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Buyer Representation: The Do's, Don'ts, Why's, and How's #72929

Sponsored by:

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- ✓ be on time
- ✓ sign in with the course facilitator before the course begins or, if a Livestream class, complete the electronic Affidavit of Completion after the class.
- ✓ be present in the course during all instruction periods
- ✓ complete the electronic Evaluation after the class.
- ✓ not have taken this course for continuing education credit within the past 366 days.

There is no make-up session for this course.

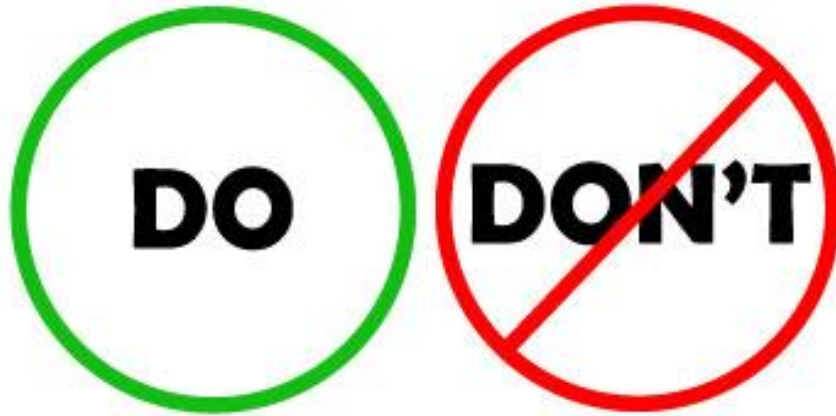
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Buyer Representation

The Do's, Don'ts, Why's and How's



This course is approved by the Georgia Real Estate Commission for 3 hours of real estate continuing education.

Objectives

At the conclusion of this course, the student will be able to:

- ❖ Discuss agency responsibilities
- ❖ Differentiate between clients and customers
- ❖ State how agency relationships are created
- ❖ Identify and discuss types of agencies
- ❖ Differentiate between brokerage engagement agreements
- ❖ Differentiate between client level service and customer level service
- ❖ Negotiate on the behalf of the buyer client
- ❖ Discuss the different type of marketing for the buyer's agent

Buyer Representation

What your Mama & 'em don't tell you

I. Agency

A. History of real estate

In the late 1800's and early 1900's, "real estate brokers" would stand on the street curb and induce people into conversation. They were known as "curb stone brokers". If successful, this prospecting would find people willing to sell property at a price. This broker would often try to beat down the price to the seller so they could then purchase that property and sell to a buyer at an inflated price. This self dealing led to much disrepute for the real estate industry and practitioners.

The NATIONAL ASSOCIATION OF REALTORS® was founded as the National Association of Real Estate Exchanges on May 12, 1908 at the YMCA Auditorium in Chicago, IL. Three earlier attempts (beginning in 1891) at organizing a national real estate group were unsuccessful. With 120 founding members, 19 Boards, and one State Association, the National Association of Real Estate Exchanges' objective was "to unite the real estate men of America for the purpose of effectively exerting a combined influence upon matters affecting real estate interests."

The Association's founding boards included the Baltimore, MD; Bellington, WA; Chicago, IL; Cincinnati, OH; Cleveland, OH; Detroit, MI; Duluth, MN; Gary, IN; Kansas City, MO; Milwaukee, WI; Minneapolis, MN; Omaha, NE; Philadelphia, PA; St. Louis, MO; St. Paul, MN; Seattle, WA; Sioux City, IA; and Tacoma, WA, boards and the California State Realty Federation (now the California Association of REALTORS®).

(This information was copied from the realtor.org website)

In 1913, the first code of ethics was adopted with "the golden rule" being the central theme. In 1916 the name was changed to the National Association of Real Estate Boards and the term REALTOR® started being used nationally.

In 1974 the name again was changed to the NATIONAL ASSOCIATION OF REALTORS®.

B. History of agency in real estate

As brokers saw the need to cooperate, Multiple Listing Services were created. In these services, members would agree to share information and try to promote each others listings. There was a common agreement that the selling broker would share in the listing broker's commission as compensation for bringing the buyer to the property. This brought up the issue of who the selling broker represented in the transaction and it was at this juncture that many feel a substantial mistake was made. It was assumed and accepted by the industry, that since the seller was funding the commission at closing, and the selling broker was sharing in that commission, then it would follow that the selling broker would represent the seller as an agent of the listing broker; sub-agent of the seller.

Because the selling broker was spending all their time with the buyer, often didn't know the seller, but was being told they represented the seller in the transaction, this led to confusion and emotional conflict. The selling agent felt they should represent the interest of their new found best friend (the buyer), but was being told they represented the interest of the seller. This led to improper disclosures, improper representation, illegal dual agency's and ultimately, law suits. It was with the law suits that made the industry realize there was a problem and change needed to take place along with education about agency responsibilities.

