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Subject: Buyer Agency

Buyer Agency and Buyer Brokerage

Buyer agency and buyer brokerage have gone mainstream. Some would argue that the real estate professional has more value to offer the buyer than the seller.

Few would argue the huge influence of the Internet on the real estate business. Some of the changes brought by the Internet provide opportunities for buyer representation. While many real estate professionals are upset by the wealth of information on the Web, it actually presents opportunities. What might those be?

- **Information overload is a problem.** Work with your buyers by helping them to organize and interpret all this property information.
- **Provide even more information than they knew existed.** We're the professionals. We should have all the information resources cataloged and ready for our buyer clients.
- **Interpret and contrast for accuracy.** The fact that information exists does not make it accurate or valuable. Your greatest value will be in helping your clients to analyze it.

Buyers, and particularly buyers who are relocating to a new area, need the services and knowledge of a local Realtor®. Position yourself to serve them better by developing resources to help them gather and analyze area and listed property data.

Ask any buyer's agent who has been practicing real estate for a while, and you'll hear sad stories from those buying agents who wished they had signed a buyer to a buyer's broker agreement. In defense of buyers, however, it's rarely the buyer's fault. It's the agent's fault for not explaining how the business works.

What often happens is an agent will work with a buyer for a few weeks to several months or longer. This effort includes:

- Introducing the buyer to lenders and obtaining loan preapproval letters
- E-mailing listings that fit the buyer's requirements
- Calling listing agents to determine availability
- Making appointments with sellers before showing homes
- Driving the buyer from one neighborhood to the next, sometimes touring up to 10 homes a day

Then one day the buyer calls, in breathless excitement, to announce that he and his wife had driven by a new subdivision, stopped to look at a model home and signed a contract to buy a new home from the builder. Sometimes they add, "Isn't that fabulous?" It's not fabulous from the agent's perspective.

Buyer's Agents Expect Compensation

Just as listing agents sign formal listing agreements with sellers, buying agents expect formal agreements, too. Like listing agreements, buyer's broker agreements are typically bilateral, which spell out the rights and duties

of both parties. Because bilateral contracts are essentially a promise for a promise, if the agent doesn't perform, you may have the right to fire the agent.

Should You Sign an Exclusive Agreement?

Little turns off buyers faster than an agent from the Internet who e-mails a buyer's broker agreement before meeting in person. It's common for agents to expect a buyer to sign a buyer's broker, but **most buyers need to feel comfortable with an agent before signing.**

Interviewing a real estate agent can help to ease a buyer's uncertainty. But many buyers are leery of signing agreements because they are concerned that the relationship might not work out. They don't want to be stuck with a crummy agent, and that's understandable. Here are a few precautions you can take to relieve that anxiety:

- **Ask For Short-Term**

The term of a buyer's broker agreement is negotiable. Although many agents might request a 90-day commitment at minimum, you are free to ask for a 24-hour, seven-day or 30-day term; it's whatever you can negotiate.

- **Request a Non-Exclusive Agreement**

These agreements provide compensation to the agent if you decide to switch agents midstream and buy a home introduced to you by the first agent. It protects the agent by establishing procuring cause. But you are free to pursue any other homes with another agent.

- **Compromise**

You can tell the agent that you prefer to spend a little time getting to know the agent before signing an exclusive buyer's broker agreement. It's reasonable to say, "Let's spend an afternoon looking at homes, and if I think we can work together, I will sign an agreement with you before we go out again." I would caution against working with an agent who is too eager to work with you before she has interviewed you, as well.

- **Specify Areas and Terms**

Most contracts contain a description of the property. If you are undecided about areas, you might want to specify the terms and area in the contract, which will allow you to work with other agents in other areas or at different terms. For example, you might specify a price range or a neighborhood. If you later decide you do not want to buy a home in that price range or in that neighborhood, you can choose a different agent to show you homes in another price range or new area.

- **Ask For a Guarantee**

I give my clients a guarantee. Many agents will accommodate that request if you ask. **That means it's a two-way street. I guarantee buyers that if either of us decide that the relationship is not working out or our personalities clash, I will release them from the agreement, and they can do likewise.** That way you're not cemented to a business arrangement if the agent is too pushy, argumentative or stubborn, and I'm not just talking about myself.

