

## AGENCY RELATIONSHIPS DISCLOSURE

This form approved by the North Dakota Association of REALTORS®, which disclaims any liability out of use or misuse of this form. This form is only for use by licensed REALTORS® in the State of North Dakota.

North Dakota law requires that, early in a relationship (at first substantive contact), real estate Brokers discuss with consumers what type of representation or relationship they desire (unless otherwise specified, the term “Broker”, as used in this form, includes both Brokers and Broker’s Salespersons). The available agency options are listed on this form.

**This is not a contract. This is an agency disclosure form only. If you desire representation, you must have a written contract according to state law (a Listing Agreement if you are a Seller, or a Buyer Representation Agreement if you are a Buyer). Until such time you choose to enter into a written contract for representation, you will be treated as a *Customer* and will not receive any representation from the Broker.**

**Acknowledgement: I/We acknowledge that I/we have been presented with the options described on pages 1 and 2 of this Agency Relationship Disclosure. I/We understand that until I/we have signed a representation contract I/we have no representation by the Broker and information given to the Broker may be disclosed. I/We understand that written consent is required for a dual agency relationship and for an appointed agency relationship.**

**THIS IS A DISCLOSURE ONLY, NOT A CONTRACT FOR REPRESENTATION.**

_____ Signature	_____ Date
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**I. Customer:** A Seller, Buyer, lessor, or lessee, who is not represented by a particular Broker in a transaction, is considered a *customer*. Brokers are not agents of a *customer* and owe the *customer* only limited legal duties. **However, Brokers must deal honestly with any party to a real estate transaction, regardless of whether the party is represented by that Broker.** These limited legal duties are to perform the customary acts typically performed by Brokers in assisting a transaction to the transaction’s closing or conclusion with honesty and good faith and to disclose to the *customer* any adverse material facts actually known by the Broker which pertain to the title of the real property, the physical condition of the real property, and defects in the real property. Brokers do not owe the agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting to a *customer*. *Customers* should be aware that any information shared with Brokers may be disclosed. If a Broker represents another party in the same real estate transaction, the Broker is required to place the interest of the represented client first.

**II. Seller’s Broker:** A Broker who lists a property, represents the Seller, and acts on behalf of the Seller. A Seller’s Broker owes to the Seller the agency duties described on Page 2. The Seller’s Broker must also disclose to the Buyer material facts, as defined by state law, of which the Broker is aware that could adversely and significantly affect the Buyer’s use or enjoyment of the property. If a Broker working with a Buyer as a *customer*, but is representing the Seller, Broker must act in the Seller’s best interest and must tell the Seller any information disclosed to the Broker. If the Broker is representing the Seller, the Buyer *customer* will not be represented and will not receive advice and/or counsel from the Broker. If a Broker represents two or more Sellers as clients who both desire to offer competing real property for sale or lease, a Broker may do so without breaching any duty to such clients. In such an event, Broker still owes agency duties to the clients, except as limited in this Paragraph II.

**III. Buyer’s Broker:** A Broker who enters into an agreement to represent and act on behalf of a Buyer. A Buyer’s Broker may represent the Buyer only, and not the Seller, even if they are being paid in whole or in part by the Seller. A Buyer’s Broker owes to the Buyer the agency duties described on Page 2. A Broker must disclose to Buyer’s material facts, as defined by state law, of which the Broker is aware that could adversely and significantly affect the Buyer’s use or enjoyment of the property. If a Broker working with a Seller as a *customer* is representing a Buyer, Broker must act in Buyer’s best interest and must tell Buyer any information disclosed to the Broker. If the Broker is only representing the Buyer, Seller will not be represented and will not receive advice and/or counsel from Broker. If the Broker represents two or more Buyers as clients who desire to make an offer to purchase the same real property, the Broker may do so without breaching any duty to such clients, by assisting such clients with multiple offers even though the interest of such clients are competing. However, if the same Salesperson represents two or more Buyers who desire to make an offer to purchase the same property, that Salesperson must disclose to Buyer clients the fact that a competing written offer has been submitted by another Buyer client of that Salesperson, without disclosing the identity of the other Buyer client, or the terms of the offer. In such an event, the Broker and the Salesperson still owe agency duties to the clients, except as limited in this Paragraph III.

