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## Termination of buyer agency agreement form

Buyer's agents work for buyers, not sellers. That's the good news. Buyer's agents can be helpful, particularly to first-time home buyers and those with little experience purchasing real estate. However, there is no perfect contract or agreement. Be sure your buyer's agent agreement clearly states the compensation involved, who will pay the fees due, the specific duties the agent is agreeing to perform, agreement termination terms and the length of the agreement. When successful, buyer's agents earn fees, as they should. However, it's important to know from whom will this compensation come. In most standard agreements, the listing, or seller's agent, will split the sales commission 50-50 with the buyer's agent. However, like most business deals, "everything's negotiable." A buyer's agent agreement may put the onus on the buyer to pay a stipulated fee to the agent. Examine the agreement carefully to avoid an obligation to pay a buyer's agent out of your pocket. Unlike listing agents, buyer's agents should be working exclusively for you. Their responsibilities can differ, but they should not be helping the seller receive the highest price possible. Among other duties, your agent should be responsible for locating homes for sale that meet your stated criteria and arrange for viewing appointments. Additionally, they should agree to negotiate with the seller or seller's agent, should you consider making an offer on the home. Unless you know an experienced buyer's agent well or have a strong recommendation from a trusted friend or family member, be careful with the length of a buyer's agent agreement. You should consider a short-term agreement, such as 30 days, with a buyer's agent you do not know. In the event the agent does not perform to your expectations, you can find another representative who may generate better results. Long-term agreements can become onerous and unproductive if the agent is not effective. Experienced attorneys recommend that the time to protect yourself with any contract is when both parties are happy and on the same page. This is before or when signing an agreement. Both parties' rights to terminate a buyer's agent agreement should be clearly stated. If your agent is not doing everything possible to find homes meeting your preferences and budget, you may find it wise to terminate the agreement. Be sure your termination rights are clear and specific. Signing agreements and paperwork is a major part of buying a house, but don't let exhaustion have you signing everything you see. The purpose of these agreements is to protect you and your investment. Here's how an experienced local agent can help you deal with agency agreements.Year after year, real estate agents are ranked as some of the happiest professionals in the country. Part of this is the satisfaction of finding homes for people and another part is the kind of relationship building that the job is founded on. Buyer agency agreements help to protect these relationships and ensure everyone involved is happy by the end of the transaction.While these agreements are negotiable, they create boundaries for how long the agent will work for their clients as well as geographical boundaries for their representation. Here's everything you need to know about these agreements.1. What is a buyer agent agreement?It's common to be presented with an agent agreement. Sometimes large brokerages will get you to sign an agency agreement and then send whichever agent is available your way. It can protect both parties to formalize the agreement between both of you before the agent represents your interests.This keeps agents from wasting their time on a buyer who might fly the coop on them. It also ensures that buyer's agents will be held responsible for the work that they do. These agreements may outline the region that the agent will work for buyers in so that they can continue their search if they choose.2. Do I have to sign a buyer agent agreement?If you feel uncomfortable signing with an exclusive buyer agent, you don't have to sign their agreement. Not signing is your right as a consumer. Buyer agents introduce these contracts to ensure they get paid and to protect their interests, but they fail to realize that buyers can be turned off.Buyers benefit from having an agency agreement with a brokerage because they'll get top priority. As a buyer, promising not to work with another agency with an exclusive buyer agreement also ensures that the agency won't represent the seller. When an agency works solely on behalf of buyers, agents and buyers never have to deal with a conflict of interest.A Clever Partner Agent will keep your best interests in mind.3. Are buyer broker agreements enforceable?Depending on the terms of the contract that brokers offer, they might be tightly binding. Consulting an attorney before signing any kind of contract, especially when you're dealing with a large portion of your personal wealth, can help to protect you from a catastrophe.Contracts are legally enforceable and establish expectations for either party in a transaction. While it might not be worth it for an individual agent or broker to pursue a lawsuit against a buyer, it's generally unethical to break an agreement if the broker did everything that was expected of them.4. How do I get out of a buyer's agent agreement?In most agreements and contracts, there are clauses to help buyers get out of the agreement with mutual consent. In these cases, if both parties sign on and agree to leave a contract, it's perfectly legal.Talking to the agent should be the first step and if things can't be worked out the way that you want, then pursue canceling the contract. Ask if they have a termination of agreement and release form to allow you to get out of the contract. The termination form will detail the conditions of the termination and outline any fees. If they don't agree to let you out, you may have to look into the contract and point out any duties they're failing to perform. You could go