

Buyer Agency in Connecticut

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CONNECTICUT'S BUYER AGENCY POLICY

- A **buyer** wanting representation must sign a **buyer representation agreement** & be given a copy.

This is a contract

Connecticut Real Estate Regulations, Section 20-328-6a(a)(2);
Connecticut Real Estate Commission's policy on Agency, 4

- The terms of the **buyer representation agreement** are negotiable.

- An agent of a real estate brokerage firm cannot show a **buyer** another firm's listings(s) without a written, signed **buyer representation agreement**.

Connecticut Real Estate Regulations, Section 20-328-6a(a)(2);
Connecticut Real Estate Commission's policy on Agency, 5c

What You Should Know About Agency

You need to know who represents your interests and who doesn't. You need to know your options and the implications of each option. Too often Realtors are uncertain about agency relationship laws and may not clearly explain your rights and their duties. Agency is all about who represents you. Know your options.

Gerald Anderson, 2005

A bit of History

Until recently Agency was not much of an issue. The Realtor who signed a contract with a homeowner to list their property represented the interests of the homeowner and only the homeowner. They were the Seller's Agent. Any Realtor at the listing firm, not just the listing Realtor, worked exclusively for the Seller and owed complete loyalty to the Seller. They were all the exclusive agents of the Seller. The legal theory was that the Broker in charge of the firm actually took the listing and, all Realtors working for that Broker owed the Seller the same duties and became the Seller's Agent.

Interestingly, all of the Realtors working at the other real estate firms also owed the same duty of loyalty to the Seller. They had no duty of loyalty to the Buyer. This relationship stemmed from the law of sub-agency. All of the Realtors working at other firms were considered Sub-Agents of the listing Broker. They therefore inherited that Broker's duties of loyalty to the Seller. Not surprisingly, many buyers did not understand sub-agency. However, sub-agency is still practiced in most states.

Under sub-agency, the Seller is the Client. The Buyer is called a Customer. Realtors are Agents or Sub-Agents of the Seller and are therefore often called Real Estate Agents. The real estate company is still often called a Real Estate Agency.

In 1996, Connecticut began changing its agency laws so the Buyer could be represented. The first step was to require all Realtors to explain to Buyers who was, or was not, representing them. The second step was to require Realtors to offer to represent Buyers as their Agent. This offer of representation, if accepted, requires the Buyer to sign a Buyer Representation Agreement (sometimes called a Buyer-Broker or Buyer-Client Agreement) with the firm, just like the Seller signs a Listing agreement with the Listing firm. The final step was to eliminate the requirement of sub-agency. Sub-agency is no longer practiced in Greenwich.

A written agreement is needed to be represented & to become a Client

Whether you are a Seller or a Buyer, if you want to be represented, you must enter into a written Agreement which obligates the Realtor and everyone in that real estate firm to represent you as your Agent. This is Connecticut law. For the Seller this Representation Agreement is called an *Exclusive Right to Sell*. For the Buyer, the Representation Agreement is called an *Exclusive Right to Represent Buyer*. See our Buyer Representation Agreement at the end of this booklet or in the Downloadable Forms section of www.GreenwichLiving.com/forms.htm.

Until such time as a Buyer chooses to enter into a written agreement for representation, the Buyer will be treated as an Unrepresented Customer and not as a Client. This means that as a Buyer-Customer, Greenwich Realtors may only show you the listings of their own firm. Because sub-agency is no longer practiced, no Realtor should show Customers (Unrepresented-Buyers) properties listed by other real estate companies.

Duties Owed Clients

Once a Buyer or a Seller signs a representation agreement, they become a Client of the real estate firm and an agency relationship is created. In addition to the duties of **fairness** and **truthfulness** owed to Customers, that firm and every Realtor in that firm then owes the following duties to their client: **loyalty, obedience, complete disclosure, confidentiality, diligence** and **accounting**. The Realtor must disclose to their Client all known relevant and material information. As a result, in Connecticut all Sellers are Clients and almost all Buyers are Clients. Each side is represented by a Realtor who works only in their interest.

Buyer Options

Who represents you and the duties owed to you should be explained by your Realtor at your first meeting. If you choose not to be represented, you should be asked to sign a document that says your rights were explained and you chose not to be represented.

