CONNECTICUT REAL ESTATE COMMISSION

POLICY ON AGENCY

Summary

Two significant new agency laws were enacted in 1996 (Public Act 96-159) and 1999 (Public Act 99-229) that affects real estate brokerage practices. Taken together, these new laws essentially do the following four things:

(i) Limit Subagency. In cooperating sales, there is no longer the presumption that the broker working with the buyer is the subagent of the seller. The primary purpose of this change is to encourage buyer representation. Subagency is still allowed, but for each listing shown, the seller would have to approve the subagency relationship by signing a written consent to subagency.

(ii) Allow Dual Agency. Provides for a dual agency consent forms to be used to obtain a buyer's and seller's (or landlord and tenant's) consent to dual agency. For in-house sales, where only one brokerage firm is involved, the brokerage firm can represent both the buyer and seller as a dual agent, provided that this consent is obtained. The forms provide guidance as to what type of disclosures cannot be made in a dual agency relationship.

(iii) Allow Designated Agency. Real estate brokers are now allowed to appoint a separate seller agent and separate buyer agent for a dual agency transaction. The designated agents are not considered dual agents.

(iii) Protect confidential client information. Requires preservation of confidential information at any time during or after an agency relationship.

In order to provide guidance to licensees with regard to issues related to the new laws, the Commission establishes the following policies:

OVERVIEW

1. Agency documents

Refer to Table 1 for an outline of agency documents required to be entered into with or given to buyers and sellers.

2. Agency in practice

Refer to Table 2 for an outline of issues to consider regarding the practical application of agency relationships.

3. Agency runs to the brokerage firm, not individual licensees.

In general, agency runs from a client to the broker in a brokerage firm and all salespersons in that brokerage firm. This means that if the brokerage firm has entered into a listing agreement with a seller, then all of the brokers and salespersons in that firm are agents of that seller, represent that seller, and owe fiduciary duties to that seller. Likewise, if the brokerage firm enters into a buyer agency agreement with a buyer, then all of the brokers and salespersons in that firm are the agents of the buyer, represent that buyer, and owe fiduciary duties to that buyer. Further, once a seller consents to a cooperating broker acting as a subagent, all licensees affiliated with that broker are that seller's subagent for the listed property. The only exception to this is in the case of the appointment of designated agents, as outlined in paragraph 10.

WORKING WITH BUYERS

4. The law allows licensees to work with a buyer as either a client or customer.

The law does not require that a licensee enter into an agency relationship with a buyer as a client, in order for the licensee to provide services to the buyer. A licensee can work with a buyer without representing the buyer in one of two ways. (A licensee can also provide some services to a buyer that the licensee intends to potentially represent before a buyer agency agreement is entered into, as outlined in paragraph 5).

First, the broker can be the buyer's agent as long as the buyer agrees with this. If a licensee represents a buyer, the law requires that a written buyer agency agreement be entered into before the licensee negotiates on behalf of the buyer (see paragraph 5 for further detail on what constitutes negotiating and the timing).

Second, a licensee can work with a buyer as a customer, meaning that the licensee does not represent the buyer. The licensee can show the buyer in-house listings, in which cases the licensee is the agent of the seller. The licensee can also show the buyer another firm's listing by being the sub-agent of the seller, after obtaining the seller's written consent to subagency. Note that a licensee is not legally entitled to enforce a compensation arrangement when working with a buyer on another firm's listings unless the licensee's firm enters into a buyer representation agreement with the buyer or obtains the seller's written permission to act as a subagent.

A licensee can also work with the buyer without being the buyer's agent for in-house sales and subsequently represent the buyer for another company's listings. Once the licensee becomes the buyer's agent, the licensee would then be either a dual agent or designated agent for any in-house sales with that buyer.
The steps involved in working with a buyer as a client and as a customer are outlined in more detail in Table 2.
Office policy may be more restrictive than what the law allows. Real estate firms that have chosen to work with buyers only as buyer agents must advise buyers that it is their *policy* (not the law) to only work with buyers as buyer agents.

5. A licensee may conduct preliminary activities for a buyer before a written buyer representation agreement is entered into, given the following guidelines are met.

a. **Before** a licensee works with the buyer, the licensee should:

(i) ask whether the buyer is currently being represented by another real estate firm.
(ii) explain the real estate firm's office policy on the various agency, dual agency, designated agency, and customer relationships that the licensee could potentially have with the buyer; and
(iii) specifically tell the buyer not to provide confidential information unless and until the buyer and licensee have entered into an agency relationship.

b. The licensee **can do** the following for a buyer, without entering into a written buyer agency agreement:

(i) give the buyer property information;
(ii) give the buyer information on the licensee's firm; or
(iii) give the buyer information on mortgage rates and lending institutions.

c. The licensee **cannot do** the following for a buyer, **unless** either (1) a written buyer agency agreement is entered into, or (2) the licensee is going to represent the seller and has presented the buyer with the form Agency Disclosure Notice (given to Unrepresented Persons) stating that the licensee represents the seller (and for cooperating sales, obtains the seller's consent to subagency):

(i) ask the buyer to disclose confidential information (including information about the buyer's financial status, reasons for purchasing, etc.);
(ii) express an opinion on or give advice about particular real estate (note that a licensee representing the seller should be cautious expressing an opinion or giving advice);
(iii) physically show the buyer in-house listings;
(iv) physically show the buyer property listed with another firm; or
(iv) discuss an offer with the buyer; or
(v) engage in any verbal or written negotiations on the buyer's behalf concerning the price or any terms or conditions of the purchase.