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**IV. Dual Agency- Broker Representing Both Seller and Buyer:** Dual Agency occurs when one Broker represents both parties to a transaction, or when two Salespersons licensed to the same Broker each represent a party to the transaction (unless Appointed Agency applies, see V). Dual Agency requires the informed written consent of all parties, and means that the Broker owes the same duties to the Seller and Buyer. This role limits the level of representation the Broker can provide, and prohibits Broker from acting exclusively for either party. In a Dual Agency, Broker's knowledge regarding either party's willingness to negotiate further on price or terms, or regarding motivation for pursuing a transaction, will be kept confidential, unless Buyer or Seller instructs Broker in writing to disclose specific information about him/her. Dual Agents may not advocate for one party to the detriment of the other as described below in (3). Within the limitations described above, Dual Agents owe to both Seller and Buyer the agency duties described below in (2). Dual Agents must disclose to Buyer's material facts, as defined by state law, of which Broker is aware that could adversely and significantly affect Buyer's use and enjoyment of the property.

**V. Appointed Agency:** Some Brokers have the option of replacing Dual Agency (see IV) with Appointed Agency for in-house transactions. The Broker may appoint one salesperson affiliated with the Broker to exclusively represent a Seller, and one salesperson affiliated with the Broker to exclusively represent the Buyer. In that case, no Dual Agency is created. **Appointed Agent who singularly represents both Seller and Buyer in the same transaction is considered to be a disclosed Dual Agent owing agency duties to both parties and must get permission from both parties to so act.**

**VI. Subagent:** A Broker who is working with a Buyer as a *customer* but represents a Seller whose property is listed with a different brokerage. If a Broker working with a Buyer as a *customer* is representing the Seller, Broker must act in the Seller's best interest and must tell the Seller any information that is disclosed to the Broker. In that case, the Buyer is a *customer* and is not represented by either Broker, and will not receive advice/or counsel from the Broker.

**VII. Limitation:**

- (A) **Intent to Perform-** The Broker/Salesperson must disclose any information to either party which may indicate that one of the parties does not intend to perform in accordance with the terms of the purchase agreement or any other written agreement or obligation.
- (B) **Imputed Knowledge-** The knowledge of one Salesperson of real estate brokerage firm regarding an affected real property is not imputed to another Salesperson in the same brokerage firm and no duty is imposed upon a Salesperson regarding the affected real property to another Salesperson within the same real estate brokerage firm.
- (C) **Disclaimer of Certain Obligation-** Unless otherwise agreed in writing, a Broker and its Salespersons are not obligated to independently verify the accuracy or completeness of any statement or representation made by any person other than the Broker and Salesperson involved in the transaction under question.

**(1) This disclosure is required by law in any transaction involving a one to four unit residential property.**

**(2) Agency duties are listed below and have the following meanings:**

**Loyalty** – Broker/Salesperson will be faithful to and act only in the best interest of client(s).

**Obedience** – Broker/Salesperson will carry out all lawful instructions of client(s).

**Disclosure** – Broker/Salesperson will disclose to client(s) all material facts of which they have knowledge and which might reasonably affect the client's use and enjoyment of the property.

**Confidentiality** – Broker/Salesperson will keep the confidences of client(s) unless required by law to disclose specific information (such as disclosure of material facts to a Buyer).

**Reasonable Care** – Broker/Salesperson will use reasonable care in performing duties as an agent.

**Accounting** – Broker/Salesperson will account for all money and property received as agents for client(s).

**(3) If Seller decides not to agree to a Dual Agency relationship or an Appointed Agency relationship, Seller may give up the opportunity to sell the property to Buyers represented by Broker/Salesperson.**

**If Buyer decides not to agree to Dual Agency relationship or an Appointed Agency relationship, Buyer may give up the opportunity to buy the property of Sellers represented by Broker/Salesperson.**

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