

## **New Hampshire Real Estate Commission of Real Estate Brokers and Real Estate Agents**

The New Hampshire Real Estate Commission licenses applicants who meet the statutory and regulatory requirements initiated for real estate brokers and salespersons. In carrying out its mission, the Commission regulates real estate schools and agent curriculum and contracts with a testing vendor to provide computerized broker and salesperson examinations. The Commission seeks to protect consumers by exercising its authority to discipline those real estate agents and real estate brokers who violate licensing laws and regulations.

### **Agency Disclosure**

A real estate broker or salesperson must tell you who he or she represents in a prospective transaction. This disclosure of the relationship the agent has with you must be made in writing at the time of your first personal meeting to discuss a specific piece of property.

### **Types of Agency Relationships**

**Sellers Agent** - If you engage the services of a listing broker to sell your property, you become the broker's client. That broker represents you, the seller, and owes you undivided loyalty, confidentiality and accountability. In negotiating for the best price terms, he must put your interests first.

**Buyer's Agent** - You may engage the services of a broker to represent you exclusively as a buyer of real property. In this case, the broker represents you and is accountable to you. She must obey your instructions and keep confidential anything you tell her that may affect your purchase of real property. In negotiating for the best price and terms, she must put your interests first.

**Disclosed Dual Agent** - A broker can work for both the buyer and the seller on the same property provided the broker gets the consent of both parties in writing and provides each with a written notice of the relationship. In this case, the broker owes both the seller and buyer a duty to deal with them fairly and honestly. In this type of agency relationship, the broker does not represent either the seller or buyer exclusively, and neither party can expect the broker's undivided loyalty. Undisclosed dual agency by a broker is illegal.

### **Licensed Brokers and Salespersons**

Only licensed real estate brokers and salespersons can assist you with the purchase, sale, lease or exchange of real property. This assistance includes a number of services, such as examining property for basic valuations (not to be confused with the services of a licensed appraiser), negotiating purchase, sale or lease agreements, maintaining escrow accounts, and advertising.

To become licensed, an applicant must satisfactorily complete the agent curriculum in real estate approved by the Commission and pass a written examination conducted by the Commission's testing service.

A **real estate broker** negotiates agreements to sell, exchange, purchase, rent or lease interest in real property for a fee, commission or other valuable considerations for another person. A broker is responsible for accepting and escrowing all funds, such as a deposit placed on the purchase of a home, and for finalizing transactions. A real estate broker must supervise any transactions conducted by a salesperson.

A **real estate salesperson** engages in the same activities as a broker in negotiating agreements to sell. A salesperson has no authority or control over escrow funds. A salesperson must be affiliated with a broker, either as an employee or as an independent contractor, and work under the supervision of the broker. A salesperson can not operate his own real estate business.

## **What Buyers Should know when Dealing with a Real Estate Agent**

Who does the real estate agent represent? Typically the broker represents the seller.

Be cautious. Do not reveal too much personal information, especially when working with a seller's broker. Disclosing financial information or information regarding your urgency to make a deal may undermine your bargaining position if the broker conveys it to the seller.

Make sure the real estate agent is licensed and in good standing with the Commission. (Check that both the broker's and salesperson's license have not been subject to disciplinary actions, such as a suspension or revocation. Seacoast Board of Realtors (603) 964-7243.

You can negotiate the amount of any deposit.

**Deposits:** Both parties need to be clear about who will hold any deposit funds and what will happen in the event of a dispute between the parties. All agreement should be in writing, and no party should sign an agreement or pay any money until they are comfortable that they understand the terms.

If the broker accepts money from you for any reason, that broker must immediately deposit the payment in an escrow account, a separate bank account which is maintained specifically as a depository for funds belonging to others. The money must be kept in this separate account until the transaction is successfully completed or is terminated. *It is illegal for a broker to mingle your funds with his own.*

If a salesperson accepts your payment or deposit, the salesperson must turn over this money to the supervising broker.

If you make an offer to purchase a property listed by a broker, the broker or salesperson is required to convey your offer to the owner of the property immediately.

You should be clear about your negotiating position prior to making an offer on a property. Don't become attached to a property beyond your desired price range. You could end up spending beyond your means.

You can negotiate the terms of a purchase and sales agreement.

**Purchase and Sale Agreement:** A Purchase and Sale Agreement is the contract between the buyer and seller noting the terms concerning the purchase of the house (real property). Essentially, it controls the sale of the home from seller to buyer. It includes information on what is being sold, the sale price, your financing, the type of title you will get, the closing date, the amount of deposit you have paid and how much of the house price you are financing.

*Typical negotiable items include:*

The amount of the deposit, the closing date, and the number of loan applications you will file and the main terms of such loan (e.g., that you are trying for a fixed rate loan that does not exceed a specific percentage rate and number of years). You may also rid the agreement of deposit dispute clauses or include one more favorable to you as the buyer should the sale fall through.

Allow enough time in the purchase and sale agreement to obtain financing. The purchase and sale agreement should also specify how many applications for financing constitute "good faith." Repeated unsuccessful application can be costly and time consuming. Investigate "pre-approval" before house hunting so you are clear about financial limitations.

If the broker or the seller makes any important promises or representations about the property or what will be included in the sale, make sure those promises are contained in the purchase and sale agreement.

Allow enough time in the purchase and sale agreement to have a professional home inspection performed. Use references from friends, not the listing broker, to find your inspector.