Buyer's Broker Agreements & Buyer's Broker Contracts

Buyer Representation Agreements: Terms, Conditions and Duration

Home buyers typically sign buyer broker agreements with their real estate brokers / agents before writing a purchase agreement. The buyer broker agreements spell out precisely who represents the buyer. It's also known as buyer representation. There are a huge variety of buyer broker agreements used throughout the United States. For simplicity, I will review the three most common types of agreements used in California, with most weight given to Exclusive Right to Represent because it's the preferred form.

The following information is a general overview. It is not a legal interpretation of Buyer Broker Agreements. I cannot give legal advice. If you desire legal advice, please consult a real estate lawyer.

Buyer Broker Agreement (Non-Exclusive / Not for Compensation)

This agreement outlines the broker's / agent's duties and obligations to the buyer, agency relationships, broker scope of duty and buyer obligations; it does not provide for compensation.

- Buyer may hire more than one broker / agent to locate property
- Buyer is not obligated to compensate the broker / agent
- Buyer has the right to demand single agency

Buyer Broker Agreement - Non-Exclusive, Right to Represent

The non-exclusive agreement outlines the broker's / agent's duties and obligations to the buyer, agency relationships, broker scope of duty and buyer obligations; however, it does provide for compensation. It also removes the buyer's responsibility to pay a commission if the broker / agent is paid by another party such as the seller.

- Buyer may purchase a property through another broker / agent, as long as the property is not a home introduced by the first broker
- Buyer has the right to demand single agency
- The broker / agent can receive a higher commission than the negotiable fee stated in the agreement if the seller elects to pay more and it is disclosed

Buyer Broker Agreement - Exclusive Right to Represent

This is the form that I use with my buyers. It is similar in scope to the non-exclusive form except for one major distinction: the buyer has agreed to work exclusively with the broker / agent.

- The buyer cannot hire more than one broker / agent to represent her
- The commission is negotiable
- Buyer has the right to demand single agency
- The buyer is not responsible for the commission if another party (such as the seller) pays it

- The broker / agent can receive a higher commission than the negotiable fee stated in the agreement if the seller elects to pay more and it is disclosed

While non-exclusive agreement terms may run for a month or two, exclusive agreement terms are typically anywhere from three months to one year. If the buyer elects to subsequently purchase any property introduced to her by the agent, she will owe the agency a commission. Exclusive representation gives the broker / agent the ability to negotiate with unrepresented sellers (such as for sale by owners) on the buyer's behalf. In these instances, the commission is often added to the sale price and then paid by the buyer to the broker as part of the financing. If the buyer is able to purchase the property at a substantial discount through the power of the broker's / agent's negotiating ability, the broker / agent will have more than earned her fee. Exclusive representation means the broker / agent is employed by the buyer and will work diligently on the buyer's behalf.

Termination

Ask the broker / agent if she will release you from the contract if you find that the relationship is not a good fit for you or vice versa. While agents are not bound to release you, if they won't agree to this upfront, don't sign the agreement with them. Professionals give personal guarantees that the customer will be satisfied. If an agent can't give you that guarantee, the agent does not deserve your business.

Real Estate and Buyer Agency News

"A conflict of interest is more likely when a real estate firm that represents sellers assigns you one of its brokers as a buyer agent. That's why many people believe an "exclusive" buyer broker is preferable. If there aren't any in your area, and you have to use a listing broker, "make sure they disclose when they are showing you properties they have a financial interest in," says Stephen Brobeck, executive director of the Consumers Federation of America." *Business Week*

"Agents: How to hire one for your side." "Most agents who show you homes don't represent your interests. They work for the seller, and their object is to sell the house for the highest possible price." *USA Today*

"You have a whole new evolution of practice in the marketplace," said Sharon Millet, a Maine real estate broker who headed the 22-member NAR task force that issued the report. Millet said that the report's recommendations are designed to give home buyers and sellers easier access to the "kind of representation" that they want." *Washington Post*

'Buyer Advocacy appears to be taking off.' "I'll never buy a house any other way." – Mrs. Renee Talley, Highland Park TX *Wall Street Journal* "Exclusive agencies are the best. They remove any conflict of interest, which is the main reason for considering a buyer broker in the first place. *Kiplinger's CHANGING TIMES*

