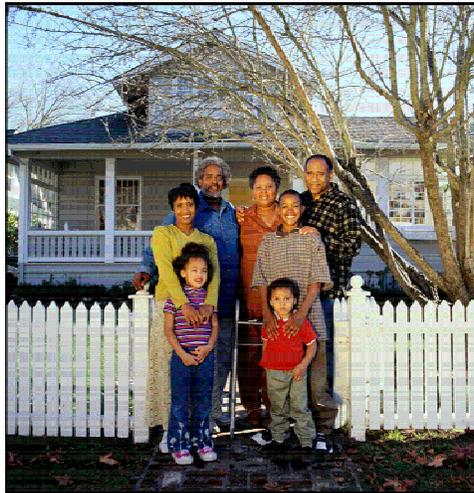


WISCONSIN DEPARTMENT OF REGULATION AND LICENSING

Your rights when buying or selling a home



Congratulations on deciding to pursue your dream of owning a home! Buying a home is a very important investment which requires you to make many important personal and financial decisions.

Although this experience is very rewarding, it can also be very confusing. During this process, many questions may arise. If you decide to use a licensed Wisconsin Real Estate Agent, this brochure will explain what services you should expect from these professionals and what duties they owe you under the law.

Wisconsin law provides strong protections for all real estate consumers and this brochure has been designed to assist you in fully understanding your rights as a Wisconsin consumer.

If you have any questions concerning something not mentioned in this brochure, please contact the Wisconsin Department of Regulation and Licensing at (608)-266-2112 or visit our website at <http://drl.wi.gov>.

What is a Real Estate Agent?

A real estate agent is a professional licensed by the state of Wisconsin to help you buy or sell your home. The real estate agent's job is to bring buyers and sellers together and help them reach an agreement. An agent also provides other services.

A real estate agent may assist both parties in negotiating the purchase contract and in filling out certain legal contract forms. Forms such as the offer to purchase and counter-offer are typically used during a transaction.

A real estate agent will explain the closing procedures in advance and make sure everything you need for the closing is ready. For example, if the agent provides closing services, the agent makes sure that the seller has the title insurance ordered and the deed prepared, and that the buyer has the insurance binder and a certified check for payment.

Not all real estate licensees provide the same services nor do they charge the same fees. To ensure that you are getting the best value for your money, ask the real estate agents in your community what services they provide, what they charge and what additional services are recommended or are necessary to complete the transaction. It is always recommended that you consider the services of an experienced real estate attorney as early in the transaction as possible. If you experience problems with an agent you may contact that agent's supervising broker, the Department of Regulation and Licensing, private legal counsel or (if the agent is a member of the REALTORS® trade association) the local association of REALTORS®.

The Real Estate Agent's Relationship with Clients and Consumers

Real estate agents must treat all parties to a real estate transaction fairly.

Client-Agent Relationship

A client engages the professional services of a real estate agent through a written contract. It is the agent's job to use his or her knowledge about buying and selling real estate to protect the best interests of the client. When you sell your home as a client of the real estate agent, you sign a contract with the agent called a listing contract. The listing agent then works for you and receives the commission agreed upon in the listing contract when the house is sold. Buyers can also work with agents as clients. This is a relationship referred to as buyer agency. You sign a contract with the agent, called the buyer agency agreement, the buyer's agent works for you and receives a success fee according to the buyer agency agreement.

In a seller/client relationship, the agent guides you throughout the real estate transaction, providing information on such issues as pricing the home, which purchase offers are fair, and how to structure a purchase contract to your advantage.

In a buyer/client relationship, the agent guides you throughout the real estate transaction, providing information on such issues as how much to offer for a home and how to structure a purchase contract to your advantage. The agent may also negotiate on your behalf.

Although an agent works for you in a client-agent relationship and owes you additional services, called fiduciary duties, an agent must also treat all customers fairly.

