

The importance of agency should not be taken lightly in today's market.

It is important to understand what legal responsibilities your real estate agent has to you and to other parties in the transactions. In the state of Idaho every agent has the responsibility to supply you with an agency disclosure pamphlet. (We call it the blue brochure.) Along with receiving the blue brochure you will notice both the purchase and sale agreement and the listing agreement have agency information on them.

**1. SELLER'S REPRESENTATIVE** (also known as a listing agent or seller's agent).

A seller's agent is hired by and represents the seller. All fiduciary duties are owed to the seller. The agency relationship usually is created by a listing contract.

**2. SUBAGENT.**

A subagent owes the same fiduciary duties to the agent's principal as the agent does. Subagency usually arises when a cooperating sales associate from another brokerage, who is not representing the buyer as a buyer's representative or operating in a nonagency relationship, shows property to a buyer. In such a case, the subagent works *with* the buyer as a customer but owes fiduciary duties to the listing broker and the seller. Although a subagent cannot assist the buyer in any way that would be detrimental to the seller, a buyer-customer can expect to be treated honestly by the subagent. It is important that subagents fully explain their duties to buyers.

**3. BUYERS REPRESENTATIVE** (also known as a buyer's agent).

A real estate licensee who is hired by prospective buyers to represent them in a real estate transaction. The buyer's rep works in the buyer's best interest throughout the transaction and owes fiduciary duties to the buyer. The buyer can pay the licensee directly through a negotiated fee, or the buyer's rep may be paid by the seller or by a commission split with the listing broker.

**4. LIMITED DUAL AGENCY**

At the time you enter an agreement for Agency Representation, you may be asked to give written consent allowing the brokerage to represent both you and the other party in a transaction. This "dual agency" situation can arise when, for example, the brokerage that represents you, the seller, also represents buyers who may be interested in purchasing your property. When this occurs, it is necessary that the brokerage's representation duties be "limited" because a buyer and seller have built-in conflicts of interest. Most significantly, the buyer typically wants the property at the lowest price, while the seller wants top dollar. *As a "limited dual agent," the brokerage and its licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning price negotiations, terms or factors motivating the client/buyer to buy or the client/ seller to sell.* However, the brokerage must otherwise promote the best interests of both parties, perform the terms of the written representation agreement with skill and care, and perform all other duties required by law. Buyers and sellers alike often find it desirable to consent to limited dual agency: buyers do not want the brokerage to be restricted in the search for suitable properties, and sellers do not want the brokerage to be restricted in the search for suitable buyers. Thus, when

all parties agree in writing, a brokerage may legally represent both the buyer and the seller in the same transaction, but only as a "*limited dual agent*."

#### **5. LIMITED DUAL AGENCY WITH ASSIGNED AGENTS**

In some situations, a brokerage that has obtained consent to represent both parties as a limited dual agent may assign individual licensees ("sales associates") to act solely on behalf of each party. (The brokerage must have an office policy that ensures client confidences are protected.) Where this is the case, the sales associate, or "assigned agent," is not limited by the brokerage's agency relationship with the other party, but instead has a duty to promote the best interest of the client that he or she is assigned to represent, including negotiating a price. The designated broker (the licensee who supervises the sales associates in the brokerage firm) remains a limited dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.