to the brokerage to settle disputes. However, you might have to pursue legal action if you can't get them to agree to let you out of the contract.5. Should I get a buyer's agent?Some buyers might prefer to work without an agent at all. However, since sellers are typically responsible for paying the commission fees for both parties, there's no good argument for going without one. This is especially important when a seller has their own agent to represent their interests and advocate on their behalf.Buying a house without a realtor means that you won't have someone in your corner who knows which common issues to look for during a walkthrough. It also means that there's no one to help you craft an offer or negotiate with counter offers. Working with an experienced local agent helps buyers to save money, but some experienced home buyers might prefer to go solo.The average buyer could benefit from the help in finding listings and recommending services that they need. Help with the paperwork involved is also, an overlooked but important reason for hiring an agent.6. Can you get out of a home purchase agreement?Buyers are often required to put some money down when they submit an offer on a home. This is part of the overall purchase agreement and is called an "earnest money deposit." It's a good faith agreement to let sellers know that the buyer is serious about their offer.To get out of a contract without meeting the agreed upon terms, buyers risk losing their earnest money deposit or at least a portion of it. Contracts contain contingencies to protect buyers if an inspection uncovers a major issue or there is any kind of catastrophe. If contingencies aren't satisfied, buyers may get out of the contract but might have to forfeit some money.7. Can you fire your real estate agent before closing?As stated above, terminating a contract can be messy. However, switching agents at a brokerage or buyer agency shouldn't be. If you want to continue working with the agency, they will usually be happy to pair you with an agent better suited to your needs.Most buyer agency agreements provide a protection period of the agency or the individual agent you're working with. The commission will be owed if a transaction is completed within this given timeframe. But to avoid any issues at all, make sure to ask your agent all the right questions before you sign an agreement with them.Find the Best Agent for YouWhen you work with an agency, you should be paired with an agent who is there to help you no matter what. Working with a Clever Partner Agent offers you the chance to get a feel for them. The termination form will ask you to provide some information about why you wish to terminate the agreement. The form should also outline the fees that you may be required to pay following termination. If your agent and your state do not offer such a form, write your agent a letter asking if she is willing to terminate the agreement and the proposed terms of cancellation. If your agent is unwilling to terminate your buyer's agent contract on your terms, you may always attempt to cancel the agreement by pursuing a claim for breach of contract. Start by reviewing the duties of the agent as listed in your buyer's agency contract. Also, implied in an agency contract is the fiduciary duty for the agent in your best interest. If you determine that the agent has breached any of her duties, explain that you intend to pursue a claim for breach of contract if you are not allowed to cancel your agreement. If you agent will not comply, consider initiating a lawsuit for breach of contract. Make sure not to confuse your contracts; a letter of termination of purchase and sale agreement is very different than a letter of termination for the buyer's agency contract. Similarly, if someone mentions a "termination of real estate contract by buyer" you may need to clarify the context. If you are confused about paperwork, do not hesitate to ask your agent or broker for clarification along the way, offered by Executive Office of Housing and Economic Development A Description of Real Estate Buyer Agency RE02R06: Buyer Agency History of written relationship disclosure States response to Federal Trade Commission survey - license regulation requires disclosure of licensee representation. 1990 MA Board of Registration of Real Estate Brokers and Salespersons created its first written agency form. 1993 MA Board of Registration of Real Estate Brokers and Salespersons revised agency disclosure form to recognize buyer agency. Current MA regulation requires real estate licensees to disclose form of relationship to prospective buyers and sellers of real estate at the first personal meeting to discuss a specific property with a potential buyer or seller. (See 2005 Massachusetts Mandatory Licensee-Consumer Relationship Disclosure). Establishment of Agency Express written or oral contract where agent and principal agree to terms. Implied agency by actions and/or words Note: Compensation does not create an agency relationship. Duties That May Be Required of licensees, commonly referred to by the acronym OLD CAR. Obedience - the duty to carry out all lawful instructions of the Client Loyalty - the duty to act in the best interest of the Client Disclosure - the duty to disclose all information relevant to the Client Confidentiality - the duty to keep the Client's confidential information, confidential - Duty survives termination of agency relationship. Duty does not apply to legally required disclosures such as known physical hazardous conditions of property. Accountability - the duty to protect, isolate and account for all money, documents, or other personal property provided to the agent Reasonable Care and Due Diligence - the duty to act competently and being capable of performing the duties undertaken General Definitions "Real estate broker" - Any person who for another and for a fee, commission or other valuable consideration, or with the intention or with the expectation of upon the promise of receiving or collecting a fee, commission or other valuable consideration, does any of