Customer-Agent Relationship

In a customer-agent relationship a customer receives services from a real estate agent who is performing on behalf of and for the benefit of the agent's client. In this customer type of relationship there is no contract between you and the agent. The agent represents the best interests of the client at the same time that the agent works with you as a buyer/customer.

Although you are not the agent's client, the agent is required by law to treat you fairly and honestly. The agent may suggest that you consult with a professional, such as a home inspector or building contractor to help you evaluate a property condition, or an attorney or accountant to advise you on legal or tax matters.

It is important for you to understand whom the agent works for and what services they provide. This is why Wisconsin law requires that an agent who is going to negotiate on your behalf as a customer provide you with a disclosure of duties statement. This *broker disclosure to customers* statement explains the duties owed to you as a customer. Agents may work with many customers and clients at one time.

Fair Treatment for All Clients and Customers

Whether you are a customer or a client, you expect and deserve top-notch service from your real estate agent. This is why Wisconsin law requires real estate agents to treat all parties fairly in a real estate transaction. The law also provides that the agent has additional obligations with respect to his or her client, called fiduciary duties. This brochure explains the duties owed to all parties and the duties owed only to clients.

If you are a client, a broker disclosure statement of the duties owed to you will be provided to you by your broker agent, and will either be included in your agency contract or provided to you in a separate form.

If you are a customer, a broker disclosure statement of the duties owed to you will be provided to you prior to that broker negotiating on your behalf.

Please review this information carefully. If you have any questions please ask your agent or your attorney for additional information or legal advice, as appropriate. Your agent is prohibited by law from giving you legal advice.

What Duties do all Real Estate Agents owe all parties in a Real Estate Transaction?

1. Fair and honest treatment

Every agent must provide services honestly and fairly. When answering your questions, every agent must be honest and accurate.

2. Disclosure of Material Adverse Facts

Every agent must disclose, in writing, material adverse facts that you do not already know and that you cannot discover through vigilant observation. Material adverse facts are facts that are of such significance to a reasonable party that failing to disclose the facts could affect the party's decision to purchase the property. A real estate agent has a duty to disclose material adverse facts in writing to the prospective parties.

Some examples of material adverse facts include:

- A real estate agent not disclosing that a sink garbage disposal is missing from the sink;
- A real estate agent not disclosing the true age of a home
- A real estate agent improperly advertising a home as having central air-conditioning when the home does not have central air-conditioning;
- Tax assessments;
- Pending construction that could affect views, conditions or other issues related to the home (i.e. a home with a beautiful view has the view obstructed by future highway construction).

Material adverse facts could be any condition that would have a significant, adverse effect on the value of the property, structure or other market conditions.

3. Confidentiality

Every agent must keep confidential any information which you indicate to be confidential and any information that the agent knows a reasonable person would want to be kept confidential. When you receive the required *broker disclosure to clients* statement that the agent must give you before beginning negotiations on your behalf, you can list the information you consider to be confidential. You can also list information that might be considered confidential but which you are authorizing the agent to disclose. For example, you can permit the agent to reveal information about your financial qualifications to the seller, to encourage the seller to accept your offer to purchase.

4. Provision of Accurate Market Condition Information

You may ask your agent to provide timely and accurate information about market conditions, and every agent must respond within a reasonable time with examples of sale prices for comparable properties and other market condition information. The agent cannot, however, give you an opinion about whether a particular house is priced too high or low unless you are the agent's client.

5. Reasonable Skill and Care

Every agent must be knowledgeable concerning real estate laws, public policies, current

market conditions, and the physical characteristics of the property being sold. Every agent must use reasonable skill and care when:

- Inspecting properties;
- Preparing and giving a general explanation of the purchase contract and other documents;
- Monitoring deadlines and closing dates;
- Making reasonable efforts to find a property meeting your criteria;
- Recommending that you seek third-party advisers (such as attorneys, accountants, home inspectors, or building contractors)

6. Accounting

Every agent must safeguard all funds or other things of value received from the parties to the transaction. Funds, such as earnest money or cash advances, are held in the agent's trust account where they are kept separate from the agent's money and where separate records are kept for each transaction.

