

## **Sample Policy B: Exclusive Buyer Agency**

### **SECTION A: GENERAL POLICY ON AGENCY**

1) It is the policy of (brokerage name) to only represent buyers. Affiliated licensees may not list property, act as a subagent of the seller, or practice dual agency. On properties listed with another brokerage, licensees affiliated with (brokerage name) must act as buyer's agents. On properties that are not listed--for-sale-by-owner properties--the agents shall represent buyers as well.

2) When representing a buyer, (brokerage name) and its agent owe the buyer the duties of loyalty, obedience, confidentiality, accounting and reasonable skill and care in performing our duties, and any other duties contained in our buyer agency agreement. We are required to act solely on behalf of the buyer's interest to seek the best price and terms for the buyer. Finally, as a buyer's agent, we also have a duty to disclose to the buyer all material information obtained from the seller or from any other source.

3) At first contact with a listing agent or owner of a for-sale-by-owner property, the agent shall notify the listing office or FSBO that they are a buyer's agent. To a FSBO, the agent shall also disclose their intent, if any, to seek compensation from the seller.

### **SECTION B: MANAGEMENT-LEVEL POSITIONS**

The following positions in the brokerage are considered to be management level: (Name positions or titles that fall under the definition of a management-level licensee).

### **SECTION C: APPOINTMENT OF LICENSEES**

In the event an agent wants another agent in the brokerage to represent his client, that buyer must agree in writing to this agent being appointed to represent him. Such written appointments must be maintained in the brokerage file. (*Here brokers should specify how appointments will be handled. A buyer can authorize his agent to make appointments in the buyer agency agreement or appointments can be authorized by the buyer when needed on an appointment of agent form*).

### **SECTION D: WORKING WITH RELATIVES, BUSINESS ASSOCIATES, ETC.**

1) If a relative, business associate or other person with whom an agent has a personal relationship wishes to purchase property through the agent, that agent shall act as a buyer's agent. When showing a property, the listing agent, or if

there is none, the seller, shall be notified of the family, business or personal relationship the agent has with the buyer. This relationship shall be disclosed in writing before any offer that is made. *(Note: This disclosure is required by Article 4 of the National Association of REALTORS® Code of Ethics.)*

2) Agents licensed with (brokerage name) cannot list properties owned by relatives, personal friends or business associates. Such persons shall instead be referred to other brokerages.

3) If an agent has a personal, family or business relationship with another agent involved in a transaction, that fact must be disclosed to the parties. This disclosure must be made prior to a contract being entered into. *(Here brokers may want to indicate that agents are required to notify them that such a situation exists so the broker can determine if any policy change is necessary.)*

#### **SECTION E: AGENTS BUYING OR SELLING THEIR OWN PROPERTY**

*(Note: License law does not require licensees to buy or sell property through their brokerage, but this requirement can be imposed by the brokerage. This must be addressed in the policy. Below is sample language.)*

1) Agents selling their own property must either list it with another brokerage or sell it as a FSBO. It cannot be listed for sale with (brokerage name). If it is sold as a FSBO, the agent must advertise in his name and indicate his status as a real estate agent, but not include the brokerage name. On any purchase contract that is entered into, the fact that the agent/seller is a licensed agent must be noted.

2) Agents buying property for themselves must handle this transaction through the brokerage.

3) If the property the agent wishes to purchase is listed with another brokerage, the agent shall act as a buyer's agent representing himself. The listing brokerage must be notified at first contact of the fact the agent is acting for himself as a buyer's agent and this must be confirmed on any subsequent purchase contract.

4) If the property is not listed, the seller must be notified at first contact that the agent is representing himself as a buyer's agent and of any intent to seek compensation from the seller. The agent must also indicate his status as a licensed agent on any purchase contract.

#### **SECTION F: DUAL AGENCY**

Since it is the policy of (brokerage name) to only represent buyers, it will not act as a dual agent in any situation.

## **SECTION G: CHANGING AGENCY RELATIONSHIPS**

As discussed in Section A, agents shall represent the buyer only. Therefore, agents are prohibited from changing that relationship to represent the seller.

## **SECTION H: CONFIDENTIAL INFORMATION**

*(Note: The procedures outlined below are merely an example of how to address confidentiality issues. Brokers are free to modify these, or adopt other procedures. If a brokerage includes language in its buyer agency agreement appointing all other agents in the brokerage to represent the buyer, this section on confidentiality is not necessary.)*

Since all agents within (brokerage name) only act as buyer's agents, it is possible that one agent could potentially represent a buyer who is competing for a property against another buyer represented by a different agent in our brokerage. Therefore, it is necessary for the following steps to be followed to protect the confidential information of one buyer/client from being disclosed to another agent in our brokerage who could be representing a different, competing buyer:

**1) Office files.** Each agent shall maintain in his file cabinet all documents relating to a purchaser he represents. Correspondence, credit reports, offers, addendums, inspection reports and the like shall not be kept on desks or left out where they could be viewed by other agents. Agents shall keep their file cabinets locked when they are not in the office. The broker shall have keys to the agent's file cabinet in the event it is necessary for the broker to access this information.