the following:- sell, exchange, purchases, rents or leases, or negotiates, or offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of any real estate, or lists or offers, attempts or agrees to list any real estate, or buys or offers to buy, sells or offers to sell or otherwise deals in options on real estate, or advertises or holds himself out as engaged in the business of selling, exchanging, purchasing, renting or leasing real estate, or assists or directs in the procuring of prospects or the negotiation or completion of any agreement or transaction which results or is intended to result in the sale, exchange, purchase, leasing or renting of any real estate. (See M.G.L., Chapter 112, Sec. 87PP). "Real estate salesman" - an individual who performs any act or engages in any transaction included in the foregoing definition of a broker, except the completion of the negotiation of any agreement or transaction which results or is intended to result in the sale, exchange, purchase, renting or leasing of any real estate. (See M.G.L., Chapter 112, Sec. 87PP). "Agent" -One who is authorized to represent and act on behalf of a principal (the principal i.e. client (buyer/seller) or real estate broker (broker of record)). "Principal" - commonly known as person who engages agent for representation. "Client" - also known as a Principal - a person who empowers another to act as his or her representative/agent. Client relationship = fiduciary relationship. "Customer" - generally refers to person without representation involved in a transaction. All agents have a duty to treat customers fairly. Vicarious Liability-"liability created not because of a persons actions but because of the relationship between the libel person and other parties. For example, a real estate broker is vicariously libel for the act of his or hers salespeople while acting on behalf of the broker even if the broker did nothing to cause the liability" (The Language of Real Estate) Informed Consent - "Consent to a certain act that is given after a full and fair disclosure of all facts needed to make a conscientious choice." (The Language of Real Estate) Subagent - An agent of a person or entity who is already acting as agent for a principal (agent of an agent). Fiduciary - "A relationship that implies a position of trust or confidence wherein one person is usually entrusted to hold or manage property or money for another. The term fiduciary describes the faithful relationship owed by an attorney to a client or by a broker (and salesperson) to a principal. The fiduciary owes complete allegiance to the client." (The Language of Real Estate) Types of Licensee/Consumer Relationships Seller Agency - Real estate agent represents seller on client basis and treats buyer as customer. Seller agent's duties to seller include "OLD CAR". Buyer Agency - Real estate agent represents buyer client in real estate transaction Buyer agent's duties to buyer include "OLD CAR". Subagency - (Rare) Where client expressly or implicitly authorizes his/her broker to use other agents to assist in locating and buying property for buyer. The buyer must sign language that indicates the following: "Massachusetts law permits the broker to cooperate with other licensed brokers who will act as subagents of the buyer only with the written consent of the buyer and the disclosure for the buyer of the potential for vicarious liability. Vicarious liability is the potential for a buyer to be held liable for an act or omission of the subagent". Subagent's duties to seller or buyer include "OLD CAR". Single Agency - "The practice of representing either the buyer or the seller but never both in the same transaction." (The Language of Real Estate) Dual Agency - a real estate agent who represents both the seller and buyer in the transaction is a disclosed dual agent with written informed consent of both the buyer and the seller. A Dual Agent has a duty of confidentiality and accounting to both parties. Undisclosed dual agency is illegal. Reasonable Care and Skill will apply in the real estate transaction. Dual agent's duties to seller and buyer include "OLD CAR" however the "OLD R" in "OLD CAR" is modified to adapt to the requirements Dual Agency. Facilitator: Also known as a Non-Agent or Transaction Broker/Salesperson. The Facilitator works to complete the transaction. Although bound by license law and MGL Ch. 93A, they do not have a fiduciary relationship with the seller or the buyer. They do not represent either party in the transaction. The Facilitator must disclose all known material defects that exist. Failure to do so could result in a Chapter 93A violation. Their duties consist of accounting and any other Facilitator duties undertaken. Facilitator's has no required duties to seller and/or buyer A Facilitator is obligated to fulfill all the duties of "A" ("Accountability") pursuant to the Massachusetts Real Estate License Law. Designated Agent- A real estate licensee who has been specifically appointed or designated by the broker with whom they are affiliated to individually represent a specific client (either a buyer or seller) when selling or buying real estate. The designated agent has full duties of agency ("OLD CAR") to the client while all other licensees of the firm the Designate Agent is associated with do not represent the buyer or seller and could very well represent the other party to the transaction. Termination of Buyer Agency Relationship Expiration of agreement Mutual agreement to terminate or rescission Completion of performance under agreement Death or Insanity of Buyer Agent or Client Principal Impossibility of performance (ie. destruction of property) Incapacity (ie. mentally incapable) or Bankruptcy of either party Repudiation - either principal or agent withdraws consent, court may deem this a breach of fiduciary obligation and breaching party may be held liable for damages. Buyer Agency Compensation Compensation Methods Commission based on sales price paid by buyer directly via contract between broker and buyer paid from transaction by listing broker via agreement between