- **Unrepresented Buyer working with a Seller's Broker**

A broker who lists a property, and any Realtor licensed to that listing broker, represents the Seller and acts on behalf of the Seller. This has not changed from prior law. When a Realtor at the listing firm is working with a Buyer as a Customer, he or she is representing the Seller, not the Buyer. The Realtor must act in the Seller's best interest and must tell the Seller any information disclosed by the Buyer. When the Buyer is not represented, the buyer will not receive advice or counsel from the Realtor. The Realtor's only real duties to the Buyer are to be fair and to disclose to the Buyer material facts the Realtor is aware of which could adversely and significantly affect the Buyer's use and enjoyment of the property.

- **Unrepresented Buyer Working with a Sub-Agent**
No one in Greenwich practices sub-agency. Realtors showing Buyers properties not listed by their own firm must have a Representation Agreement signed by the Buyer.
- **Represented Buyer Working with Their Buyer-Broker**
A Buyer may enter into an Agreement with the Realtor to represent them and act on their behalf. In this event, the Realtor, and all Realtors working for that Realtor's brokerage firm, represent the Buyer. This is true even though the Realtor is being paid the Seller or Listing Broker.

Dual Agency

Dual Agency occurs when a Real Estate firm represents a Seller and a Buyer in the same transaction.

If a Realtor in a firm is working with a Seller as a Client and that Realtor, or any other Realtor in the same firm, is representing a Buyer as a Client and if that Buyer is interested in the Seller's property, the firm and both Realtors are the agents of both the Buyer and the Seller. This is called Dual Agency.

- **Broker Representing both Seller and Buyer as a Dual Agent**
Dual Agency changes the type of representation the firm and any Realtors in that firm can provide. Dual Agency prohibits Realtors in the Listing Firm from acting exclusively for either party. Dual Agency requires the informed consent of both the Clients. This consent must be in writing. See the Connecticut Dual Agency agreement in the Downloadable Forms section of www.GreenwichLiving.com/forms.htm.

In a Dual Agency, confidential information about price, other offers, terms and motivation for pursuing a transaction will be kept confidential. Other information will be shared. Dual Agents may not advocate for one party to the detriment of the other.

Within the limitations described above, Dual Agents owe to both Seller and Buyer the fiduciary duties described earlier in the section "Duties Owed Clients". Obviously the Realtor(s) must be very skilled and trustworthy to negotiate a sale between the two parties.

Connecticut law requires Realtors to discuss Agency and the possibility of Dual Agency with Buyers and Sellers at their first "substantive" contact or meeting. However, neither can agree to a Dual Agency in advance of the Buyer Client wishing to place an offer on a Seller Client's property.

- **Broker representing both Clients as Designated Agency**
In 1999 Connecticut amended the Dual Agency law to allow a special form of Dual Agency called Designated Agency. See the Connecticut Designated Agency Agreement in the Downloadable Forms section of www.GreenwichLiving.com/forms.htm (see forms of interest to both buyers and sellers.)

Under Designated Agency, if the firm has sufficient safeguards in place to protect the confidential information of both the Buyer and the Seller, the firm can designate two Realtors - one to represent the Seller and one to represent the Buyer. The designated agent(s) owes complete fiduciary duties only to the person they represent.

- Anderson Associates practices Designated Agency.

Purchases from a FSBO (For Sale by its Owner)

In the event that a Buyer Client wishes to consider the purchase of a property being sold by an owner, the firm can provide the Buyer with two choices:

- **Designated Agency**
Almost all FSBOs are willing to pay a commission to a real estate firm which brings a Buyer Client. When the firm signs an agreement with the FSBO, even if that agreement is just to pay the Buyer Agent's commission, the firm will become a Dual Agent. The firm will then appoint a designated agent to represent the Seller. The Buyer will continue with their own Realtor assuring them their interests will not be compromised.
- **Sole Buyer Agency**
If either the Buyer or the FSBO seller does not want to agree to Designated Agency, the Realtor can still continue to represent the Buyer. In that event, the Buyer will want to make their offer contingent on the FSBO paying a fee to the Buyer Agent's firm (an agreement between the FSBO and the Buyer does not trigger Dual Agency) or the Buyer will simply make their offer low enough to compensate for paying the commission themselves.