C. The Do's, Don'ts, Why's, and How's

1. The Do's

- a. Conduct a counseling session
- b. Only provide client level services with a signed brokerage engagement agreement
- c. Be transparent
- d. Be client centric
- e. Engage relationship building
- f. Consider obtaining the ABR designation

2. The Don'ts

- a. Cross thresholds without something in writing
- b. Provide client level service to customers

3. The Why's

- a. Protection from legal liability
- b. Protection from compensationectomy
- c. Build respect
- d. Build relationships

4. The How's

- a. Know the market
- b. Anticipate market changes
- c. Be aware of changes in business models and create competitive strategies
- d. Develop buyer centric negotiating strategies for the current market
- e. Sell the value proposition

D. Agency responsibilities

1. Client

- a. Undivided loyalty
Do what is best for the client
- b. Obedience
Obey legal and reasonable instructions

- c. Confidentiality
Be discreet
- d. Full disclosure
Tell all
- e. Accountability
Responsible for money and actions
- f. Fairness
Be aggressive, be bold but be fair
- g. Honesty
Tell the truth
- h. Integrity
The self control to do the right thing

2. Customer

- a. Accuracy
Even to a customer, you may be held responsible for the accuracy of your statements i.e. age, condition, square footage, etc.
- b. Fairness
Aggressively represent your client but temper that with fairness under the circumstances
- c. Honesty
It's OK for the truth to sound fascinating!
- d. Integrity
Again, everybody, client or customer, should be able to expect you to be a person of character.
- e. Disclosure (partial; not full)
Disclose that information to the customer that is in your client's best interest. Also disclose that information which is required by law, even if it is damaging to your client.

E. Creating the agency relationship

1. Expressed
Created by words
2. Implied
Created by actions

F. Types of agency relationships

1. Seller agency/landlord agency
Company represents sellers in transaction. In true seller agency, company policy would preclude agents from representing buyers (tenants).
2. Buyer agency/tenant agency
Company represents buyers in transaction. In true buyer agency, company policy would preclude agents from representing sellers (landlords).
3. Sub agency co-op
Two brokers working together to shepherd a transaction to closing. Both represent the seller. Listing broker as primary agent of the seller and selling broker as agent of the listing broker and sub-agent of the seller. Salespeople represent the interest of their broker. No representation of the buyer.
4. Single agency co-op
Two brokers working together to shepherd a transaction to closing. One (the listing broker) represents the seller's interest and the other (the selling broker) represents the buyer's interest. Broker's typically split the commission. It is immaterial under Georgia law, when discussing agency, who pays the commission.
5. Dual agency
One broker; one agent; one transaction; two clients. It is this presenter's opinion that this is a recipe for disaster! If you understand anything we have talked about to this point, you must agree. Conflict in full disclosure vs. confidentiality. Conflict in that the loyalties are divided.

6. Designated agency
One broker; two clients; two agents; one transaction. BRRETA says this is not a dual agency if parties are informed and agree. HUH!?!? Looks like a duck, waddles like a duck, quacks like a duck. It is OK to disagree with me on this one; apparently the state legislature does.
7. Transaction broker
The broker has no client in the transaction. Owes customer duties to all parties.
8. Facilitator (moderator; communicator; arbitrator; negotiator)
This is not currently recognized in Georgia. I made it up because I like it. Let a man dream! This would replace dual agency and relieve the broker from duties of full disclosure and undivided loyalty. Different from a transaction broker because confidentiality is still in place.

G. Types of buyer brokerage engagement agreements

1. Exclusive right to represent
Client agrees to work with one brokerage firm and if that client buys a property during the engagement period, they will do so through the broker and protect that brokers rights to be compensated.
2. Exclusive agency
Client agrees to work with one brokerage firm and if that client buys a property during the engagement period, they will protect the broker's rights to be compensated. The buyer client, however, reserves the right to find a property on their own and have no compensation obligation to the broker.
3. Non-exclusive (open)
Buyer may enter into a nonexclusive relationship with as many brokers as they wish. The only broker that would be due any compensation would be the one who finds the client a property. If the buyer finds a property on their own, no compensation to any broker would be required. This type of agreement leads to disloyalty and dispute.

II. Understanding the buyer's agent

A. Must represent

1. Self
Have no choice. How could you honestly claim you were representing another when you are the "other party"?
2. Those that wish to be anonymous
Confidentiality is the key.

B. Should represent

1. Former clients
They would reasonably expect the same level of service they had received in previous transactions.
2. Current clients
See above! How could you logically represent the person as a client in a property they are trying to sell but not in the property they are trying to buy, especially when the transactions are running concurrently?
3. Referrals from clients
The client who is referring and the person referred would reasonably expect that they receive the same level of service previously provided (client level).
4. Relatives
Come on! Even the in-laws deserve client level service!
5. Business associates
Client level service is expected and more comfortable for everybody.
6. Friends
Same as business associates.