**2) Computerized records and messages.** All computer documents maintained by agents shall be password-protected so that other agents in the brokerage cannot retrieve or view this information. Agents shall not share their passwords with one another for any reason.

**3) Office meetings and discussions.** Agents shall not share confidential information regarding their clients at office meetings or discuss such information with others in the office unless the client specifically permits such disclosure. If the client so authorizes, this authorization should be obtained in writing or noted by the agent in his file. Confidential information includes, but is not limited to, the buyer's motivation to purchase, his reason for moving, his financial situation, the amount of any offer or counter-offer the buyer has made or is considering

making or the amount of any pending contract. Office meetings involving such confidential information shall take place in private, so as not to be overheard by others.

**4) Facsimile transmissions.** When faxing documents that contain confidential information such as offers and counter-offers, agents must not leave the original documents on the fax machine where they could be viewed by others. Incoming faxes shall only be retrieved by (name individuals such as the office manager or receptionist). The fax shall then be personally delivered to the agent, if the agent is in the office, or sealed in an envelope and placed in the agent's mailbox. Clients and cooperating agents should be directed not to fax you confidential information during non-working hours unless it is confirmed that you will be there to retrieve it.

**5) Telephone and inter-office messages and conversations.** Telephone and inter-office messages that contain confidential information shall be hand-delivered in writing to the appropriate agent or placed in an envelope on either the agent's desk or in his mailbox. Conversations with management-level licensees or other staff concerning clients shall be held in private if the conversation involves confidential information.

**6) Meetings and conversations with clients.** All meetings with clients shall take place in (*brokers should denote a private meeting room or other similar space within the office*). Telephone conversations with clients that involve confidential information shall take place only in the agent's office. (*Note: If the agent does not have a private office, the brokerage shall designate some location within the office where the agent could have a private telephone conversation.*) Agents shall not utilize the speaker phone when having conversations of a confidential nature, unless the conversations take place in a closed office.

## **SECTION I: POLICY ON COOPERATION AND COMPENSATION**

1) It is the policy of (brokerage name) to cooperate with all other brokerages on an equal and consistent basis. This means (brokerage name) and its agents will provide non-confidential information and present all offers written by other brokerages in a timely and objective manner. (*Note: If a brokerage does not offer such cooperation to all brokerages on an equal and consistent basis, the broker must indicate that fact.*)

2) It is the policy of (brokerage name) to accept the compensation offered in the multiple listing service to buyer brokerages.

3) *(Here the broker should indicate how he wants agents to handle the situation where the property is a FSBO, is not in the MLS, compensation is not offered to buyer brokers, or the compensation offered is deemed to be insufficient.)*

*The following section is not required to be included in your brokerage company policy but may be helpful to your agents to understand the procedures you want them to follow and to assure compliance with license law requirements.*

## **SECTION J: GENERAL PROCEDURES WHEN REPRESENTING BUYERS**

- 1) Explain our policy of only representing buyers.
- 2) Provide the buyer with the “Consumer Guide to Agency Relationships.” This must be given to the buyer before the earliest of the following events:
  - Showing property;
  - Pre-qualifying the buyer;
  - Asking the buyer for specific information about his financial ability to purchase property;
  - Discussing an offer; or
  - Submitting an offer.
- 3) Review the “Consumer Guide to Agency Relationships” with the buyer, including your policy on cooperation and compensation. Explain that we accept compensation from listing brokers or sellers, but also explain how it will be handled if the seller or listing broker won't pay us. Buyers must sign and date acknowledging receipt of the “Consumer Guide to Agency Relationships.”
- 4) Have the buyer sign the buyer agency agreement.
- 5) Disclose your status as a buyer's agent to any listing office at first contact.
- 6) On FSBOs, disclose at first contact your status as a buyer's agent and also disclose any intention to seek compensation from the seller.
- 7) On any properties you show the buyer, provide the buyer with a copy of the residential property disclosure form, the lead-based paint disclosure and acknowledgement form, and the EPA lead paint pamphlet if these forms are required on the property. Have the buyer sign these forms before signing the offer.

8) Have the buyer sign the Agency Disclosure Statement prior to signing the offer and deliver this form along with the offer.