"To Buyers: If you want representation, work with a buyer broker. They are legally obligated to represent your interests in any negotiations with sellers." The Consumer Federation of America " Groups such as the Consumer Federation of America and AARP recommend using buyer's agents. *SmartMoney Magazine* , June 1995

"Many people don't realize that, unless specifically stated otherwise, brokers are legal representatives of sellers. A buyer broker, representing only the buyer, may be able to secure a better price and better terms." *Good Housekeeping*

"When one salesperson has a home listed for sale, and another salesperson working for the same brokerage locates a buyer, the second salesperson can't be a true buyer's agent. Why? Because both people work for the same brokerage. A "dual agency" with both buyer and seller is the usual solution. To solve this problem, a few states are experimenting with laws allowing the agent who finds a buyer for a home listed with the same brokerage to be a fully disclosed buyer's agent for the buyer. This "legal fiction" enables the buyer to work with his own agent who, by law, doesn't also represent the seller." Robert J. Bruss – *Real Estate Weekly/The Virginian–Pilot*

"Buyer brokers: agents that buyers can call their own...If your real estate agent isn't a buyer broker, he works for the seller...Buyers no longer have to fend for themselves." *U.S. News & World Report*

"Level the playing field when you buy a home...You may get a better deal with your own broker pulling for you...The introduction of buyer brokers takes a horribly one-sided process and simply makes it fair," says one broker." *Medical Economics*

"Buyer brokerage is becoming accepted. Unlike traditional real estate arrangements, under which the agent works for the seller, buyer brokers work for the buyer." *Florida TODAY*

"Confusion often arises because many buyers believe that the agent who shows them houses works on their behalf. In fact, subagents of the listing broker – often they are agents who work for another office – also act on behalf of the seller." *New York Times* May 19, 1995 We all know that dual agency is not legally definable in the real world. We should not offer anything less than 100% client-level services to our buyer/seller clients. We should reject all anti-consumer proposals that do not offer our clients protective fiduciary duties and responsibilities." Robert McAvoy – President of the New Hampshire Assoc. of Exclusive Buyer Agents

"Buyer brokers have the buyer's interests in mind. They act as a personal advocate, hunting for the right house and haggling with the seller's agent. In fact, a 1992 study by a national long distance phone company, found that 200 relocating workers who used buyer brokers paid an average of 91% of the offering price, whereas those using traditional brokers paid 96%." *Diversion Magazine for Physicians*<>

Buying A Vacation Home

Buying or building a vacation home is an exciting and important decision.

As with buying other luxury homes, a variety of factors are important when buying a vacation home:

- the natural beauty and recreational possibilities of the property
- the suitability of the design to your tastes and needs
- the match between the surrounding community and your own goals and interests
- the desired level of privacy

Exclusive Buyer Agents

Whether you'd like to purchase an existing vacation home, or build on the property of your dreams, an exclusive buyer agent (EBA) is in an ideal position to help you meet your goals.

An exclusive buyer agent can offer...

- access to the full range of vacation homes for sale in the desired area, including those that are not listed with realtors such as those "for sale by owner"
- absolute commitment to protecting your confidentiality and privacy .
- help in working with builders to bring your vacation home plans to life
- access to in depth knowledge of the area and communities you are interested in

All About Buyer Agency

Many home buyers believe that the Agent with whom they are working--sometimes on a daily basis--represents them and their interests. Without certain disclosures, this definitely is *not* the case.

The Agent, unless specifically disclosed otherwise, represents the *seller* in any transaction for the sale of a home. It is that Agent's fiduciary duty (where their loyalty lies) to protect the seller's position at all times.

Buyer's Agency, however, may be an option available to you. Simply put, it allows the Agent with whom you are working to be your representative and to put your interests above all others.

Example 1: You see a house advertised in the newspaper, a home magazine, or the Internet. You contact the Listing Agent (this is who will be advertising the home) and make an appointment to see the house. The Agent is friendly, informative, and tells you what you believe to be everything about the house. The Agent represents the seller, not you.

Example 2: You are working with an Agent, who shows you 25 different homes over 3 weekends. The Agent buys you lunch twice, knows all 4 of your children by name as well as all of your personal likes and dislikes, but does not offer Buyer Agency. You feel comfortable with the Agent, revealing important personal information. Without Buyer Agency, "your" Agent represents, and owes loyalty to, each and every one of those 25 sellers--not you. Any information you reveal to the Agent must be relayed to the sellers.

