

Real Estate Agency

1. Introduction
2. Terminology
3. How an agency relationship is formed
4. Statutory Duties Owed to a Principal
5. Before entering into a Brokerage Relationship
6. Compensation
7. Disclosure of Brokerage Relationship to your non-client
8. Types of Agency
9. Termination of Brokerage Relationship

VOCABULARY

Agency & Agency Relationships

The term “agency” is used in real estate to help determine what legal responsibilities your real estate professional owes to you and other parties in the transaction.

The **buyer's representative** (also known as a buyer's agent) is hired by prospective buyers and works in the buyer's best interest throughout the transaction. The buyer can pay the agent directly through a negotiated fee, or the buyer's rep may be paid by the seller or through a commission split with the seller's agent.

The **seller's representative** (also known as a listing agent or seller's agent) is hired by and represents the seller. All fiduciary duties are owed to the seller, meaning this person's job is to get the best price and terms for the seller. The agency relationship usually is created by a signed listing contract.

A **subagent** owes the same fiduciary duties to the agent's customer as the agent does. Subagency usually arises when a cooperating sales associate from another brokerage, who is not the buyer's agent, shows property to a buyer. The subagent works with the buyer to show the property but owes fiduciary duties to the listing broker and the seller. Although a subagent cannot assist the buyer in any way that would be detrimental to the seller, a buyer customer can expect to be treated honestly by the subagent.

A **disclosed dual agent** represents both the buyer and the seller in the same real estate transaction. In such relationships, dual agents owe limited fiduciary duties to both buyer and seller clients. Because of the potential for conflicts of interest in a dual-agency relationship, all parties must give their informed consent. Disclosed dual agency is legal in most states, but often requires written consent from all parties.

Designated agents (also called appointed agents) are chosen by a managing broker to act as an exclusive agent of the seller or buyer. This allows the brokerage to avoid problems arising from dual-agency relationships for licensees at the brokerage. The designated agents give their clients full representation, with all of the attendant fiduciary duties.

A **transaction broker** (sometimes referred to as a facilitator) is permitted in states where nonagency relationships are allowed. These relationships vary considerably from state to state. Generally, the duties owed to the consumer in a nonagency relationship are less than the complete, traditional fiduciary duties of an agency relationship.

Code of Virginia
Title 54.1. Professions and Occupations
Chapter 21. Real Estate Brokers, Sales Persons and Rental Location Agents

§ 54.1-2130. Definitions.

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person as an agent by such person's express authority in a commercial or residential real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135. Any real estate licensee who acts for or represents a client in an agency relationship in a residential real estate transaction shall either represent such client as a standard agent or a limited service agent.

"Agent" means a real estate licensee who is acting as (i) a standard agent in a residential real estate transaction, (ii) a limited service agent in a residential real estate transaction, or (iii) an agent in a commercial real estate transaction.

"Brokerage agreement" means the written agreement creating a brokerage relationship between a client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent the client as an agent or an independent contractor.

"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.

"Client" means a person who has entered into a brokerage relationship with a licensee.

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under § 58.1-3230. Commercial real estate shall not include single family residential units, including condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"Common source information company" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

"Customer" means a person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee rather than a client.

"Designated agent" or "designated representative" means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction. A designated representative shall only act as an independent contractor.

"Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction. A dual agent has an agency relationship under brokerage agreements with the clients. A dual representative has an independent contractor relationship under brokerage agreements with the clients. A dual representative shall only act as an independent contractor.

"Independent contractor" means a real estate licensee who (i) enters into a brokerage relationship based upon a brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent; (ii) shall have the obligations agreed to by the parties in the brokerage agreement; and (iii) shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § [54.1-2131](#); subdivisions A 3 through 7 and subsections B and E of § [54.1-2132](#); subdivisions A 3 through 7 and subsections B and E of § [54.1-2133](#); subdivisions A 3 through 7 and subsections B and E of § [54.1-2134](#); and subdivisions A 2 through 6 and subsections C and D of § [54.1-2135](#) but otherwise shall have no obligations under §§ [54.1-2131](#) through [54.1-2135](#).

