Commonwealth of Massachusetts

BOARD OF REGISTRATION OF REAL ESTATE BROKERS AND SALESPERSONS

www.mass.gov/dpl/boards/re

MASSACHUSETTS MANDATORY REAL ESTATE LICENSEE-CONSUMER RELATIONSHIP DISCLOSURE

THIS IS NOT A CONTRACT

This disclosure is provided to you, the consumer, by the real estate licensee listed in this disclosure.

THE TIME WHEN THE REAL ESTATE LICENSEE MUST PROVIDE THIS NOTICE TO THE CONSUMER:

All real estate licensees must present this form to you at the first personal meeting with you to discuss a specific property. In the event this relationship changes, an additional disclosure must be provided and completed at that time.

CONSUMER INFORMATION AND RESPONSIBILITY:

If you are a buyer or seller, you can engage a real estate licensee to provide advice, assistance and representation to you as your agent. The real estate licensee can represent you as the seller (Seller's Agent) or represent you as the buyer (Buyer's Agent), or can assist you as a Facilitator.

All real estate licensees, regardless of the working relationship with a consumer must, by law, present properties honestly and accurately, and disclose known material defects in the real estate.

The duties of a real estate licensee do not relieve consumers of the responsibility to protect their own interests. If you need advice for legal, tax, insurance, zoning, permitted use, or land survey matters, it is your responsibility to consult a professional in those areas. Real estate licensees do not and cannot perform home, lead paint, or insect inspections, nor do they perform septic system, wetlands or environmental evaluations.

Do not assume that a real estate licensee works solely for you unless you have an agreement for that relationship.

For more detailed definitions and descriptions about real estate relationships, please see page 2 of this disclosure.

THE SELLER OR BUYER RECEIVING THIS DISCLOSURE IS HEREBY ADVISED THAT THE REAL ESTATE LICENSEE NAMED BELOW IS WORKING AS A:

Check one: ☐ **Seller's agent** ☑ **Buyer's agent** ☐ **Facilitator**

If seller's or buyer's agent is checked above, the real estate licensee must complete the following section:

Check one:

☑ **Non-Designated Agency**

The real estate firm or business listed below and all other affiliated agents are also working as the agent of the ☐ **Seller** ☑ **Buyer**

☐ **Designated Agency**

Only the licensee named herein represents the ☐ **Seller** ☐ **Buyer** (designated seller agency or designated buyer agency). In this situation any other agents affiliated with the firm or business listed below do not represent you and may represent another party in your real estate transaction.

By signing below, I, the real estate licensee, acknowledge that this disclosure has been provided to the consumer named herein:

Signature of Real Estate Licensee	*Printed Name of Real Estate Licensee*	*License #*	☐ *Broker* ☐ *Salesperson*	*Today's Date*
Buyer's Choice Realty	8375			
Name Real Estate Brokerage Firm	*Brokerage Firm Real Estate License #*			
Signature of Consumer	*Printed Name of Consumer*		☐ *Buyer* ☐ *Seller*	*Today's Date*
Signature of Consumer	*Printed Name of Consumer*		☐ *Buyer* ☐ *Seller*	*Today's Date*

☐ *Check here if the consumer declines to sign this notice.*

Last Revised: January 24, 2017

TYPES OF AGENCY REPRESENTATION

SELLER'S AGENT

A seller can engage the services of a real estate licensee to act as the seller's agent in the sale of the seller's property. This means that the real estate agent represents the seller, who is a client. The agent owes the seller client undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put the seller's interests first and attempt to negotiate price and terms acceptable to their seller client. The seller may authorize sub-agents to represent him/her in marketing its property to buyers, however the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions.

BUYER'S AGENT

A buyer can engage the services of a real estate licensee to act as the buyer's agent in the purchase of a property. This means that the real estate agent represents the buyer, who is a client. The agent owes the buyer client undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put the buyer's interests first and attempt to negotiate price and terms acceptable to their buyer client. The buyer may also authorize sub-agents to represent him/her in purchasing property, however the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions.

