use or enjoyment of the property. If Broker is working with Buyer as a *customer*, but is representing Seller, Broker must act in Seller’s best interest and must tell Seller any information disclosed to Broker. If Broker is representing Seller, Buyer *customer* will not be represented and will not receive advice and/or counsel from Broker. If Broker represents two or more Sellers as clients, who both desire to offer competing real property for sale or lease, Broker may do so without breaching any duty to such clients. In such an event, Broker still owes agency duties to the clients, except as limited in this Paragraph II.

III. Buyer’s Broker: A Broker who enters into an agreement to represent and act on behalf of a Buyer. A Buyer’s Broker may represent Buyer only, and not Seller, even if they are being paid in whole or in part by Seller. A Buyer’s Broker owes to Buyer the agency duties described on lines 70-77. Broker must disclose to Buyer material facts, as defined by state law, of which Broker is aware that could adversely and significantly affect Buyer’s use or enjoyment of the property. If Broker working with Seller as a *customer* is representing Buyer, Broker must act in Buyer’s best interest and must tell Buyer any information disclosed to Broker. If Broker is only representing Buyer, Seller will not be represented and will not receive advice and/or counsel from Broker. If Broker represents two or more Buyers as clients who desire to make an offer to purchase the same real property, Broker may do so without breaching any duty to such clients; and may assist such clients with multiple offers even though the interest of such clients are competing. However, if the same Salesperson represents two or more Buyers who desire to make an offer to purchase the same property, that Salesperson must disclose to Buyer clients the fact that a competing written offer has been submitted by another Buyer client of that Salesperson, without disclosing the identity of the other Buyer client, or the terms of the offer. In such an event, Broker and Salesperson still owe agency duties to the clients, except as limited in this Paragraph III.

IV. Dual Agency– Broker Representing Both Seller and Buyer: Dual agency occurs when one Broker represents both parties to a transaction, or when two Salespersons licensed to the same Broker each represent a party to the transaction (unless Appointed Agency applies, see V). Dual agency requires the informed written consent of all parties, and means that Broker owes the same duties to Seller and Buyer. This role limits the level of representation Broker can provide, and prohibits Broker from acting exclusively for either party. In Dual agency, Broker’s knowledge regarding either party’s willingness to negotiate further on price or terms, or regarding motivation for pursuing a transaction, will be kept confidential, unless Buyer or Seller instructs Broker in writing to disclose specific information about him/her. Dual Agents may not advocate for one party to the detriment of the other. Within the limitations described above, Dual Agents owe to both Seller and Buyer the agency duties described on lines 70-77. Dual Agents must disclose to Buyers material facts, as defined by state law, of which Broker is aware that could adversely and significantly affect Buyer’s use and enjoyment of the property.

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V. Appointed Agency: Some Brokers have the option of replacing Dual Agency (see IV) with Appointed Agency for in-house transactions. Broker may appoint one Salesperson affiliated with Broker to exclusively represent a Seller, and one Salesperson affiliated with Broker to exclusively represent Buyer. In that case, no Dual Agency is created. **Any Appointed Agent who singularly represents both Seller and Buyer in the same transaction is considered to be a disclosed Dual Agent owing agency duties to both parties, and must get permission from both parties to so act.**

VI. Subagent: A Broker who is working with a Buyer as a *customer*, but represents a Seller whose property is listed with a different brokerage. If a Broker working with a Buyer as a *customer* is representing Seller, Broker must act in Seller's best interest and must tell Seller any information that is disclosed to Broker. In that case, Buyer is a *customer*, is not represented by either Broker, and will not receive advice/or counsel from Broker.

VII. Limitation:

(A) Intent to Perform- Broker/Salesperson must disclose any information to either party which may indicate that one of the parties does not intend to perform in accordance with the terms of the purchase agreement or any other written agreement or obligation.

(B) Imputed Knowledge- The knowledge of one Salesperson of a real estate brokerage firm regarding an affected real property is not imputed to another Salesperson in the same brokerage firm and no duty is imposed upon a Salesperson in a real estate brokerage firm to disclose facts that are known by that Salesperson regarding the affected real property to another Salesperson within the same real estate brokerage firm.

(C) Disclaimer of Certain Obligations- Unless otherwise agreed in writing, a Broker and its Salespersons are not obligated to a client, a customer or any other person to discover defects in any real property, to verify the ownership of any real property, or to independently verify the accuracy or completeness of any statement or representation made by any person other than Broker and Salesperson involved in the transaction under question.

VIII. Agency duties:

- A. **Loyalty-** Broker/Salesperson will be faithful to and act only in the best interest of client(s).
- B. **Obedience-** Broker/Salesperson will carry out all lawful instructions of client(s).
- C. **Disclosure-** Broker/Salesperson will disclose all material facts to client(s) (that they have knowledge of) which might reasonably affect the client(s)' use and enjoyment of the property.
- D. **Confidentiality-** Broker/Salesperson will keep the confidences of client(s) unless required by law to disclose specific information (such as disclosure of material facts to a Buyer).
- E. **Reasonable Care-** Broker/Salesperson will use reasonable care in performing duties as an agent.
- F. **Accounting-** Broker/Salesperson will account for all money and property received as agents for client(s).

If Seller decides not to agree to a Dual Agency relationship or an Appointed Agency relationship, Seller may give up the opportunity to sell the property to Buyers represented by Broker/Salesperson.

If Buyer decides not to agree to a Dual Agency relationship or an Appointed Agency relationship, Buyer may give up the opportunity to buy the property of Sellers represented by Broker/Salesperson.

Acknowledgement: I/We acknowledge that I/we have been presented with the options described on pages 1 and 2 of this Agency Relationship Disclosure. I/We understand that until I/we have signed a representation contract I/we have no representation by Broker and information given to Broker may be disclosed. I/We understand that written consent is required for a dual agency relationship and for an appointed agency relationship.

THIS IS A DISCLOSURE ONLY, NOT A CONTRACT FOR REPRESENTATION.

Signature _____ Date _____ Signature _____ Date _____

Printed Name _____ Printed Name _____