

TODAY'S BUYER REPRESENTATION AGREEMENTS ARE KEY

By Judith I. Johannsen

People have been taking title to property for hundreds of years, and over the years this process has evolved. Long before explorers landed in America, an English landowner could pick up a handful of dirt from his land and give it to another, signifying the transfer of title to the land. Pretty simple. In early American history, pioneers seeking a better life and freedom from too many rules pushed westward across the country to the new and unsettled frontier, and when they came across land they liked, they simply declared that it was theirs. Getting to the land was an adventure, but taking title to land was simple and there were no rules. Boy, have times changed.

The property acquisition process for present-day buyers may still be considered an adventure, but is very different from the methods of merry olde England and the westward ho pioneer as today's buyers cannot simply accept some dirt from a present owner and be assured of ownership or just drive around, find some land they like and then declare it to be theirs. The present-day real estate game is a bit more complicated than that of the days of yore, so rules have been created to keep records of title, agency, and compensation arising from transactions clear.

One of the main differences in real estate transactions between then and now is the widespread use of real estate agents, and buyers who plan to work with Connecticut real estate agents need to know some underlying rules. First and foremost, the Connecticut Real Estate Regulations mandate that a real estate licensee must enter into a written agency agreement with a buyer before negotiating a sale, exchange or lease of property. Some buyers balk at having to sign an agreement to work with someone they have just met and argue they are merely in the looking stage and not yet ready to negotiate. Buyers need to know that the Connecticut Real Estate Commission has interpreted the word "negotiate" to mean "show". What this means is that before an agent can show property to a buyer, a written agency agreement must be entered into. This agency agreement is a Buyer Representation Agreement and is signed by the buyers and the agent on behalf of the agency. Any buyer who signs such an agreement should receive and keep a copy of it.

The exception to this rule occurs when an agency represents a seller and the buyer wishes to see only that property. In this instance, the buyer is not required to sign a Buyer Representation Agreement; however, the buyer may be asked to sign a form that discloses that the agency represents the seller and that the buyer has chosen to be unrepresented.

When buyers first meet with an agent and say that they want to buy a house, the agent should ask the buyers if they are currently represented by an agency. Buyers who are not represented by an agency typically have no problem saying so. However, many buyers who are already represented are reluctant to say so. Some buyers apparently believe that the best strategy for finding a property is to have as many agents working on their behalf as possible, and further believe that if they say they are unrepresented, they will get to see this new agency's listings not available to everyone else. While that rationale appears logical, in practice it would be wrong. What these buyers don't understand is that practically every Realtor® (Realtor®s are agents that belong to the national, state and local real estate boards and subscribe to a Code of Ethics) has access to the same pool of information about properties through their board's multiple listing service.

Some buyers think that it's none of the inquiring agent's business if they have already signed a Buyer Representation Agreement with another agency. That thinking, too, would be wrong. To question potential purchasers if they are already represented by an agency is not the agent's way of making small talk nor of prying into the prospective purchasers' business; rather, the question is grounded in the second of the basic rules an agent must follow. The Connecticut Real Estate Regulations and The Code of Ethics each state that a Realtor® shall not interfere with the agency relationship of another. If an agent works with another agency's client, a complaint can be filed against an agent deemed to be interfering.

While the filing of a complaint does not sound particularly onerous, the possible consequences from a determination of interference in another's agency relationship include suspension or revocation of a real estate license and/or a hefty fine as well as the scarring of someone's reputation in a business where reputation is essential.

So, if you're a buyer and you believe you're being particularly clever by telling an agent that you're not already represented by an agency when you really are, what you essentially accomplish is a not-so-hot reputation for yourself, a maddeningly difficult situation for the agents who have pledged to work for you and with you, and an unasked-for dust-up between the brokers of the respective agencies involved.

If you wish to use a Realtor® to find a property, what's the best way to proceed? A good suggestion is to meet with several agents from different agencies, pick the agency you prefer, sign a Buyer Representation Agreement that specifies a length of time, the geographical area(s), and a compensation arrangement that works for you, and follow through with that agency relationship until the agreement expires. Be mindful that the agreement you sign is with the agency, not with a particular agent. If difficulties arise during the term of the agreement, speak to the agency's broker or manager as that is the person with authority to enforce, modify or terminate the agreement. Don't sign with another agency (thinking who's going to find out?) when you have a Buyer Representation Agreement still in effect as that only creates more problems than it solves as well as possible liability for the buyer who has agreed to compensate the buyer broker.

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