6. Buyer-brokers must accurately explain compensation arrangements with buyers.

A broker entering into a buyer brokerage agreement with a buyer must explain the provisions of the agreement which detail the compensation arrangement. A broker cannot advertise or represent that buyers can be represented with no liability to pay a fee or commission (unless in fact the buyer has no obligation to pay compensation in any circumstances under the agreement).

7. A licensee is not required to represent buyers that come into open houses.

A licensee is not legally required to enter into an agency relationship with buyers who come to the licensee's open house. The licensee can work with the buyer as the seller's agent. (See Table 2, Brokerage Firm Represents Seller and Brokerage Firm Working with Buyer.) The form Agency Disclosure Notice (given to Unrepresented Persons) need not be given to prospective buyers, provided there is a sign or pamphlet disclosing the licensee's agency relationship and the specific real estate needs of the prospective buyer are not discussed. If the licensee and buyer both desire, a buyer agency agreement can be entered into. (See Table 2, Brokerage Firm Represents Buyer).

REPRESENTING BOTH BUYERS AND SELLERS

8. The possibility of dual agency must be stated in agency agreements.

If a brokerage firm represents both buyers and sellers, that firm's agency agreements must contain a statement, as set forth in the licensing regulations, that the potential exists for a broker to be a dual agent.

9. Dual agency is allowed, if both parties give their informed consent.

Dual agency is permitted if both the buyer and seller give their informed consent to it. One way that this consent can be obtained is by using the Dual Agency/Designated Agency Disclosure Notice and Consent Agreement. Buyer and Seller must sign the form, having checked that they "do" consent do dual agency. Another way to obtain this consent is to use the Dual Agency Consent Agreement. Both Buyer and Seller must sign the form. Details on the timing of the execution of these forms are set in paragraph 10.

10. Notice of and informed consent to dual agency can be obtained by using EITHER the Dual Agency/Designated Agency Notice and Consent Form OR the Dual Agency Consent Agreement.

Either the Dual Agency/Designated Agency Disclosure Notice and Consent Agreement *or* the Dual Agency Consent Agreement *may* be generically signed by the seller at the time a listing agreement is entered into, identifying the buyer as "all buyers that the licensee now represents or may represent in the future." Similarly, either form *may* be generically signed by the buyer at the time the buyer agency agreement is entered into, identifying the seller as "all sellers that the licensee now represents or may represent in the future" and the property as "all property currently listed with the licensee or listed with the licensee in the future." Before a specific buyer-client makes an offer on a specific seller-client's property, both the buyer and seller *must* execute a specific Dual Agency/Designated Agency Disclosure Notice and Consent Agreement *or* Dual Agency Consent Agreement listing the proper parties and property.

Practical Note: for a transaction where designated agents will be appointed, the Dual Agency/Designated Agency Notice and Consent Form should be used to obtain dual agency consent.

11. Designated agency is allowed, if both parties give their informed consent.

In the case of dual agency, if all parties agree, the Brokerage Firm can appoint one or more licensees to solely represent the Buyer as a Designated Buyer's Agent and one or more licensees to solely represent the Seller as a Designated Seller's Agent in a specific transaction. These designated agents would not be deemed to be dual agents, although the brokerage firm and other licensees within the firm would still be considered dual agents.

12. Designated agency is not an option for only one party/client in a transaction.

The designated agency option is not available to only one party to a transaction. In other words, a brokerage firm can not designate a designated agent to solely represent the Buyer, and not use designated agency for the Seller in a specific transaction.

13. Notice of and informed consent to Designated Agency can be obtained by using the Dual Agency/Designated Agency Notice and Consent Form.

For designated agency to occur, the law requires that both the buyer and seller be given notice and give their informed consent. These two requirements can be met by using the Dual Agency/Designated Agency Disclosure Notice and Consent Agreement. The designated agents must be listed on the form, having been appointed by the Brokerage Firm. Additionally, Buyer and Seller must sign the form. This portion of the form would be filled out when the dual agency portion is, with the timing being the same.

APPLICATION

14. Application to leasing transactions.

All of the above applies to leasing transactions, except the limitation on subagency. In a lease transaction (but not a lease-purchase-option transaction), licensees working with a tenant may be a subagent of the landlord, without obtaining a written Subagency Consent document.

15. Application to commercial property.

All of the above applies to both residential and commercial property transactions.