"Okay," many buyers say, "so the Agent represents the seller and not me. Is that a big deal?" Maybe not, but it is important to understand that if the Agent represents the seller, they cannot reveal certain things to you, as the buyer:

- The reason for selling (unless the seller specifically authorizes it)
- Any concessions, in price or otherwise, that the seller may be willing to give up.
- Any conversations that the seller and the Agent may have had.
- Any information that could be detrimental to the seller, or give you, the buyer, an advantage. This would include a **CMA** (Comparable Market Analysis) that could put the seller at a disadvantage.

Buyer Agency turns the tables. If a Buyer's Agency agreement is struck between you and the Agent, it is *you*, rather than the seller, who has the representation from the Agent with whom you are working. If you are represented by a Buyer's Agent, some of the potential benefits include:

- **The Agent can develop a CMA (Comparable Market Analysis), revealing at what price similar properties in the area have been listed for and sold for.**
- **The Agent can reveal to you any information about the seller that the Agent has been able to ascertain. This may include reasons for selling, potential concessions, or other information that may be to your advantage.**
- **Information about property value trends that may influence your decision about a certain area can be relayed to you.**

Buying a home is a

big decision and a personal one.

You need the **RIGHT PERSON** to find a home that suits your needs.

So you've decided to buy a home.

Purchasing real estate is a complex and major transaction with many details to be handled. Depending on the laws in your state and the business arrangement **you** have with a licensed real estate agent, that agent may actually be negotiating for the *seller*, **not you the buyer**. The best way to be certain that an agent is working in your best interests is by signing a buyer representation agreement with an agent.

What is a Buyer Representative?

A real estate buyer's representative represents the buyer who is purchasing property in a real estate transaction. Research by the National Association of REALTORS has shown that when a buyer's representative is used, the prospective buyer found a home one week faster and examined three more properties than consumers who did not use a buyer's representative.

The buyer's representative works for, and owes fiduciary responsibilities to, the real estate buyer and has buyer's best interests in mind throughout the entire real estate process. A buyer's representative will:

- Evaluate the specific needs and wants of the buyer and locate properties that fit those specifications.
- Assist the buyer in determining the amount that they can afford (pre-qualify), and show properties in that price range and locale.
- Assist in viewing properties -- accompany the buyer on the showings, or preview the properties on behalf of the buyer to insure that the identified specifications are met.
- Research the selected properties to identify any problems or issues to help the buyer make an informed decision prior to making an offer to purchase the property.
- Advise the buyer on structuring an appropriate offer to purchase the selected property.
- Present the offer to the seller's agent and the seller on the buyer's behalf.
- Negotiate on behalf of the buyer to help obtain the identified property -- keeping the buyer's best interests in mind.
- Assist in securing appropriate financing for the selected property.
- Provide a list of potential qualified vendors (e.g. movers, attorneys, carpenters, etc.) if these services are needed.
- Most importantly, fully-represent the buyer throughout the real estate transaction.

The Buyer Representation Agreement

It is important for the buyer to discuss the buyer's representative's compensation in the initial interview. In many cases it is recommended that the buyer and the buyer's representative agree to the terms of compensation prior to viewing properties, and sign a written agreement based on those terms. The agreement should spell out the responsibilities of both parties throughout the real estate process.

In some states, legislation has been enacted to protect the buyer to the point that, absent a written agreement, the buyer's representative represents the buyer throughout the real estate transaction. Consult your REALTOR for complete details when you begin the purchase process.

Why you should use an Accredited Buyer's Representative (ABR)

Why should you look for the ABR designation before looking for a home? These three letters after a REALTOR's name tell you that you will be working with buyer representative who is committed to your best interests. The ABR Designation is awarded by **REBAC** to those REALTORS who have met the specific educational and experiential criteria needed to provide the high level quality service required by REBAC (Real Estate BUYER'S AGENT Council).

If you would like to find a buyer's representative in your area or in the area you are moving to, just go to our **Find a Buyer's Rep** page and fill in the data fields.

Links

http://en.wikipedia.org/wiki/Buyer_brokerage

<http://www.rebac.net/Content.aspx?PageName=whyuseABR.htm>