For more information on agency read the Connecticut Agency Policy <http://198.65.140.147/legal/policy.htm>

ANDERSON ASSOCIATES DUAL REPRESENTATION POLICY

DUAL REPRESENTATION

If an Realtor in our firm represents a Buyer Client who wishes to place an offer on a property listed by our firm, a Dual Representation for that purchase and sale is created.

- Both the Buyer and the Seller must sign a Dual Agency or Designated Agency Agreement.

DUAL AGENCY

If the same Realtor in our firm represents both the Buyer Client and the Seller Client, and if both Clients agree, it is our policy that the Realtor become a Dual Agent and will represent both Clients in the transaction.

- A Dual Agent owes to both Clients the fiduciary duties of Confidentiality, Loyalty, Obedience, Reasonable Skill and Care.
- A Dual Agent can not disclose confidential information about one Client to the other, this includes motivations for buying/selling as well as the buyer/sellers financial or price objectives.

DESIGNATED AGENCY

If different Realtors in our firm represent the Buyer Client and the Seller Client, it is our policy to designate each Realtor to represent their Client. This is called Designated Agency.

- Designated Agents owe complete fiduciary duties to their Clients. Their only obligation to the other Client is not to disclose any confidential information they obtained before their appointment as a Designated Agent.

COMPETING BUYER CLIENTS

The firm may represent a number of Buyers. If more than one Buyer Client wishes to bid on the same property, this does not in itself create dual representation and no consent is required. It is our policy not to disclose to either Buyer Client that more than one Client is interested in a property.

EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT

Connecticut law prohibits a broker or salesperson from representing or negotiating on behalf of a buyer unless a buyer signs a written agreement to allow the broker or salesperson to act on buyer's behalf. An agent of a real estate brokerage firm cannot show a buyer another firm's listing(s) without a written, signed buyer representation agreement. Section 20-328-6a of the Connecticut General Statutes.

1. EXCLUSIVE RIGHT:

Buyer(s) _____ (Please Print)
appoints ANDERSON ASSOCIATES, LTD (the "Broker") as Buyer's exclusive agent to assist Buyer to locate and lease or otherwise acquire an interest in real property acceptable to Buyer (the "Property").

2. GEOGRAPHICAL AREA:

This Agreement is limited to Fairfield County, Connecticut and Westchester County, New York. Outside of Greenwich, Connecticut Broker may select local Realtors to represent Buyer.

3. TERM OF AGREEMENT:

This authorization is in effect from _____ to _____ inclusive, or through the closing date of a pending transaction in which the Broker represents the Buyer.

4. BROKER'S DUTIES. Broker agrees:

- A. We will attempt to locate Property acceptable to Buyer.
- B. We will negotiate on behalf of Buyer terms and conditions agreeable to Buyer.
- C. We will assist Buyer in the purchase, exchange or lease, as the case may be, of the Property.
- D. We will provide Buyer names of attorneys, contractors, inspectors, financial services, and other professionals we believe to be reliable. This is an accommodation to Buyer not an endorsement or guarantee by Broker.
- E. We will use our best efforts to research the Property at Town Hall.
- F. We will, if requested, provide Buyer with recent sold properties we believe to be comparable to the Property.
- G. We will not disclose any personal or financial information about Buyer without Buyer's permission.

5. BUYER'S DUTIES: Buyer agrees:

- A. You represent that you are not bound by a Representation Agreement with any other Broker covering the same Geographical Area as this Agreement. You realize that you could be liable for the payment of more than one fee or commission if there is one.
- B. You will tell us about any past or current contacts with any real property or any other real estate agents relating to real property in the Geographical Area covered by this Agreement.
- C. You will utilize us exclusively in following up leads or information about a property no matter what the source.
- D. You will inform Realtors at Public Open Houses that you are represented by a Broker.
- E. You will schedule all appointments to see a property exclusively through us and will give us, if possible, two days notice of properties you would like to see, so that we can make appointments in a timely manner.
- F. You will, upon request, give us financial and personal information regarding your purchase abilities and needs.
- G. You will direct questions concerning the legal title to property, location of property boundaries, tax considerations, property & building inspection, expansion possibilities, environmental questions, engineering, or the uses or planned uses of neighboring properties, hazardous waste facilities, deaths or sickness in a property or residence of convicted persons to your attorney, tax advisor, building inspector or appropriate governmental agency.