On or before the day of the closing, but before papers are passed, make one final walk through of the property to be sure it is in the agreed upon condition.

It is often wise to seek legal advice prior to signing any documents concerning the purchase of real estate. Ask questions. Don't sign anything until it has been explained to your full satisfactions.

**What Sellers Should Know when Dealing with a Real Estate Agent**

Find out whether you are dealing with a salesperson or a broker. You may want to make sure that your understanding with a salesperson is confirmed by the broker, with whom the salesperson is affiliated.

Make sure the real estate agent is licensed and in good standing with the Seacoast Board (check both the broker's and salesperson's license have not been subject to disciplinary actions, such as a suspension or revocation.) call (603) 964-7243.

Sellers typically use the services of a real estate broker to sell their residential or commercial property. This is usually described as giving that broker a listing. The terms of the listing agreement *are negotiable*.

**Listing Agreement:** Often brokers present sellers with a standard listing agreement (an agreement that contains "standard language"). These agreements are certainly acceptable and are commonly used in practice. (They are not, however, developed by the Real Estate Board or by state government.) You may negotiate different terms that are acceptable to you and the broker.

Unless your needs demand otherwise, your listing agreement should seek to have your property advertised in as many advertising mediums as possible, thereby giving it greater exposure to more potential buyers. (For example, the Multiple Listing Service of the private realtor professional associations, local newspapers, newspapers with statewide circulation, real estate magazines and booklets, or the Internet.)

Determine whether you want the broker to represent you exclusively. This means that the broker is the only broker representing you in the sale of your property. This is a typical arrangement, but some sellers may wish to enter into a non-exclusive listing agreement with a broker, based on their particular needs. In such situations, the broker does not exclusively have the right to sell your real property. That broker will attempt to sell it, but you may also employ other brokers and your own efforts in selling the real property. Naturally, non-exclusive listing agreements may affect the ultimate terms of the agreement, particularly the commission. (Remember, the broker bears the cost of advertising the property, which can be substantial. With a non-exclusive listing agreement, the broker may want a larger commission for a sale made by the broker since he or she undertakes these costs without the exclusive right to sell.)

Check if a broker has errors and omissions insurance for his or her brokering practice. (State licensing law requires real estate brokers to have a twenty-five thousand dollar surety bond, but many brokers carry additional errors and omissions insurance.) This may be helpful should there be a problem which leads to litigation against a broker. **NOTE:** As a licensed broker both RE/MAX<sup>®</sup> and I have to maintain twenty-five thousand surety bonds and I am required to pay for errors and omissions insurance on each transaction.

Check to be sure your broker will accept offers made from other brokers including brokers who represent the buyer exclusively and brokers who may not be affiliated with a

professional association. Brokers are required to present (to you) all offers that are made to them to you, the seller.

Clearly understand what your interests are so that when you enter into a listing agreement with a broker you are comfortable with the terms. You also may want to have an attorney review such an agreement before you sign it.

## **Things Renters Should Know when Dealing with a Real Estate Agent**

Anyone in the business of finding living accommodations for another for a fee, commission, or other valuable consideration must be licensed as a real estate broker or salesperson.

Make sure the real estate agent is licensed and in good standing with the Board. The number for the Seacoast Board is (617) 271-270.

When seeking to rent or lease an apartment, house, or condominium through a real estate broker or salesperson, you may be asked to complete an application. Know what you are signing. Some applications may bind you to a fee that must be paid whether or not you ever sign a lease.

Even when a standard application form (a form that contains “standard” language) is used, you can submit the application with changes that reflect your terms.

There are no “agency disclosure” regulations for agents finding rental or lease property for a fee. Ask who the agent represents – you or the landlord?

If you are asked to make a deposit, find out what the deposit will be applied to – first or last month’s rent, security deposit, or a fee.

Determine whether it is you or the landlord who will pay the agent's commission. If you are required to pay the commission, find out when the payment is due.

*It is illegal for an apartment listing service to advertise or otherwise represent listings that claim to meet certain specification when, in fact, they do not, or to state that it has listings meeting certain specifications when it has no such listings. It is also illegal for an apartment listing service to induce you to sign a contract by falsely representing that it has listings that conform to your requirements at the time the contract is executed.*

## **Your Responsibility as a Consumer**

Whether you are a buyer, a seller, or a renter, the duties of a real estate broker or salesperson do not relieve you of the responsibility to protect your own interests. If you have questions concerning your particular transaction, pose them to the agent. If you need advice on legal, tax, insurance of other matters, it is your responsibility to consult a professional in those areas.

No broker or salesperson should advise you against using the services of an attorney in any real estate transaction.

## **Filing a Complaint**

While the majority of licensees conduct themselves as true professionals, the Real Estate Commission will take action against those who violate the statutes or the Commission's rules and regulations.

In many cases, complaints are made by dissatisfied consumers – but, dissatisfaction alone is not proof of incompetence or sufficient grounds for disciplinary action.

If you have a serious complaint against a real estate broker or salesperson, call or write the Commission for a complaint form:

New Hampshire Real Estate Commission Seacoast Board of Realtors

25 Capital Street 270 Lafayette Road

State House Annex, Room 437 Rye, NH 03870

Concord, NH 03301 (603) 964-7243

(603) 271-2701

## **Definition of terms:**

**Timely** usually means within 24 hours.

**Salesperson** and **real estate agent** are interchangeable.

**Pre-qualification** is what you as buyer can do to determine how much you can qualify for and therefore how much you can spend to purchase a piece of real property.