

All About Agency Part 1

Trying to explain agency feels like the equivalent of trying to keep up with the old Abbot and Costello skit "Who's on first, What's on second, I Don't Know's on third". By the time you are done trying to figure it all out you are spinning in circles with no idea which way to go. The problem with agency is that the definition is constantly changing; the agents have a hard time keeping up with it. If the agents don't understand who they are working for, there is no way the consumer will. In the hopes of shedding some light on this mystery, here are some thoughts on what agency is, and who is working for you.

Broker vs Agent

In order to understand who works for you, one must first understand what an agent is. The two most common terms you will hear describing Realtors® are broker and agent. An agent must take a certain amount of classes and then pass the real estate salespersons exam in order to obtain an agent's license. Once licensed, the agent can operate under the supervision of a broker. A broker is the top of the food chain. Brokers are individuals that have been an agent for a certain number of years, take a brokers exam, and are now licensed as brokers to function individually or under another broker if they choose. A broker can own, manage, or operate their own brokerage firm without another brokers' supervision. An agent cannot be paid directly either. Any commission from real estate transactions are paid to the broker and depending on what agreement exists between the broker and the agent determines how much the agent is paid

Agency Explained

For an agency relationship to exist there must be some sort of written agreement between the buyer/seller and the agent/broker. The nature of the agency relationship is that the agent has the authority to represent you in dealings with others. The agent is essentially functioning as your spokesperson and your middle man. Agents are legally obligated to protect and promote your best interests as they would their own. That fact is what separates an agent from a salesman. Real estate agents not only have to sell the house, but they also have to be responsible. The liability involved in being an agent is enormous, because there is so much at stake in dealing with this most precious of assets. That is a major reason why contracts are so darn long and there are so many disclosures and agreements to sign.

Every agent has certain fiduciary obligations towards you as the principal in a transaction. These responsibilities are as follows:

- Loyalty: To act at all times your best interest (the principal) and to put those interests everyone else, including yourself. I call this the Lassie factor.
- Obedience: To obey promptly all lawful instructions of the principal. The lawful is an important word there. You can't tell an agent to rob a home expecting that they will.
- Disclosure: To disclose all known, relevant facts to you. The principal has this same obligation conversely.
- Confidentiality: To protect the principal's secrets, unless keeping the confidence violates disclosure requirements about the property's condition. The agent can withhold why you are moving, but not that there are canisters of plutonium buried under the house.
- Reasonable care and diligence: To diligently use real estate skills and knowledge when pursuing the principal's interests.
- Accounting: To account for all funds and property entrusted by the principal.

This hopefully sheds some light on what agency actually is. By understanding this, you will be better equipped to determine what type of agent you want. Don't let agency spin you in circles. The agent is there to work for you and make your life much easier.