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GOOD COMMUNICATION BEGINS WITH THE REAL ESTATE BROKERAGE RELATIONSHIPS FORM

The Real Estate Brokerage Relationships Form is the only form created by the Real Estate Commission. The importance of providing it to potential buyers and sellers and having a meaningful conversation with them about the information contained therein, should not be underestimated. The key to good communication with your buyers and sellers begins with an effective presentation of the Real Estate Brokerage Relationships Form and a clear understanding of agency relationships.

Chapter 410 Section 9(2) of the Commission Rules requires licensees to furnish a prospective buyer or seller with a copy of the Real Estate Brokerage Relationships Form when there is “substantive communication regarding a real estate transaction by either a face-to-face meeting, a written communication, or an electronic communication with the prospective buyer or seller” and Section 13(2) requires that licensees provide copies of executed forms to their designated brokers within 5 calendar days for retention with other brokerage documentation.

Does a meaningful conversation about the important information contained in the Real Estate Brokerage Relationships Form take place when it is transmitted electronically or simply handed to a consumer with a lot of other papers? Do consumers understand that they should not reveal confidential information before an agent-client relationship is created? When a licensee meets a consumer at a property for the first time, does the consumer understand that he/she is only a customer and the licensee may not provide advice before an agent-client relationship is created? Unfortunately, the answer to these questions is too often no.

Remember that acting as an appointed agent or as a disclosed dual agent always requires the **informed** written consent of the client. Consumers may not understand the distinction between being a “customer” or a “client;” or how a licensee acting as a disclosed dual agent will affect the services provided to them. It is YOUR responsibility to provide the **information** necessary for a consumer to give his/her **informed** consent and to make decisions during the transaction. All too often the Commission hears that the Real Estate Brokerage Relationships Form was just handed to, or sent electronically, to buyers and sellers without meaningful conversations about agency relationships and the distinctions between being a customer or client. As a result, an important opportunity to inform and establish good communication at the outset of a relationship was missed.

Almost every consumer complaint investigated by the Commission has involved some element of poor communication - whether it be about appointed agency, disclosed dual agency, performance/service, earnest money disputes, incomplete property disclosure information or

other brokerage issues. Recently, a complaint was filed by sellers who claimed that their agent had not represented their best interests while acting as a disclosed dual agent. The licensee had obtained written consent to act as a disclosed dual agent from the sellers, when the listing agreement was initially entered into, and from the buyer, when a buyer representation agreement was first signed. However, it was not clear that either party truly understood what they had agreed to at the time. Further complicating the matter, the purchase and sale agreement prepared by the licensee mistakenly listed the licensee only as an agent for the seller, not as a disclosed dual agent. The complaint investigation confirmed that the buyer and sellers each were aware that the licensee was working with both sides of the transaction but each also related how they did not truly “understand” the relationships in play. The transaction ultimately failed for a number of reasons, but poor communication certainly contributed to an erosion of trust and confidence in the licensee. The sellers, uncomfortable with the representation provided to them, even sought to terminate the listing agreement.

The complaint described above may have been avoided altogether had there been better communication at the beginning of the brokerage relationships.

Consumers need to know upfront the distinction between customer-level and client-level services and that a disclosed dual agent provides limited agent level services. Many complainants never properly understand this distinction and their expectations are not met as a result.

Good communication established at the beginning of a transaction will pay dividends throughout the relationship, create trust and prevent misunderstandings which may lead to bigger issues.