

Broker Relationships in Colorado

HISTORY:

Until 1994, all brokers in Colorado were deemed to be either the agent (or sub-agent, if working with the buyer) of the seller. For lots of legal reasons, this exposed both sellers and brokers to unreasonable liability, while providing that the buyer would not be represented in the transaction.

In 1994, Colorado created new working relationships for the public in working with real estate brokers. These include seller's agent (advocating for the seller), buyer's agent (advocating for the buyer), dual agent (advocates equally—allegedly—for buyer and seller) and transaction-broker (a neutral facilitator who advocates for neither party).

Starting in 2003, the State eliminated dual-agency and sub-agency as allowable working relationships. Today, if a broker has a working relationship with the public, he/she is either the agent or transaction broker of his client. By law, a broker is a transaction broker unless he/she has a separate written agency agreement (called a listing). The working relationship is established with the individual real estate broker, not with the company. The company, however, is still responsible for supervision of its brokers to ensure a proper transaction. At Rawhide, an individual broker may offer the following working relationships:

SELLER'S/LANDLORD'S AGENT: A seller's/landlord's agent works solely on behalf of the seller /landlord and owes duties which include the utmost good faith, loyalty and fidelity. The agent will negotiate on behalf of, and act as an advocate for the seller/landlord. The seller/landlord is not legally responsible (vicariously liable) for the actions of the agent when that agent is acting within the scope of the agency, unless the agent is acting on the seller's/landlord's instructions, or if the seller/landlord knows of the action and fails to repudiate it (ratification). The agent must disclose to potential buyers or tenants all adverse material facts about the property actually known by the broker. A separate written listing agreement is required by State law which sets forth the duties and obligations of the parties.

BUYER'S/TENANT'S AGENT: A buyer's/tenant's agent works solely on behalf of the buyer/tenant and owes duties which include the utmost good faith, loyalty and fidelity. The agent will negotiate on behalf of and act as an advocate for the buyer/tenant. The buyer/tenant is not legally responsible (vicariously liable) for the actions of the agent when that agent is acting within the scope of the agency, unless the agent is acting on the buyer's/tenant's instructions, or if the buyer/tenant knows of the action and fails to repudiate it (ratification). The agent must disclose to potential sellers/landlords all adverse material facts concerning the buyer's/tenant's financial ability to perform the terms of the transaction and whether the buyer intends to occupy the property. A separate written listing agreement is required by State law which sets forth the duties and obligations of the parties.

TRANSACTION-BROKER:

A transaction-broker assists the buyer, tenant, landlord or seller throughout a real estate transaction with communication, advice, negotiation, contracting and closing without being an agent or advocate for any of the parties. The parties to a transaction are not legally responsible

(vicariously liable) for the actions of a transaction-broker, and a transaction-broker does not owe those parties the fiduciary duties of an agent (a transaction broker is neutral). However, a transaction broker does owe the parties a number of statutory obligations and responsibilities, including honesty and using reasonable skill and care in the performance of any oral or written agreement. A transaction-broker must also make the same disclosures as agents about adverse material facts concerning a property or a buyer's/tenant's financial ability to perform the terms of a transaction and whether the buyer intends to occupy the property, if pertinent to loan approval. No written listing agreement is required, although one is available. If no listing is used, the broker must provide a written Brokerage Relationships Disclosure form to the party(ies).

WHICH RELATIONSHIP SHOULD YOU PICK?

Rawhide recommends that buyers choose a reasonable-term exclusive working relationship (either agency or transaction-broker) with our brokers. A ready buyer will usually locate a suitable property within 30 days, and the transaction is typically closed in another 30-60 days. When seeking a specialty property, a longer relationship may be appropriate. The broker's fee should be negotiated at the time of the listing. Most of our clients prefer the advocacy that comes from an agency relationship.

To ensure the best chance of success in selling sellers' properties, we only work with sellers under an exclusive working relationship (either agency or transaction-broker), as this is required in order to place the seller's property into the various computer/internet databases that will expose it to the world. The length of the listing should reflect the average length of time similar properties are taking to sell, plus a little extra (hard to know for sure how long it may take). The broker's fee should be negotiated at the time of the listing.

Because the working relationship is established with the individual broker and not the company, one Rawhide broker can represent the seller and another the buyer without conflict. In the event that one individual Rawhide broker works with both the buyer and the seller in the same transaction, that broker will typically act as a neutral transaction-broker for both, regardless of the relationships in existence with each prior to that transaction. This is spelled out in the listing agreement.

This may all sound confusing, and we would be pleased to spend more time explaining it if you wish. It is important to the Colorado Division of Real Estate and to us that our clients understand working relationships and are comfortable with our policies. Regardless of which relationship you choose, we will do our best to provide you with the quality of service you expect.