

TWELVE AGENCY CONCEPTS EVERY REALTOR® SHOULD KNOW

1. A salesperson/associate broker can create an agency relationship through his words and actions even in the absence of a written contract.
2. In a traditional agency firm, there is “imputed” knowledge, where as a matter of law, each agent is deemed to know what every other agent in the firm knows. In a designated agency firm, there is no firm-wide “imputed knowledge.”
3. You can only practice designated agency if you have a written agreement that expressly provides for designated agency. Without such a written agreement, if you create an agency relationship with a buyer, the buyer has an agency relationship with everyone in the firm.
4. It is often stated that an agent owes his client the fiduciary duties of loyalty, obedience, disclosure, confidentiality, due care and accounting. The case law that has developed is over what specific responsibilities those duties cover.
5. In a dual agency situation, if you do not have the informed consent of both parties, you forfeit your right to a commission.
6. The role of a dual agent is not that of a mediator; the role is simply to facilitate the transaction.
7. You can work with a buyer in a non-agency capacity (i.e., as a customer) – and may choose to do so if you represent the seller and do not want to be a dual agent.
8. Never attempt a dual agency role (or a transaction coordinator role) when you have a special connection with one side or the other – for example, where the buyer is your relative, your best friend from high school, etc.
9. A client can always terminate an agency relationship. Termination may constitute a breach of contract such that the seller or buyer owes damages, but that doesn’t mean the agency relationship continues.
10. Delivery of a document (offer/acceptance/notice, etc.) to the listing agent is the same as delivery to the seller. (Delivery to a cooperating agent is the same as delivery to the buyer ONLY if the cooperating agent is a buyer’s agent.)
11. Representation of two buyers interested in the same house is not a dual agency situation (so you cannot address the problem by entering into a dual agency agreement), but it is a conflict of interest. Such an agent would owe both

buyer-clients the duty of full disclosure and the duty of confidentiality. Buyer's agency contracts should anticipate this situation.

12. In a traditional agency firm, you need to get a dual agency agreement signed whenever there is an in-house deal; in a designated agency firm, you only need a dual agency agreement signed when the same agent represents both the buyer and the seller.

**Dual Agency Agreement
(Designated Agency)**

Salesperson ("Salesperson"): _____

Broker/Firm ("Broker"): _____

Seller: _____

Buyer: _____

Property: _____

In separate agency agreements with Broker, Salesperson is the named designated agent for both Buyer and Seller.

Seller and Buyer acknowledge that in connection with the possible sale/purchase of the Property, Salesperson will be acting as a disclosed dual agent of both Seller and Buyer. As a dual agent of both Seller and Buyer, Salesperson will be working equally for both parties and will provide services to complete the transaction without the full range of fiduciary duties owed by a buyer's agent and a seller's agent. By working with Salesperson as a dual agent, Buyer and Seller are giving up their rights to undivided loyalty and will be owed only limited duties of disclosure, obedience and confidentiality.

Salesperson will prepare and present offers and/or counteroffers at the direction of the Seller or Buyer. In the preparation of the offers and counteroffers, Salesperson will act as an intermediary rather than as an active negotiator for either party. As a dual agent, Salesperson will not disclose any information as to either party's motivation.

Salesperson will preserve all confidential information previously obtained during any prior agency relationships.

Seller and Buyer acknowledge that Salesperson is not acting as an attorney, tax advisor, surveyor, appraiser, environmental expert or structural or mechanical engineer for either party.

Notwithstanding the terms of the designated agency contracts between Broker and Seller and Broker and Buyer, Seller and Buyer hereby release Broker and Salesperson from any fiduciary duties inconsistent with the terms of this Dual Agency Agreement.

SELLER (S)

BUYER (S)

Date: _____

Date: _____

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Dual Agency Agreement
(Traditional Agency Firms Only – Not for Use by Designated Agency Firms)

Brokerage Firm (“Broker”): _____

Seller: _____

Buyer: _____

Property: _____

Seller and Buyer acknowledge that in connection with the possible sale/purchase of the Property, the Broker and all of its salespersons will be acting as disclosed dual agents of both Seller and Buyer. This is true even if Seller and Buyer are working with different salespersons. As dual agents, all salespersons will be working equally for both parties and will provide services to complete the transaction without the full range of fiduciary duties owed by a buyer’s agent and a seller’s agent. By working with a dual agent, Buyer and Seller are giving up their rights to undivided loyalty and will be owed only limited duties of disclosure, obedience and confidentiality.

Broker’s salespersons will prepare and present offers and/or counteroffers at the direction of Seller or Buyer. In the preparation of the offers and counteroffers, a salesperson will act as an intermediary rather than as an active negotiator for either party. As dual agents, Broker’s salespersons will not disclose any information as to either party's motivation.

Broker and its salespersons will preserve all confidential information obtained during any prior agency relationships.

Seller and Buyer acknowledge that Broker’s salespersons are not acting as attorneys, tax advisors, surveyors, appraisers, environmental experts or structural or mechanical engineers for either party.

Notwithstanding the terms of any contracts between Broker and Seller or Buyer, Seller and Buyer hereby release Broker and its salespersons from any fiduciary duties inconsistent with the terms of this Dual Agency Agreement.

SELLER (S)

BUYER (S)

Date: _____

Date: _____

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