



AGENCY

Policies and Procedures of The Realty Association

The Realty Association practices "*designated agency*," which means the company can designate one of our agents to represent a seller, and designate another agent to represent a buyer (or be a facilitator) in the same transaction. This prevents the situation where every agent in the company would automatically be the seller's agent or the buyer's agent for the same client. Our policies help you avoid "dual agency" and "sub-agency" and greatly simplify your agency choices. ***You must be one (and only one) of the following in a transaction:***

- 1. Designated Agent for the Buyer** - when you have a separate written buyer agency agreement with your buyer. The buyer is now your *client*. (Mark the 1st box on our *Confirmation of Agency Status* form.)
- 2. Designated Agent for the Seller** - when you have a separate written listing agreement (that establishes an agency relationship) with your seller. The seller is now your *client*. (Mark the 2nd box on our *Confirmation of Agency* form.)
- 3. Facilitator** - when you don't have any written agency agreement with either party. The buyer and/or seller is your *customer*. You are *not* an 'agent' or 'representative' of the buyer or the seller. (Mark the 3rd box on our *Confirmation of Agency* form.)
- 4. Representing yourself** - when you are the buyer or seller, or you have a personal *financial* interest. (Mark the 4th box.)

Tennessee law requires agents to disclose their agency or facilitator status to unrepresented parties, and the Realtor Code of Ethics requires the disclosure of agency status to *all* parties. This must be performed as follows:

- (a) **verbally** "before any real estate services are provided" (that is, at first contact), **and**
- (b) **in writing** "prior to the preparation of an offer" (on the *Confirmation of Agency Status* form).

NOTE: You can have ***one (and only one)*** agency status at a time in a given transaction. It is the same status for all parties in that particular transaction. ***You wear only one agency "hat" at a time!*** Check only one box on the *Confirmation of Agency Status* form. ***Checking more than one box could be misrepresentation.***

Example 1: You show several homes (MLS listings or FSBO's) to an unrepresented buyer who prefers not to sign a buyer agency agreement with you. Initially, you would verbally disclose to the buyer that you are (by default) a ***Facilitator*** because you have no written agency agreement with either party, and that you can offer advice, but you are not an *agent* or *representative* or *advocate* of either party. *Before the preparation of any offer* (assuming the buyer has still not signed a buyer agency agreement with you or anyone else), you would check only the ***Facilitator*** box on our *Confirmation of Agency Status* form, and give a copy to the listing agent (or directly to the seller if a FSBO) before presenting the offer.

Example 2: A FSBO contacts you and tells you they have found an unrepresented buyer for their home and they want you to assist them with the final negotiations and all the required paperwork. The sellers do not want to list the home or sign an agency agreement. *Before the preparation of any offer*, you would check only the ***Facilitator*** box on our *Confirmation of Agency Status* form, and give copies to all parties. You may advise either or both of the parties, but you are not an *agent* or *representative* or *advocate* of either party.

Example 3: You have a signed buyer agency agreement with your buyer (your client). You find an MLS listed property that your buyer wants to purchase. You will be the ***Designated Agent for the Buyer*** on any offers made by that buyer (unless it's your listing, see Example 7). You would disclose this verbally upon initial contact with the listing agent, and confirm in writing on our *Confirmation of Agency Status* form before presenting the offer.

Example 4: You have a signed buyer agency agreement with your buyer. A FSBO is willing to pay you a commission if you sell their home to your buyer. You will be the ***Designated Agent for the Buyer*** on any purchases made by that buyer (unless it's your listing, see Example 7). You would disclose this verbally upon your initial contact with the FSBO seller, and confirm in writing on our *Confirmation of Agency Status* form before presenting the offer.

Example 5: Another agent (whether from our company or not) brings the buyer for your listing (you have a signed listing agreement). Before presenting the offer, you would check the ***Designated Agent for the Seller*** box on a *Confirmation of Agency Status* form (our form, their form, or TAR's), and have the cooperating agent check the box for their status (on the same form or on a different form if they prefer).

Example 6: An unrepresented buyer calls off a yard sign or ad, or comes to an open house for one of your listings (you have a signed listing agreement). You introduce yourself as the seller's agent (covers the verbal disclosure requirement). You ask if they are working with or represented by another agent, and they say they are not. They want you to write up an offer. It's okay to "double-dip," but you must disclose in writing (on our *Confirmation of Agency Status* form) *prior to the preparation of an offer* that you are the ***Designated Agent for the Seller***. [Less desirable options: (1) you could change your agency status to ***Facilitator*** with the seller's and buyer's approval on a *Change of Agency Status* form, or (2) you could refer the buyer to another agent and receive a referral fee on the buyer-side.] No dual agency!

Example 7: A buyer that has signed a buyer agency agreement with you decides they wish to purchase one of your personal listings. Your agency status (for this transaction only) would change to ***Facilitator*** with respect to both parties. You would confirm this change in writing (on a *Change of Agency Status* form) with both parties immediately upon assumption of facilitator status, and also check only the ***Facilitator*** box on our *Confirmation of Agency Status* form *before you prepare an offer*. This provision avoids "dual agency" which many attorneys believe is an invitation to a lawsuit.

You are NEVER to be a dual agent!