7. Objective Presentation of Offers

Every agent must make an objective and unbiased presentation of all proposals and offers, and indicate the advantages and disadvantages of each.

Real Estate Agents owe a client additional fiduciary duties in addition to the duties owed to all parties

When you sign a listing contract or a buyer agency agreement you become the client of the broker named in the contract. That broker owes you additional client level duties which are:

1. Loyalty

An agent must loyally represent the client, avoid all conflicts of interest, and put the client's best interests ahead of the interests of any other party.

2. Provide advice

An agent must, when requested by a client, provide information and advice to the client on real estate matters that are material to the client's transaction.

3. Disclosure

An agent is obligated to disclose to their client all known facts that are material to the transaction and that the client doesn't already know and cannot discover through reasonably vigilant observation.

A material fact is one that a reasonable person might feel is important in choosing a course of action. Examples of material facts are:

- The existence of other offers;
- The reason the seller is selling, provided the seller permits this information to be

shared with others and does not require it to be kept confidential.

4. Obedience

The agent must carry out the obligations stated in the listing contract or the buyer agency agreement and must obey all of your lawful orders which relate to the agent's duties as stated in that contract. For example, the agent must order a survey or appraisal on your behalf if you ask him or her to do so, provided this function lies within the scope of the agency agreement. However, an agent may not violate the law if you ask the agent to.

5. Negotiate

The agent is required to act as an intermediary by facilitating or participating in communications between parties to a transaction, completing forms or other documents requested by a party, or presenting to a party the proposals of other parties to the transaction and giving a general explanation of the proposal's provisions. A client may agree to waive in part or in full the broker's duty to negotiate.

Although the buyer/customer and seller/client relationships are the most common relationships in a real estate transaction, there are other ways that you can interact with a real estate agent, depending on the circumstances and type of service you want and need. Such other agency relationships might include buyer agency, designated agency and multiple representation.

A Buyer's Agent

How Seller's and Buyer's Agents Differ

Just because you are a buyer does not mean you have to be a customer. You can choose to work with the agent as a client. This relationship is referred to as buyer agency. If you work with a buyer's agent, you will engage the agent to find you a home by signing a WB-36 Buyer Agency Agreement. The buyer's agent owes the buyer client the fair treatment duties owed to all parties, plus the higher level of agent client duties.

What is a Buyer's Agency?

The first thing to remember is that Wisconsin law does not allow real estate agents to be adversarial for or against the seller or the buyer. They are legally required to treat all parties fairly. If you work with a selling agent, and there is no contract between you and the agent, you are not the agent's client. You will, however, receive a *broker disclosure to customers statement* before that agent may negotiate on your behalf. That disclosure statement lists the fair treatment duties owed by all agents to all parties, and will inform you that the selling agent is either the seller's agent or is the agent of the listing broker. The selling agent will show you properties you are interested in seeing, get more information about properties of interest, and draft the purchase contract as you direct. The selling agent must provide you with information about any known or potential property defects, and help identify those situations when you should consult a professional.

If you work with a buyer's agent, you and the buyer's agent will sign a WB-36 Exclusive Buyer Agency Agreement which includes a *broker disclosure to clients statement*. This disclosure statement lists the fair treatment duties owed by all agents to all parties and the duties owed to clients. You are the buyer's agent's client and the buyer's agent receives a success fee when you find a property and negotiate a purchase contract in accordance with your buyer agency agreement. You have the right to negotiate the fee with the buyer's agent and determine whether the fee may be paid by the listing broker, the seller, by you, or by some combination of these. A buyer's agent helps you negotiate for beneficial contract terms and generally assists you throughout the transaction. A buyer's agent owes you the fair treatment duties owed to all parties plus the higher level of agent-client fiduciary duties described earlier.

What is multiple representation?

Multiple representation occurs when a broker has two or more clients who are parties in the same real estate transaction, such as both the buyer and seller.