***Adopted by the Connecticut Real Estate Commission this 6th day of January* , 2000**.

Table 1
CONNECTICUT AGENCY DOCUMENTS

	Agency Representation Agreement	Agency Disclosure Notice	Dual Agency /Designated Agenc Notice and Conse Documentation
COOPERATING SALE			
Broker represents Seller	Listing Agreement	give to unrepresented potential Buyer at time of first personal meeting concerning Buyer's need (not required if Buyer represented by another agent)	n/a
Broker represents Buyer	Buyer Agency Agreement	give to unrepresented potential Seller at time of first personal meeting with Seller (not required if Seller represented by another agent)	n/a
Broker working with Buyer, subagent of Seller	Seller Consent to Subagency	give to unrepresented potential Buyer at time of first personal meeting concerning Buyer's needs	n/a
IN-HOUSE SALE			
Broker represents both Seller and Buyer, no Designated Agents	Listing Agreement and Buyer Agency Agreement *(must contain statement about possibility of dual agency)*	n/a	before Buyer makes a written offer: both Buy and Seller must sign "Dual Agency Conser Agreement"
Broker represents both Seller and Buyer, Designated Agents have been appointed	Listing Agreement and Buyer Agency Agreement *(must contain statement about possibility of dual agency)*	n/a	before Buyer makes a written offer: both Buy Seller, and broker mu sign "Dual Agency/Designated Agency Disclosure Notice and Consent Agreement" with nam of Desingated Agents inserted
Broker represents only Seller, working with Buyer	Listing Agreement	give to unrepresented potential Buyer at time of first personal meeting concerning Buyer's needs (not required if Buyer represented by another agent)	n/a

TABLE 2
CONNECTICUT REAL ESTATE AGENCY RELATIONSHIPS IN PRACTICE*

Brokerage Firm Represents Seller	Brokerage Firm Represents Buyer	Brokerage Firm Working with Buyer as Customer
STEP A1. Enter into written Listing Agreement. Go to STEP A2.	STEP B1. Enter into written Buyer Agency Agreement. Go to STEP B2.	STEP C1. Determine whether Buyer seeks representation (i) If yes, go to STEP B1. (ii) If no, go to STEP C2.
STEP A2. Before Seller's property is shown to each potential Buyer, determine whether Buyer is represented by a brokerage firm. (i) If Buyer is not represented, but would like to be represented by your firm, go to STEP B1. (ii) If Buyer is not represented, and does not wish to be represented, go to STEP A3. (iii) If Buyer is represented by another firm, go to STEP A4. (iv) If Buyer is represented by your firm, go to STEP A5.	STEP B2. Before Buyer is shown a property, determine whether the Seller of that property is represented by a brokerage firm. (i) If Seller is not represented, go to STEP B3. (ii) If Seller is represented by another firm, go to STEP B4. (iii) If Seller is represented by your firm, go to STEP A5.	STEP C2. This is a difficult way to go, although it is allowed by the law Procedure depends upon wheth Buyer is going to be shown an i house listing or another firm's listing. (i) For in-house listings, go to STEP C3. (ii) For another firm's listings, go STEP C4.
STEP A3. Give Agency Disclosure Notice to unrepresented Buyer at time of first personal meeting concerning Buyer's needs. Go to STEP A4.	STEP B3. Give Agency Disclosure Notice to unrepresented Seller at time of first personal meeting with Seller. Go to STEP B4.	STEP C3. Broker may work with Buyer as Seller's Agent. Go to STEP A3.
STEP A4. Proceed as Seller's Agent.	STEP B4. Proceed as Buyer's Agent.	STEP C4. Does Seller agree to Broker bei Seller's subagent? (i) If yes, Broker must obtain Seller's written consent to subagency, containing subagen Broker's name and licensee number and containing a statement that the law imposes vicarious liability on the Seller f the acts of the sub-agent. Go to STEP A3. (ii) If no, Stop. Cannot proceed this transaction and be legally entitled to compensation.
STEP A5. Have both Buyer and Seller given their informed consent to dual agency? (i) If yes, both Buyer and Seller must sign *either* ⇒Dual Agency Consent Agreement (if not designating agents) *or* ⇒Dual Agency/Designated Agency Disclosure Notice and Consent Agreement (if also designating agents) Go to STEP A6. (ii) If no, Stop. Cannot represent both parties in the same transaction without obtaining their informed consent.		
STEP A6. Have Brokerage Firm and both Buyer and Seller agreed to the appointment of Designated Agents? (i) If yes, both Buyer, Seller, and broker sign Dual Agency/ Designated Agency Disclosure Notice and Consent Agreement and broker must appoint designated agents in that Agreement. Designated agents proceed as such, rest of office proceeds as Dual Agent. (ii) If no, proceed as Dual Agent, with no designated agency.		

* These are the most common scenarios that a Broker may encounter, although this outline is not all encompassing. Refer to the Connecticut General Statutes for further detail and clarification on Connecticut agency relationships.