C. Need representation

1. First time buyers

While you are not required to represent first time buyers, this is a group that across the board needs help. They roundly do not have the experience, knowledge or education to represent themselves in a transaction as complex as a real estate purchase and a mistake could be financially devastating.

2. Relocating buyers

While the relocating buyer may be experienced in real estate transactions, they have very little, if any, actual knowledge of the local market place. Real estate markets are dynamic; ever changing, not static. Knowledge from market to market does not easily transfer.

D. Should not represent

1. Unmotivated buyers

Motivation should be checked during the first counseling session. Ask probing questions which will help uncover their commitment to purchase in a timely manner.

2. Unrealistic buyers

Buyers with unrealistic expectations are something that can be often controlled by the agent. Unfortunately, the unrealistic expectations are often originated by the agent. Be part of the solution, not the problem!

3. Buyers who expect you to do something unethical or illegal.

This should be a no brainer! If this isn't obvious to you, please hand in your workbook and quietly exit the room at the first opportunity!

E. Client level service vs. customer level service

1. Loyalty

Do what is best for the client, not the customer.

2. Disclosure

Full disclosure to the client; limited disclosure to the customer.

3. Confidentiality
The client can speak without concern of their words being used against them. The customer does not have this luxury.
4. Alternatives
Always be thinking about alternative solutions to improve the negotiating position of the client.
5. "Best" property
Focus on the needs of the client. "Best" refers to what is best for the client, not the customer.
6. "Best" terms
Again, focus on the needs of the client. Take into consideration what is need for the client and negotiate to that end.
7. Duty to educate
People gain their power through knowledge. It is our duty to educate the client so they have the power to make the best decision for themselves.
8. Duty to perform due diligence
Due diligence is required for the client, not the customer.
9. Negotiating
Do what is best for the client. Negotiate so the client is in the strongest position possible.
10. After contract follow-through
No one is served if the contract falls through. Be diligent so the client's interest is best served.

F. Decision to offer representation

1. Identify needs and wants
Are they motivated? Are they realistic? Would accepting the responsibility and liability of representing this person, ultimately be good or bad for your business?

2. Identify and verify financial abilities
Have them make an appointment with a lender and get pre-approved for a loan. This will improve their negotiating position, increase your conversion ratio (buyer to closing) and is simply the professional thing to do.
3. Current/past relationships with other agents
If they are currently working with an agent, we want to know now!! If they have worked with agents in the past, find out what you can about those relationships.

G. Negotiating brokerage engagement agreement

1. Informed consent
Provisions of the brokerage engagement agreement should be fully explained so the potential client is not only signing, but understanding their obligations and rights.
2. Benefits to buyer client
 - a. Educate the buyer
It becomes your duty to educate the buyer client, thus empowering them to make the best decision for them, their family and their economy.
 - b. Inspections
Explain and give recommendations to client about various inspections.
 - c. Protective clauses
There are many clauses that can go into a contract. The key is to have enough appropriate clauses to protect the client but not so many that people do not want to negotiate with them.
 - d. CMA
Definitely a client level service. A competitive market analysis should be done on any property before making an offer.
 - e. Refer names of contractors
Use Vendor Form to protect from liability.

- f. Provide property info to client
Provide due diligence.

3. Compensation

- a. Contingent or non-contingent
While historically compensation is contingent on a sale taking place, a viable option is for the fee to be guaranteed up front.
- b. Percentage of selling price
This is the most common form of compensation. However, this came from the days of seller representation. The more the seller gets for the property, the better the broker is compensated. Does that same idea create conflict when representing a buyer?
- c. Flat fee
A negotiated flat fee would eliminate the conflict of accepting a fee from the listing broker which has not been negotiated. It also would eliminate any conflict with reducing your compensation if you are successful in negotiating the price to the buyer's advantage.
- d. Hourly fee
This might be a viable alternative when the buyer wants only limited service.
- e. Acceptance of bonus'
This must be disclosed and approved by the buyer client.
- f. Paid by buyer
While not common, why not?
- g. Paid by seller
This is currently the most common practice. According to BRRETA, this is not a conflict.
- h. Paid by third party
This could be an alternative when representing a corporate client.

