

Are You a Customer or Client?

When you choose to work with a real estate licensee he or she may or may not be "your" agent. An agent owes certain duties to a client, but has a different obligation to a customer. It is important to know whether you are a customer or a client in a real estate transaction.

You should discuss the following information with the real estate licensee with whom you may work in order to make informed decisions.

Who is a Customer?

A customer is one who seeks to sell, exchange, purchase, rent or lease real estate, but has not hired the real estate licensee to represent them.

As a customer, you cannot expect the licensee to act as your agent or to advocate on your behalf. A real estate licensee can, however, provide valuable market information and services to assist you as a customer. A licensee is also obligated by law to treat customers honestly, to disclose material defects actually known by the licensee pertaining to the on-site physical condition of the real estate, and to promptly present all offers and counteroffers.

A licensee working "with" a customer may perform ministerial administrative acts, which include showing property, preparing and presenting offers or agreements, providing

information and assistance concerning the transaction.

Who is a Client?

A client is a person who establishes an agency relationship with a licensee through a written contract and agrees to be represented by the agent in a real estate transaction.

This contract must clearly establish the terms and obligations of both the client and the licensee/firm who becomes the agent.

As a client, in addition to the customer-level services listed above, you can expect the following client-level services:

- Advocacy
- Care, Skill and Diligence
- Advice
- Confidentiality
- Loyalty
- Lawful Obedience
- Promotion of client's best interest

Who is an Agent?

An agent is a licensee with a fiduciary obligation to provide services through a written contract for a seller, landlord, buyer, or tenant and is bound by the duties of loyalty, lawful obedience, disclosure, confidentiality, reasonable care, diligence, and accounting.

The written agency contract is with the firm and not with the individual agent.

The seller/landlord and/or the buyer/tenant may be liable for the actions of the agent and any sub-agents when these actions occur within the scope of the agency relationship.

What Types of Agency Relationships are commonly practiced in New Hampshire?

SELLER AGENCY

A seller agent is a licensee who acts on behalf of a seller or landlord in the sale, exchange, rental, or lease of real estate. The seller is the licensee's client and the licensee has the duty to represent the seller's best interests in the real estate transaction.

BUYER AGENCY

A buyer agent is a licensee who acts on behalf of a buyer or tenant in the purchase, exchange, rental, or lease of real estate. The buyer is the licensee's client and the licensee has the duty to represent the buyer's best interests in the real estate transaction.

SINGLE AGENCY

When the firm represents only one client in the transaction (the seller or the buyer), it is called single agency.

SUB- AGENCY

A sub-agent is a licensee who works for one firm, but is engaged by the principal broker of another firm to perform agency functions on behalf of the principal broker's client.

A sub-agent does not have an agency relationship with the customer.

DISCLOSED DUAL AGENCY

A disclosed dual agent is a licensee acting for both the seller/landlord and the buyer/tenant in the same transaction with the knowledge and written consent of all parties.

The licensee cannot advocate on behalf of one client over another. Because the full range of duties cannot be delivered to both parties, the written informed consent must be given by all clients in the transaction.

A Dual Agent may not reveal confidential information without consent, such as:

1. Willingness of the seller to accept less than the asking price.
2. Willingness of the buyer to pay more than what has been offered.
3. Confidential negotiating strategy not disclosed in the sales contract as terms of the sale.
4. Motivation of the seller for selling nor the motivation of the buyer for buying.

NON-AGENCY

A licensee acting in the a Non-Agency capacity shall only perform acts of an administrative nature (ministerial acts) which include showing property, preparing and presenting offers or agreements, providing information and assistance concerning the transactions.

This relationship may change to an agency relationship by entering into a written contract for representation.

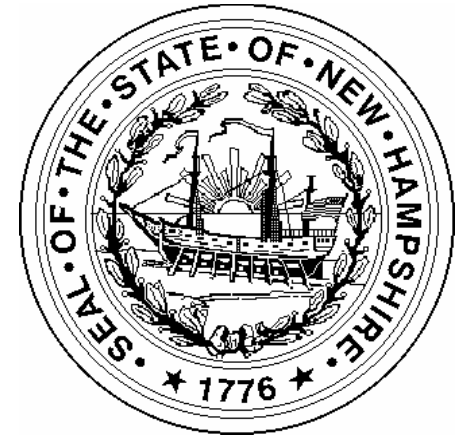
If another relationship between the licensee who performs the services and the seller, landlord, buyer, or tenant is intended, it must be described in writing and signed by all parties to the relationship prior to services being rendered.

The material presented in this brochure is intended to assist consumers in making wise decisions regarding a real estate transaction in New Hampshire. Anything in this pamphlet should not be considered legal advice. Additional information can be obtained regarding the laws, rules and regulations on Real Estate Agency Relationships at <http://www.nh.gov/nhrec/adrules.html> or by contacting the NH Real Estate Commission at the contact information below.

NH Real Estate Commission
25 Capitol Street, Room 434
Concord, NH 03301
Tel: (603) 271-2701
Fax: (603) 271-1039
E-mail: nhrec@nhrec.state.nh.us
Website: www.nh.gov/nhrec

NEW HAMPSHIRE CONSUMER INFORMATION

Relationships in Real Estate



**When Buying, Selling,
Renting or Leasing Real
Estate,
Are you a Customer or
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