

# Buyer's Agents and Seller's Agents Have Two Very Different Jobs

## Know The Players

To understand agency, it helps to first know the names of the players. A “broker” is a person who has passed a special exam to earn the designation and is licensed by the state. Typically a principal broker forms a real estate company and recruits real estate licensees (salespersons and associate brokers) to the company as associates (often called “agents”). Agency agreements are legally made between the client and the company, personified by the principal broker. The associates, or agents, represent the principal broker by working personally with the firm’s clients and get some or all of the resulting brokerage commission.

## Agent And Principal

Legally speaking, an agent is the person who represents and acts on behalf of another person, called the principal. The agent owes certain duties to the principal. These duties generally include care, confidentiality, full disclosure and accurate accounting, although some specifics may vary from state to state.

## Seller's Agent

A real estate agent who is employed by and represents only the seller in a transaction is a “seller’s agent.” This agent is also known as a “listing agent,” because the agent lists the home for sale and generally markets it through a Multiple Listing Service. The listing agreement serves as a contract between the seller and the agent, and spells out how the seller’s agent will be paid. Responsibilities of a seller’s agent include getting the highest purchase price and best terms possible for the seller.

A seller’s agent can offer buyers a variety of services, including a diligent search to find the right home, an explanation of available financing, calculation of monthly payments and estimated settlement costs, etc. The seller’s agent is expected to act honestly and in good faith and may also be required by state law to disclose to the buyer certain kinds of information about the property.

However, a seller’s agent cannot divulge confidential information to the buyer that is not in the best interest of the seller, such as what price the seller will accept, or offer an opinion of the home’s value.

In many instances, a seller’s agent produces a buyer for the home. Although the seller’s agent is often first contacted by a potential buyer and works hard to help the buyer find the right home to purchase, the seller’s agent represents the seller throughout the transaction and is responsible for getting the best terms possible for the seller.

## Buyer's Agent

A real estate agent who is employed by and represents only the buyer is a “buyer’s agent.” The agreement between the buyer and the buyer’s agent serves as a contract between them and typically spells out the agent’s duties and how the agent will be paid. The buyer’s agent may be paid by the seller through a commission split with the listing agent or paid a sales commission by the buyer or by some other mutually agreed-upon formula. Some buyer’s agents may also (or instead) charge the buyer a retainer or hourly fee for services. In addition to helping the buyer with the home-finding process, the responsibilities of a buyer’s agent — unlike those of the seller’s agent — include representing the buyer’s interests throughout, and working to negotiate the best price and terms for the buyer.

## In-Company Situation

An “in-company situation” occurs when the potential buyer is working with an associate from the same real estate company that listed the home for sale. The solution to this situation goes by different names in different parts of the country — for instance, “designated representative,” “transaction broker,” “facilitator” or “disclosed dual agent.”

State statutes and common law determine how an “in-company situation” is handled. Your real estate professional can explain the alternatives to you. Keep in mind, however, a broker and associates must maintain the confidentiality of their clients. For instance, without permission they cannot reveal to a buyer what lower price their seller would accept nor to a seller how much more their buyer is willing to pay.

In an “in-company situation,” as in other agency relationships, the basic goals haven’t changed: the seller wants to sell, the buyer wants to buy, and the agents want to help close the transaction.



## COMMONLY-ASKED QUESTIONS

### Straight Answers For Sellers

#### I'm selling my home. Should I agree to let buyer's agents show my home?

Although only you can decide whether you want to permit buyer's agents to show your home, remember the greater exposure your home gets to qualified buyers, the more likely you are to sell it quickly and at the highest possible price. The majority of sellers and seller's agents let any agent help sell the home. Sellers typically don't care who brings a buyer or how the broker splits the commission as long as the home sells.

#### If a buyer is using a buyer's agent, do I have to pay the buyer's agent a commission?

Practices vary by area. Check with your agent to learn about your choices. As the seller, generally you can indicate on the listing agreement whether the seller's agent must split the commission you pay with the buyer's agent. Most sellers choose to work with a broker who splits the commission with a buyer's agent even though that agent does not represent the seller's interests. This, of course, maximizes the number of potential buyers for your home. Because the listing broker already is prepared to share the commission with a seller's agent who produces a buyer, most sellers don't mind when their broker instead shares the commission with a buyer's agent.

#### Can the seller's agent represent me in the sale of my home and then continue to represent me as a buyer's agent when I purchase my next home?

If the seller's agent also works as a buyer's agent, the agent can go on to represent you as a buyer's agent — under a separate agreement — as you purchase another home provided both you and the agent agree to the representation.

#### How and when will I find out who an agent is working for?

Most states require real estate agents to disclose to buyers and sellers their agency relationship. The National Association of REALTORS supports disclosure laws requiring real estate agents “to provide timely, meaningful, written disclosure to consumers of all possible agency relationships available under state law and the most significant implications of choosing one type over another.”

This “disclosure” should take place early, certainly before either a seller signs a listing agreement, a buyer is shown any properties, or the real estate agent is told any confidential information. The consumer usually signs a form acknowledging the agency disclosure.

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