

DUTIES OF A REAL ESTATE LICENSEE

TCA 62-13-403. A licensee who provides real estate services in a real estate transaction shall owe all parties to such transaction the following duties, except as provided otherwise by Section 62-13-405, in addition to other duties specifically set forth in this chapter or the rules of the commission:

1. Diligently exercise reasonable skill and care in providing services to all parties to the transaction;
2. Disclose to each party to the transaction any adverse facts of which licensee has actual notice or knowledge;
3. Maintain for each party to a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency or sub-agency agreement entered into by the licensee to represent either or both of the parties in a transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure, information required to be disclosed under this part, and information otherwise required to be disclosed pursuant to this chapter. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;
4. Provide services to each party to the transaction with honesty and good faith;
5. Disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party;
6. Timely account for trust fund deposits and all other property received from any party to the transaction; and
- 7.(a) Not engage in self-dealing nor act on behalf of licensee's immediate family, or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of such interest and the timely written consent of all parties to the transaction [disclosed and consented to on page 1 of this form]; and (b) Not recommend to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services under the Tennessee Real Estate Broker License Act of 1973, without timely disclosing to the party who receives the referral, the licensee's interest in such referral or the fact that a referral fee may be received.

TCA 62-13-404. Any licensee who acts as an agent in a transaction regulated by the Tennessee Real Estate Broker License Act of 1973 owes to such licensee's client in that transaction the following duties:

8. To obey all lawful instructions of the Client when such instructions are within the scope of the agency agreement between licensee and licensee's client.
9. To be loyal to the interests of the client. A licensee must place the interests of the client before all others in negotiation of a transaction and in other activities except where such loyalty duty would violate licensee's duties to a customer under Section 62-13-402 or a licensee's duties to another client in a dual agency.
10. Unless the following duties are specifically and individually waived, in writing by a client, a licensee shall assist the client by:
 - (a) Scheduling all property showings on behalf of the client;
 - (b) Receiving all offers and counter offers and forwarding them promptly to the client;
 - (c) Answering any questions that the client may have in negotiation of a successful purchase agreement within the scope of the licensee's expertise; and
 - (d) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction. Upon waiver of any of the above duties, a consumer must be advised in writing by such consumer's agent that the consumer may not expect or seek assistance from any other licensees in the transaction for the performance of the above.

No agency relationship exists without a separate written Agency Agreement. This form is not such an agreement.

"Adverse facts" means conditions or occurrences generally recognized by competent licensees that have negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property.

"Client" means a party to a transaction with whom the broker has entered into a specific written agency agreement to provide services.

"Customer" means any party, other than a client in a transaction, for whom or to whom a licensee provides services.

"Designated agent" refers to a licensee who has been chosen by such licensee's managing broker to serve as the agent of an actual or prospective party to a transaction, to the exclusion of other licensees employed by or affiliated with such broker.

"Facilitator" means any licensee: (A) Who assists one (1) or more parties to a transaction who has not entered into a specific written agency agreement representing one (1) or more of the parties; or (B) Whose specific written agency agreement provides that if the licensee or someone associated with the licensee also represents another party to the same transaction, such licensee shall be deemed to be a facilitator and *not a dual agent*; provided, that notice of assumption of facilitator status is provided to the buyer and seller immediately upon such assumption of facilitator status, to be confirmed in writing prior to execution of the contract. A facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. "Transaction broker" may be used synonymously with, or in lieu of, "facilitator" as used in any disclosures, forms or agreements under this chapter.

The real estate company named on Line 23 appoints individual designated agents and/or facilitator licensees. In no case is that real estate company or their licensee to be considered to be a dual agent in this transaction.

Standard of Practice 16-10 of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®:

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. (Amended 1/04)