6. COMPETING BUYER CLIENTS:

The Buyer understands and agrees Broker may represent other buyers and show properties and negotiate offers for these other buyers. If more than one buyer client of the Brokerage firm wishes to bid on the same property, this does not create dual representation and no consent is required. We will not to disclose to either buyer client that more than one client is interested in the same property. However, if the same Agent represents two buyers who wish to bid on the same property, that Agent must tell both buyers and offer to have another Agent(s) in the Brokerage represent each of them with regard to that purchase.

7. FAIR HOUSING

This Agreement is subject to the Connecticut General Statutes prohibiting discrimination in commercial and residential real estate transactions (Connecticut General Statutes, Title 46a, Chapter 814c).

IT IS UNLAWFUL UNDER FEDERAL AND/OR STATE LAW TO DISCRIMINATE ON THE BASIS OF RACE, CREED, COLOR, NATIONAL ORIGIN, ANCESTRY, SEX, SEXUAL ORIENTATION, MARITAL STATUS, AGE, LAWFUL SOURCE OF INCOME, LEARNING DISABILITY, MENTAL RETARDATION, FAMILIAL STATUS AND MENTAL OR PHYSICAL DISABILITY.

8. BUYER AGREES TO THE FOLLOWING PROFESSIONAL FEE:

- A. Buyer agrees Broker is entitled to a professional service fee if Buyer purchases or leases properties introduced to Buyer during the term of this Agreement or any extensions thereof or within 120 days of the termination of this Agreement.
- B. If Buyer purchases a home listed on a Multiple Listing Service (MLS), we will collect our commission or fee from the seller or listing agency as long as a commission of, at least 2.5%, is offered to cooperating brokers.
- C. In the event Buyer purchases Property which is not listed on an MLS (such as a house being offered directly by an owner or through an auction or in bankruptcy), or if the compensation offered through the MLS is not, at least 2.5 %, Buyer agrees to pay our fee of 2.5% of the purchase price of the Property. Any fee or commission collected by Broker will be credited towards Buyer's obligation.
- D. If a fee of less than 2.5 % is offered by a Seller or Listing Broker, Broker will inform Buyer before presenting an offer.
- E. Broker will make every effort to collect their fee from the Listing Broker, Seller, Financial Institution, or out of the transaction. or structured within an offer to purchase.
- F. The fee shall be paid at closing.

THE AMOUNT OF RATE OF REAL ESTATE BROKER COMPENSATION IS NOT FIXED BY LAW. IT IS SET BY EACH BROKER INDIVIDUALLY AND MAY BE NEGOTIABLE BETWEEN YOU AND THE BROKER.

9. DUAL REPRESENTATION

If an Agent in our brokerage firm represents a Buyer Client who wishes to place an offer on a property listed by our brokerage firm, a Dual Representation for that purchase and sale is created. Both the Buyer Client and the Seller Client must sign a Dual Agency or Designated Agency Agreement before an offer is made.

- A. DUAL AGENCY: If an Agent in our firm represents both the Buyer Client and the Seller Client and if both Clients agree, that Agent will become a Dual Agent and represent both Clients in the Transaction. A Dual Agent owes loyalty to both Clients, but can not disclose confidential information about one Client to the other.
- B. DESIGNATED AGENCY: If both Clients do not agree that the Agent should be a Dual Agent, we will designate one Agent to represent the Seller Client and one Agent to represent the Buyer Client. Designated Agents owe complete fiduciary duties to their clients. Their only obligation is not to disclose any confidential information they obtained before their appointment as a Designated Agent.

10. GENERAL CONSIDERATIONS

- A. This Agreement (a) constitutes, the entire agreement between the parties and supersedes all prior agreement, (b) may not be assigned, (c) may not be amended or modified except by a written agreement signed by both parties, (d) shall be governed by and construed in accordance with the substantive laws of the State of Connecticut, (e) shall be enforced by binding arbitration in Connecticut after independent mediation efforts have been exhausted.
- B. Buyer agrees not to enter into another Representation Agreement with any other broker in the Geographical Area covered by this Agreement unless this Agreement has expired or is cancelled.

Broker: ANDERSON ASSOCIATES, LTD.

164 Mason Street, Greenwich, CT 06830

Tel: 203-629-4519. Fax: 203-629-4786

www.GreenwichLiving.com

By: Broker/Agent

Date

Buyer: _____ Date: _____

Buyer: _____ Date: _____

Street Address: _____

Town/State/Zip: _____