There are two types of multiple representation, one with designated agency and one without designated agency. As a client you are free to choose either type of multiple representation, or none at all.

Multiple representation with designated agency.

In this instance there will be a listing broker representing the seller. That same broker will also have a buyer agency agreement with the buyer. That broker may assign two employees as agents, one to represent the seller as a seller's agent, and one to represent the buyer as a buyer's agent. Each agent will provide full negotiation services to each respective client.

Other features of designated agency are:

- All parties in a transaction must consent in writing to create designated agency.
- Any or all of the parties may thereafter withdraw consent, in writing, at any time.
- Each designated agent will keep the confidential information of the clients confidential.
- Each designated agent *is allowed* to provide advice and opinions to assist the client he or she is working with in negotiations even if that advice and those opinions favor the interests of that client over the interests the broker's other client in the transaction.

Multiple representation without designated agency

In this instance one real estate agent or brokerage company represents both the seller and the buyer as clients in the same transaction, but without designated agency. Because the buyer and seller will likely, at some point, have opposing interests in the transaction, it is impossible for the agent or company to provide the fullest client level services at all

times. In multiple representation without designated agency, the agent or company will take on a more neutral role in the negotiations. For example, the agent or company will prepare contract proposals as directed by either party, but may not provide either party with advice on how to gain an advantage over the other.

While this multiple representation relationship may limit the services provided to a particular client (and therefore must be consented to in advance in writing) it does increase the likelihood of the right buyer and seller finding each other. Without consent to the multiple representation relationship, the agent or company is not able to show its buyer clients the agent's or company's listings of seller clients. Ask your real estate agent or attorney for more information about all of these agency relationships.

There are primarily *three* ways in which multiple representation without designated agency relationship is created:

- The same broker represents a seller client (listing agreement) and a buyer client (buyer agency agreement) in the same transaction and one of these clients consented to designated agency while the other consented to multiple representation without designated agency in their respective agency agreements.

Since both clients did not consent to designated agency, this becomes a multiple representation without designated agency relationship. In this instance the broker represents both clients but cannot place the interests of either client ahead of the other client in the transaction.

- The same broker represents a seller client (listing agreement) and a buyer client (buyer agency agreement) in the transaction but one or both of the clients have withdrawn consent to designated agency after previously consenting.

This means that when the agency contracts were first entered into both of the clients consented to multiple representation with designated agency but later one or both clients withdrew their consent to designated agency. This then becomes a multiple representation relationship without designated agency and the broker cannot thereafter place the interests of any one client ahead of the interests of the other client in the transaction.

- All clients consented to multiple representation without designated agency in their agency contracts with the same broker.

This means that when the agency contracts were first entered into by the buyer and the seller (typically a buyer agency agreement and a seller listing agreement) both of the clients consented to multiple representation but without designated agency. The broker represents both clients but cannot put the interests of one client ahead of the interests of the other client in the transaction.

Agency Disclosure Statements.

As either a customer or client you will receive a *broker disclosure* statement that is required by Wisconsin law.

- As a seller client, the *broker disclosure to clients* statement will be included in your listing contract.
 - As a buyer client the *broker disclosure to clients* statement will be included in the buyer agency contract.
- If you are a customer the *broker disclosure to customers* statement will be provided to you by a broker representing a client in the transaction before that broker begins to provide you with negotiation services.

Ask your real estate agent for more information about these agency relationships.

Home Financing

If you are a buyer, any loan funds due at closing must be guaranteed by the lender before you can make a complete settlement on your loan. So ask your lender or closing agent about the status of loan funds due at closing to insure qualified loan funds will be available.