(NON-AGENT) FACILITATOR

When a real estate licensee works as a facilitator that licensee assists the seller and/or buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated, owe the seller and buyer a duty to present all real property honestly and accurately by disclosing known material defects and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. Should the seller and/or buyer expressly agree, a facilitator relationship can be changed to a seller or buyer client relationship with the written agreement of the person so represented.

DESIGNATED SELLER'S AND BUYER'S AGENT

A real estate licensee can be designated by another real estate licensee (the appointing or designating agent) to represent a buyer or seller, provided the buyer or seller expressly agrees to such designation. The real estate licensee once so designated is then the agent for that buyer or seller who becomes the agent's client. The designated agent owes the buyer client or seller client, undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put their client's interests first, and attempt to negotiate price and terms acceptable to their client. No other licensees affiliated with the same firm represent the client unless otherwise agreed upon by the client. In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer in the same transaction, then the appointing agent becomes a dual agent. Consequently, a dual agent cannot fully satisfy the duties of loyalty, full disclosure, obedience to lawful instructions, which is required of a seller or buyer agent. Only your designated agent represents your interests. Written consent for designated agency must be provided before a potential transaction is identified, but in any event, no later than prior to the execution of a written agreement for purchase or sale of residential property. The consent must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample consent to designated agency is available at the Board's website at www.mass.gov/dpl/re.

DUAL AGENT

A real estate licensee may act as a dual agent representing both the seller and the buyer in a transaction but only with the express and informed written consent of both the seller and the buyer. A dual agent shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently, a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions, which is required of a seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds. Written consent for dual agency must be provided before a potential transaction is identified, but in any event, no later than prior to the execution of a written agreement for purchase or sale of residential property. The consent must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample consent to dual agency is available at the Board's website at www.mass.gov/dpl/re.

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Our Explanation of Consumer/Licensee Relationships in Massachusetts

This disclosure is required by the real estate Licensing Board to make certain consumers are made aware of how real estate works in Massachusetts. It is merely a disclosure for consumer protection and does not obligate the consumer in any way. It is required that all real estate licensees present it at the first personal meeting to discuss any specific property with a consumer.

The potential relationships between a consumer and a real estate licensee include: **Seller Agency**, **Buyer Agency**, **Facilitator** or non-agency, **Disclosed Dual Agency**, and the preferred approach of most Massachusetts real estate companies, **Designated Agency**.

Sub-agency is the way real estate was done for decades. A sub-agent is simply an agent of an agent. When one firm invites another firm to represent their client; that is called Sub-agency. At one time all real estate agents worked for the seller as agents or sub-agents. Buyer Agency changed all that. Very few Massachusetts real estate firms offer sub-agency relationships today.

Both Seller Agency and Buyer Agency require **fiduciary level services** to their clients as follows:

Obedience to the lawful instruction of the client.
Undivided Loyalty or placing the clients interest above all others including their own.
Full Disclosure of everything known about the other side of the transaction.
Confidentiality for everything know about the client and their circumstances.
Accountability to the client (buyer or seller) who is the principal of the agent.
Reasonable Care and Due Diligence to avoid foreseeable risk.

Exclusive Seller Agencies (ESA's) and **Exclusive Buyer Agencies** (EBA's) are the ones who can always do this for their clients without conflict. **Single Agencies** tend to be smaller offices working for either buyers or sellers, but never both in the same transaction. If conflicted, they refer out buyers. **ESA's** work for sellers and never buyers while **EBA's** work only for buyers and never sellers. **We are EBA's!**

There is an inherent conflict when a real estate firm represents both sellers and buyers at the same time. This is called Dual Agency and requires written, informed consent to both parties. This applies to both Designated Agency offices and Dual Agency offices.

Disclosed Dual Agency requires that confidentiality remains, but the agent may not advocate for one side over the other since both parties are being represented. This means a reduction in service for both parties. The agent works for both and must assume a neutral role. Fiduciary duties are minimized or eliminated because of conflict.

Designated Agency is a form of Dual Agency wherein one agent is designated to represent the seller and another agent is designated to represent the buyer and the appointing agent is considered a Dual Agent.

Facilitator the non-agency option in Massachusetts does not represent either party and confidentiality is not required since it is a fiduciary duty owed only to a represented client; never to a customer.