

IDAHO BROKERAGE DISCLOSURE

The law requires all real estate licensees to perform certain basic duties when dealing with any real estate buyer or seller. You can expect any real estate licensee you deal with to provide the following “customer-level” services:

- To perform necessary and customary acts to assist you in the purchase or sale of real estate;
- To perform these acts in good faith and with reasonable care;
- To properly account for money or other property you place in his or her care; and
- To disclose “adverse material facts” which are, or should be, within that licensee's knowledge. These include facts that would significantly affect the desirability or value of the property to a reasonable person, and facts that would indicate to a reasonable person that one of the parties cannot, or will not, complete his obligations under the contract. (Note: Idaho law exempts “psychological” impacts from this disclosure requirement. See Section 55-2701, Idaho Code)

Unless or until you enter a written agreement with the brokerage for agency representation, you are considered a “Customer” of the brokerage, and the brokerage will not act as your agent. As a Customer, you should not expect the brokerage or its licensees to promote your best interest, or to keep your bargaining information confidential.

Whenever you speak to a licensee who represents a party on the other side of the transaction, (e.g., you are seeking to buy the property, and the licensee represents the seller), you should assume that any information you provide **will be** shared with the other party.

If offered by the real estate brokerage, you may enter a written agreement for “Agency Representation,” requiring that the brokerage and its licensees act as an “Agent” on your behalf and promote your best interests as their “Client.” Idaho law authorizes three types of Agency Representation.

Single Agency:

If you enter a written agreement for Agency Representation, you, as a Client, can expect the real estate brokerage to provide the following services, in addition to the basic duties and obligations required of all licensees:

- To perform the terms of your written agreement with skill and care;
- To promote your best interest, in good faith, honest and fair dealing;
 - **If you are the seller**, this includes seeking a buyer to purchase your property at a price and under terms and conditions acceptable to you, and assisting in the negotiation thereof; and, upon your written request, asking for reasonable proof of a prospective buyer's financial ability to purchase your property;
 - **If you are the buyer**, this includes seeking a property to purchase at an acceptable price, terms and conditions, and assisting in the negotiation thereof; and, when appropriate, advising you to obtain professional inspections of the property, or to seek appropriate tax, legal and other professional advice or counsel.
- To maintain the confidentiality of specific client information, including bargaining information, even after the representation has ended.

Limited Dual Agency:

At a time you enter an agreement for Agency Representation, you may be asked to give written consent allowing the brokerage to represent both you and the other party in a transaction. This “dual agency” situation can arise when, for example, the brokerage that represents you, the seller, also represents buyers who may be interested in purchasing your property. When this occurs, it is necessary that the brokerage's representation duties be “limited” because a buyer and seller have built-in conflicts of interest. Most significantly, the buyer typically wants the property at the lowest price, while the seller wants top dollar. **As a “limited dual agent,” the brokerage and its licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning price negotiations, terms or factors motivation the client/buyer to buy or the client/seller to sell.** However, the brokerage must otherwise promote the best interests of both parties, perform the terms of the

written representation agreement with skill and care, and perform all other duties required by law.

Buyers and sellers alike often find it desirable to consent to limited dual agency: buyers do not want the brokerage to be restricted in the search for suitable properties, and sellers do not want the brokerage to be restricted in the search for suitable buyers. Thus, when all parties agree in writing, a brokerage may legally represent both the buyer and the seller in the same transaction, but only as a **“limited dual agent.”**

Limited Dual Agency with Assigned Agents:

In some situations, a brokerage that has obtained consent to represent both parties as a limited dual agent may assign individual licensees (“sales associates”) to act solely on behalf of each party. (The brokerage must have an office policy that ensures client confidences are protected.) Where this is the case, the sales associate, or “assigned agent,” is not limited by the brokerage’s agency relationship with the other party, but instead has a duty to promote the best interest of the client that he or she is assigned to represent, including negotiating a price. The designated broker (the licensee who supervises the sales associates in the brokerage firm) remains a limited dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

What to Look For in Any Agreement for Agency Representation:

Whatever type of representation you choose, your written Agency Representation Agreement should answer these questions:

- How will the brokerage be paid?
- When will this Agreement expire?
- What happens when a transaction is completed?
- Can I cancel the Agreement, and if so, how?
- Can I work with other brokerages during the time of the Agreement? And what happens if I sell or buy on my own?
- Am I willing to allow this brokerage to represent me and the other party in the same transaction?

Real Estate Licensees Are Not Inspectors:

Even if you have a written agreement for agency representation, you should **not** expect the brokerage or its licensees to conduct an independent inspection of the property, or to independently verify any statement or representation made by any party to the transaction or other reasonably reliable sources (such as a licensed appraiser, home inspector, or the county assessor’s office). Real estate licensees are entitled to reasonably rely on the statements of their clients and other third-party sources. ***If the condition of the property is important to you, you should hire an appropriate professional, such as a home inspector, surveyor, or engineer.***

Idaho Real Estate Brokerage Representation Act:

The specific duties owed by the real estate brokerage and its licensees to a customer or client are defined by the “Idaho Real Estate Brokerage Representation Act,” located at Idaho Code Section 54-2052, et seq.

When you sign a real estate Purchase and Sale Agreement as a buyer or seller, you will be asked to confirm:

1. that this disclosure was given to you and that you have read and understand its contents; and
2. the agency relationship, if any, between you and the brokerage working with you.