Wisconsin's Good Funds Law

Loan Funds at Closings - Section 708.10 of the Wisconsin Statutes pertains to how loan funds are guaranteed at closings. By calling the law the "Good Funds Law," we mean that loan funds must be guaranteed by the lender before a borrower is allowed to make a complete settlement on his or her loan. Specifically, § 708.10(2) provides that if a settlement agent (the loan closer) is to deliver qualified loan funds to the borrower in a transaction, or to a third party on the borrower's behalf, *a lender may not permit or require a borrower to complete a loan settlement unless the lender unconditionally delivers qualified loan funds to the settlement agent before or immediately upon completion of the loan settlement.*

Completing a Loan Settlement

"Loan Settlement" means the occurrence of all of the following:

1. The borrower signs a promissory note, mortgage, and other loan documents the lender requires.
2. Delivery of the loan funds to the borrower or a third party on behalf of the borrower, such as the loan closer.

3. The borrower's three-day right to rescind the loan has expired, if there is a right to rescind that particular loan.

“Qualified Loan Funds” can be any of the following:

1. A wire transfer.
2. Cashier's check or teller's check.
3. A check that is legally negotiable, and on which the lender or lender's affiliate is the drawee (See §§ 403.103(1)(b) and 403.10 (1), Wis. Stats.).
4. The lender transfers the loan funds into an account maintained by the lender or lender's affiliate that is for the settlement agent or borrower. The loan transactions covered under the Good Funds law are defined in §706.001(1), Wis. Stats., including the refinancing of an existing loan that is secured by a mortgage on real property.

What to do if Problems Occur?

Problems with the Real Estate Agent

If issues occur with your Real Estate Agent, talk with the agent's supervising broker. If this yields no result, it is possible for you to file a complaint against the agent with the Department of Regulation and Licensing. The department can be reached at (608)-266-2112. You may also wish to consult private legal counsel.

Problems with Home Financing

This does not include open-ended credit. For more information regarding this law, review the above mentioned statutes, visit the Wisconsin Legislature's home page at www.legis.state.wi.us. Click on “Wisconsin Law,” then “Statutes.” You may also wish to consult with private legal counsel.

If problems occur with home financing, you have several options:

1. Shop around

Lending institutions provide different services. By looking at more than one institution, you can compare prices, which ensures you receiving the best deal possible. Lending institutions are all different, ranging from banks, credit unions and other organizations which are specifically designed for mortgages.

These different institutions can be found by looking online. Many borrowers choose to use institutions in the city they live while others use nationwide lenders. Each provides a different array of services and different interest rates, loan amounts, etc. It is important that you use whichever type of lender you feel most comfortable with and provides the

best deal.

2. Check your Credit

The Federal Government allows for you to request one free credit report per year. This allows you to review the report and identify any errors. It is important to carefully check your credit report and if errors are found, fix them, before applying for a home loan. This ensures not only the best possible opportunity to receive a loan but also a competitive interest rate.

A free credit report can be attained from any of the following credit bureaus:

Equifax

P.O. Box 740241
Atlanta, GA 30374
(800)-685-1111
<http://www.equifax.com>

Experian

P.O. Box 2002
Allen, TX 75013
(888)-397-3742
<http://www.experian.com>

TransUnion LLC

P.O. Box 1000
Chester, PA 19022
(800)-888-4213
<http://www.transunion.com>

It is important to note that each bureau provides services to various lenders. It is possible that your credit score and report may vary slightly from each institution.

Important Telephone Numbers and Websites

Wisconsin Department of Regulation and Licensing

(608)-266-2112
<http://drl.wi.gov>

Wisconsin Department of Financial Institutions

(608)-261-9555
<http://www.wdfi.org>

What is the Wisconsin Department of Regulation and Licensing?

The Department of Regulation and Licensing protects the citizens of Wisconsin by ensuring the safe and competent practice of licensed professionals.

What does the Department do?

The Department serves the public and professionals by fairly administering education, experience, and examination requirements, setting professional practice standards and insuring compliance by enforcing occupational licensing laws.

The Department licenses and regulates 128 different types of credentials in 57 professional fields. The agency's 110 employees issue approximately 49,500 new credentials each biennium, renew more than 304,000 credentials, and provide ongoing support and services to 340,000 credential holders.

The agency also provides centralized administrative services to 46 boards, councils and committees who have various levels of responsibility and oversight based on statutory provisions.

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