"Licensee" means real estate brokers and salespersons as defined in Article 1 (§ [54.1-2100](#) et seq.).

"Limited service agent" means a licensee who acts for or represents a client in a residential real estate transaction pursuant to a brokerage agreement that provides that the limited service agent will not provide one or more of the duties set forth in subdivision A 2 of §§ [54.1-2131](#), [54.1-2132](#), [54.1-2133](#), and [54.1-2134](#), inclusive. A limited service agent shall have the obligations set out in the brokerage agreement, except that a limited service agent shall provide the client, at the time of entering the brokerage agreement, copies of any and all disclosures required by federal or state law, or local disclosures expressly authorized by state law, and shall disclose to the client the following in writing: (i) the rights and obligations of the client under the Virginia Residential Property Disclosure Act (§ [55.1-700](#) et seq.); (ii) if the client is selling a condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the resale certificate required by § [55.1-2309](#); and (iii) if the client is selling a property subject to the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the resale certificate required by § [55.1-2309](#).

"Ministerial acts" means those routine acts which a licensee can perform for a person which do not involve discretion or the exercise of the licensee's own judgment.

"Property management agreement" means the written agreement between a property manager and the owner of real estate for the management of the real estate.

"Residential real estate" means real property containing from one to four residential dwelling units and the sale of lots containing one to four residential dwelling units.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship in a residential real estate transaction. A standard agent shall have the obligations as provided in this article and any additional obligations agreed to by the parties in the brokerage agreement.

1995, cc. [741](#), [813](#); 2006, c. [627](#); 2008, cc. [851](#), [871](#); 2011, c. [461](#); 2012, c. [750](#); 2016, c. [334](#); 2023, cc. [387](#), [388](#).



**Williamsburg Real Estate School
Continuing Education or Post License Education Credit**

PLEASE PRINT CLEARLY: FORM MUST BE TURNED AT END OF CLASS TO RECEIVE CREDIT.
There will be a \$10 charge assessed for forms turned in after the day of the class.

PLEASE INDICATE NAME BELOW **EXACTLY** AS IT APPEARS ON YOUR REAL ESTATE LICENSE.

FIRST NAME - PRINT CLEARLY			
MIDDLE NAME OR INITIAL			
LAST NAME			
FIRM NAME			
EMAIL ADDRESS			
DAYTIME PHONE NO.			
COURSE NAME	Real Estate Agency <i>Approved for 1 hour Mandatory Real Estate Agency CE</i> <i>Approved for 1 hour Broker Mgmt</i>		
COURSE DATE	Thursday, March 14, 2024		
LICENSE NUMBER (10 DIGITS):	<u>0</u>	<u>2</u>	<u>2</u> <u>5</u> _ _ _ _ _
CREDIT TYPE REQUESTED (Circle one) <i>PL credit is required for salespersons in their first year of real estate.</i>	CE # 28600	BR # 28601	
X			

Signature - Required: My signature certifies that I was present for this entire session and am entitled to receive continuing education credit. (Partial attendance does not give continuing education or class credit.)



Speaker Evaluation & Suggestion Card

Instructor: John Wilson

Class: Real Estate Agency

Date: March 14, 2024

Please turn in the form at the end of the class.

1. The instructor demonstrated expertise in the subject.

1 2 3 4 5

2. The instructor was interesting and I enjoyed the class.

1 2 3 4 5

3. I gained knowledge that will be valuable to my business.

1 2 3 4 5

4. I would attend another class by this instructor.

1 2 3 4 5

5. We loved having you as our guest in class today! What went well? How could we serve you better?

6. Would you recommend this class to someone who hasn't taken it?

- Yes
- No
- I'm not sure