- i. Financing the fee
Lenders are starting to understand the broker provides a valuable service and as such, that is part of the value of any real estate transaction. The fee for the buyer's agent may be able to be financed, similar to closing costs.
- 4. Due diligence
 - a. Alternatives
 - b. Financing eligibility
 - c. Property search
 - d. Inspections
 - e. Explain:
 - 1) process
 - 2) offer
 - 3) forms
 - 4) negotiations
 - f. CMA
 - d. Seller's property disclosure form
 - e. Stigmatized properties
 - f. Verify (as applicable):
 - 1) property taxes
 - 2) well/septic
 - 3) zoning
 - 4) square footage
 - 5) assessments
 - 6) owner's association obligations
 - 7) deed restrictions
 - 8) lot information
 - g. Negotiate terms of offer
 - 1) earnest money
 - 2) terms
 - 3) inspections
 - 4) repairs
 - 5) closing date
 - 6) occupancy date
 - 7) contingencies
 - 8) personal property
 - 9) warranties

III. Negotiating for the buyer client

A. Win/Win vs. Win/Lose

In any good negotiations, both parties must feel they have won something. The key is to make sure your client wins more! If a party feels they are losing, deadlock may be on your horizon. Unless you have a unique and extremely strong position, plan to barter and compromise.

B. Consider client strengths and weaknesses

1. market conditions

What are interest rates and financing availability? Is it a buyers market or sellers market?

2. competing properties

How does the subject property compare with others on the market? What is the supply demand balance?

3. financial strength

Has the buyer been pre-approved? Does the buyer need assistance in financing? Does the buyer need assistance in costs?

4. other influences

Have the buyer and seller created any bond? Are there any time considerations? What are the parties' motivations?

C. Presentation plan

1. Build Rapport

People will tend to do business with people they like and trust. Ask to be present in the presentation of the offer to the other party so you can humanize your client.

2. Identify Dominant Needs

Ask copious (that means a lot of) questions. Gain information and help the party focus on their needs (particularly those needs you can fulfill!).

3. Relate Benefits

People buy benefits, not features. A definition of value is "the present worth of future benefit". Sell value!!

4. Close For Decision
Give the party the opportunity to say yes. If you have correctly identified the needs and properly related the benefits, the only logical conclusion is to buy what you are selling.

IV. Marketing the buyers representative

- A. Horizontal marketing
Making the phone ring. Increasing the sphere of influence.
 1. Newspaper Ads
Can be expensive and ineffective. Must have a specific goal. Must have a response offer. Measure results.
 2. Open Houses
Can be effective but must be done correctly.
 3. Direct Response Advertising
Can be in newspaper, magazines, flyers or mailers. Go after a specific market and limit the offer. Give value to the offer.
 4. Cold Calling
Purely numbers but will work if you are consistent. Have a specific purpose and use probing questions.
- B. Vertical Marketing
Marketing to people within your sphere of influence. Business building.
 1. Past Clients
As an industry, we tend to readily spend whatever is asked to get new referrals but hesitate to spend anything to keep what we have. In the long run, this philosophy makes no sense. True wealth building is done with people that we already have a relationship with.
 2. Agent Referrals
Have a campaign to build on relationships with other agents. Network at every opportunity.

3. Professional Referrals
Actively promote referrals from attorney's, mortgage people, insurance salespeople, the medical profession and anybody else you can develop a relationship with. Consider joining or starting a network group.
4. Company Orphans
These are the former clients/customers of agents who have retired or left the company. Ask the broker for permission to contact these people and service them on behalf of the company. If possible, get the former agent involved.
5. Sphere Of Influence
Your sphere of influence is those people you know well enough to call and they would know who you are. On a daily basis, you should be methodically trying to convert a few people from outside your sphere to inside.

C. Image building

1. Name
Is there something unique you can do with your name? The ultimate goal is to promote until people think of your name when they think of real estate and they think of real estate when they think of your name.
2. Logo
Does your logo promote the image you want? Is it unique? Is it easily identifiable?
3. Pictures
Should we use our picture on business cards? How about our advertising pieces? What about our pets, kids and grandchildren?
4. Being First
The reality is, people typically do business with the first competent real estate agent they meet. While you should constantly strive to be the best you can be and continue to improve, it is typically more important to be first than it is to be best.

D. Differentiation

How are you different from your competition? If people perceive us to all be the same, they will do business with the least expensive and most convenient. You must be different!

E. Value Added Service

What do you bring to the table that equates to value for your client? How can you make it tangible? Do you truly believe you have a service that is valuable? Are you able to convince others of the value of that service? **YOU MUST ARTICULATE YOUR VALUE!!!**

F. Post Transaction Marketing

1. Change Of Address Cards

Use your digital camera and take a picture of the new home. Provide the buyer with change of address cards with their new home picture on the card.

2. Moving Day Meals

Have a meal brought to the buyer on their moving day. Be creative and thoughtful.

3. Post Closing Signs

Ask buyer for permission to put up a sign "Acquired with the help of.....", "Buyer represented by.....".

4. Handy Man Services

Provide a handy man for 2 or 3 hours after move-in to take care of any odds and ends.

5. Picnics/Parties For Clients

Show your appreciation to your clients. Be careful of alcohol.

6. Cards

Be creative.

a) birthdays

b) holidays

c) anniversaries