listing and seller broker (MLS) Flat Fee For Service/Menu Options Money Credited to the seller at closing Compensation alone does not create agency representation Dual Agency Disclosed Dual Agent - represent both buyer and seller. "informed consent" of buyer and seller Failure to disclose and receive buyer and seller's consent violates state licensing regulations and agency law. Buyer and seller may rescind the underlying real estate transaction and agent may be liable for all monetary damages. Duties of Dual Agent Undisclosed dual agency is illegal in Massachusetts and courts require forfeiture of the commission by those found guilty of this activity among other possible damages. Other Legal Issues Affecting Seller or Buyer Representation or Facilitation. State and Federal Lead Paint Laws require that any property where a child under six years old resides must be deleaded and property owner is responsible for compliance. Real estate licensees are required to notify all prospective purchasers and lessors about the dangers of lead paint and must inform prospective buyers about buyer's 10 day right to a lead paint inspection. Federally approved state lead paint disclosure forms may be obtained from the Massachusetts Department of Public Health or local REALTOR® Boards. The three forms available are entitled the Property Transaction Lead Paint Notification Certification form, the Tenant Lead Law Notification form, and the Tenant Lead Law Certification form. Real Estate Licensees are also required to tell prospective purchasers that under the State Lead Law, a new owner of a home built before 1978 in which a child will live or continue to live must have it either deleaded or brought under interim control within 90 days of taking title to the property. For more information about the lead paint laws, consult Massachusetts General Law Chapter 111, Home Inspector Law - In effect as of May 1, 2001 - "At the time of the signing of the first written contract to purchase, real estate brokers and salesmen, or the seller if no broker or salesperson is involved in the sale, shall distribute a brochure, published by the Office of Consumer Affairs and Business Regulations, educating consumers about the home inspection process. Real estate brokers and salesmen shall not directly recommend a specific home inspection company or home inspector but may, upon request, provide a complete list of licensed home inspectors prepared by the board. "This prohibition shall not apply if there is a written contractual agreement or a written agency disclosure between the buyer and the real estate broker acting exclusively for the buyer as a buyer's broker." (MGL Ch. 112 sec. 87Y1/1/2). Psychologically Stigmatized Property - ie. felonies, murders, suicides Absent a specific inquiry by prospective purchaser or his/her agent to the licensed broker or salesperson, there is no duty for the licensee to either investigate or affirmatively disclose murders, suicides, allegations of ghosts or other potential stigmas. (See Chapter 294 of the Acts of 1998)2. HIV Status, State law - Questions regarding HIV status of any former or current occupant of residence should not be answered by a real estate licensee. Mass. General Law - Chapter 93A - Consumer Protection Statute requires seller's agent to disclose known material defects on the property to potential buyers. ["actual knowledge" standard] Chapter 93A does not apply to persons who are "not in the business of selling". Residential sellers, not in the business of selling homes, have no affirmative disclosure requirement with the exception that they must inform potential buyers about lead paint on the property. Due Diligence: Buyer's agent has a duty to ask questions on behalf of his or her client. Affirmative Disclosure Under Attorney General's Regulations Anything that may influence a prospective purchaser Physical defects in the property iii. Title defects and encumbrance Sex Offender Registry According to statute, persons over age of 18 may request information from the sex offender registry for their own protection or the protection of a child or person under their care or custody. The statute imposes criminal penalties for misuse of information provided to the individual making the inquiry. Customers and clients should be urged to contact the local police department to find out this information firsthand. (M.G.L. Chapter 6, Section 178D). Client Counseling, Company Policy & Record Keeping Explain to buyer his or her responsibilities as a client and determine search criteria for the property. Ex. Contact buyer agent's office to see a property. Explain company policies regarding cooperation and compensation and any potential for buyer agent to act as dual agent. Advantages of written company policy versus verbal Clearly defined duties of agent and client Agency relationship created between broker owner of company and buyer client. Agent of broker working with buyer client creates the agency relationship between the broker of record and client. Owner broker is only party authorized to determine form of agency representation for company. Mandatory Licensee - Consumer Relationship Disclosure is not Buyer Agent Contract Record Keeping Mandatory Licensee - Consumer Relationship Disclosure Forms - state regulation requires retaining forms for 3 years Contracts - contract law statute of limitations is 6 years; recommend keeping records of contracts for 7. All business records - state regulations do not specify time frame. Escrow check copies - state regulation requires retaining copies for 3 years. In event a dispute arises possible options include1. Alternative Dispute Resolution ( arbitration or mediation) REQUIRED HANDOUTS 1) Massachusetts Mandatory Licensee-Consumer Relationship Disclosure 2) Mass. General Law - Chapter 294 of the Acts of 1998 3) Mass. General Law - Chapter 112, Section 87YY Suggested References: Buyer Representation in Real Estate by Dianna Brouthers and Roger Turcotte Agency Relationships in Real Estate, 2 nd ed., by John Reilly

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