



Brokerage Relationships

Definition of a Brokerage Relationship: A working relationship between a licensed real estate broker and a buyer or seller to engage the services of the licensed broker on behalf of the buyer or seller in acquiring or marketing real property. This relationship may be a limited agency, or a non-agency, according to the agreement of the parties. In the absence of a signed agreement regarding the brokerage relationship, the default position under Colorado License Law is "transaction-brokerage".

Prior to enactment of The Brokerage Relationships Act in January of 1994, every licensed real estate broker or salesperson in Colorado working to sell a listed property was assumed to be an agent of the seller. As agents of the seller, licensees working with a seller or a buyer owed the same duties of loyalty and fidelity to the seller. The current law recognizes and defines different types of relationships between licensees and buyers and sellers such as single agency (buyer agency or seller agency), and the transaction-broker relationship.

Colorado real estate licensees are required by law to disclose, in writing, the nature of the working relationship to buyers and sellers and the level of service they will provide. A buyer or seller has the right to choose what type of representation best meets their needs, just as they have the right to choose a broker to represent them in a real estate transaction.

Under Colorado law, a buyer can work with an agent under either of two legal relationships. These are called "transaction brokerage" or "buyer agency." Working as a transaction broker, a real estate agent is required to act with absolute neutrality between the buyer and seller. In fact, an agent working as a transaction broker is expressly prohibited under Colorado law from doing anything that could be construed as advocating "for the interests of any party to such transaction." Thus, if they know for certain that a property will be difficult to resell or that it is overpriced, they are prohibited from telling the buyer. If they know that there are coal mines under the property or that the property is located near a planned expressway, they are prohibited from telling the buyer. If they know that specific portions of the contract put the buyer at risk, they are prohibited from telling the buyer. The same agent working with the buyer with an agency relationship would be required by law to tell the buyer these things, and would be legally liable for failure to do so.

Under **Colorado law**, if you don't sign an buyer agency agreement with the real estate agent who is helping you find a home, that agent is acting legally as a "transaction broker" rather than a buyer agent. This means that they are prohibited from working to protect your interests in the transaction. Under Colorado law, the only way to overcome this presumption in the law is to sign a buyer agency agreement, which makes it clear that your agent is accepting the legal responsibility to represent your interests in helping you locate and purchase a home. You can, in fact, sign an agreement to work with an agent under a transaction broker relationship, but you gain nothing by signing such an agreement and you may assume some serious obligations by doing so.

Buying or Selling with an Agent or Transaction Broker?

Buyer's/Seller's Agent or Transaction Broker?

To help you navigate the complicated path of buying or selling a home, you need an experienced and educated agent. With the numerous laws protecting buyers and threatening sellers, now more than ever you should have an **advocate** on your side.

In Colorado, you can have a “transaction broker” or an “agent”. In almost every real estate transaction, I recommend that you use a buyer’s agent (if you’re the buyer) or a seller’s agent (if you’re the seller). The difference between a transaction broker and an agent can best be explained with a sports analogy.

- A transaction broker is similar to a referee. The duties of a referee are to ensure the game is played fair and **NOT advocate** for any particular team or party.
- An agent is similar to a coach or manager. An agent is **looking out for your best interests** and **works in your favor to your advantage; your agent’s goal is to win** the game while playing within the rules in an honest manner.

A transaction broker helping you to buy a house should treat all parties (buyer AND seller) fairly, honestly and disclose all known relevant information to all parties of the real estate transaction. This can hurt or help you depending on which side of the transaction you are sitting (buyer or seller). The transaction broker does **NOT** have a FIDUCIARY duty to you (i.e. **will not advocate for you** will **not** seek a better price or better terms).

A buyer’s (or seller’s) agent helping you to buy (or sell) a house should treat all parties fairly, honestly and disclose **ONLY** permitted information to the other party (the seller or the seller’s agent or the transaction broker). Your agent **should do what you ask** (within the Law) and **guide you** through the entire process while **always looking out for your best interests**. Your agent HAS a FIDUCIARY **duty** (dictated by Colorado Law) **to you DURING AND AFTER** the transaction is complete. If your agent **KNOWS** that the seller may be open to accepting a lower offer, then your agent should inform you and make appropriate recommendations that favor you.

For these reason, it is recommend that you **hire a Realtor that CAN and WILL operate as your BUYER’S AGENT** to help you in your home purchase (and as a **Seller's AGENT** when selling).

A fiduciary duty^[1] is the highest standard of care at either equity or law. A fiduciary (abbreviation *fid*) is expected to be extremely loyal to the person to whom he owes the duty (the “**principal** “): he must not put his personal interests before the duty, and must not profit from his position as a fiduciary, unless the principal consents. The word itself comes originally from the Latin *fides*, meaning faith, and *fiducia*, trust.