

Nebraska

Buyer Agency

In Real Estate Transactions

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Buyer Agency

This article examines the characteristics of buyer agency and the responsibilities of agents under Nebraska buyer agency law. The student will compare the traditional law with current agency law and will examine the duties real estate agents have towards customers and clients.

Performance Objectives

After completing this lesson, the student should be able to:

- Explain the difference between traditional agency and new buyer agency.
- Understand a broker's obligations to a principal, when the principal is the buyer.
- Identify a broker's obligations to customers and to their client.
- Discuss the importance of disclosure.

Key Terms

Agent
Buyer Agency
Common law agency
Dual agency

Principal
Sub-Agent
Third parties

Agency in Nebraska and other "Buyer Agency" States

Traditional Agency

Agency occurs when a person (the **principal**) selects another (the **agent**) to perform some act on his or her behalf. In the case of real estate, a principal (the seller) hires a broker (the agent) to sell real estate to a buyer (the customer). Historically, the agent, whether or not they first were contacted by the buyer or the seller were agents of the seller, this is the traditional law of agency also known as **common law agency**. After obtaining a listing to sell a property, the [common law seller's] agent may find a buyer by themselves or may enlist the help of other agents (**sub-agents**). A sub-agent has the

same fiduciary responsibility to the seller as the listing broker and owed the same loyalty to the seller, even though the sub-agent had no personal relationship with the seller. It did not matter if the sub-agent was a member of the agent's office or worked for another broker through a cooperating agreement to use a multiple listing service.

The buyer, whether the sub-agent was working with them or had contacted the listing agent even before the seller had decided to sell the real estate was not represented by any agent and had to fend for themselves in the negotiations. Occasionally a buyer entered into a formal buyer representation agreement, but that was a rarity and was normally reserved for commercial properties where a company would hire an agent to exclusively represent their interests in a transaction. The typical buyer, especially in a residential purchase, were largely unrepresented in the real estate transaction.

Because most home buyers (and most likely many licensed real estate agents) did not understand the legal relationship and the legal consequences of the broker and seller relationship, they often divulged confidential information about themselves which the seller could use to their advantage. The agent and/or the sub-agent (who owe a fiduciary responsibility to the seller) were required to convey such information to the seller. The revelations often worked to the disadvantage of the buyer and often resulted in lopsided bargaining power in the seller's favor.

For example, a buyer enlisted the help of their neighbor, a real estate agent. No formal agreement was signed, but they spent many evenings looking through the multiple listing service books at pictures and descriptions of available homes. After finding a possible home the buyer may tell the agent that they would "offer \$92,000 but would go as high as \$100,000" to buy the house. The buyer, because they developed a trust with the neighbor assumed that the agent would not reveal the statement to the seller, but the agent, because of their duty to the seller was required to disclose the statement. If you were the seller, would you accept their \$92,000 offer? Of course not, because you already knew that they would raise the offer to \$100,000 if they needed to. Under historical common law agency, the agent (the buyer's neighbor) was a sub-agent of the listing agent and thus owed a fiduciary responsibility of loyalty and disclosure to the seller requiring them to disclose the statement.

Similarly, consider the case where the agent knew that the seller would accept \$85,000 but the buyer was considering offering full price of \$100,000 to make sure their offer would be accepted by the seller. Believing the agent would advise them to make the lower offer if they knew it would be accepted, the buyer trusted the failure to disclose. Under the historical agency law, the real estate agent was bound to not tell the buyer that the seller would accept the lower offer.

Judging by the number of complaints filed by buyers with the Nebraska Real Estate Commission (and similar offices in the various states) each year it was obvious that

buyers were not aware that they were essentially unrepresented in the negotiations. Responding to the problem, states have attempted to resolve the issue in a number of ways. Nebraska and a few other states have re-defined the law of agency as it relates to real estate agents. Where the historical agent relationship deemed the agent and any sub-agents to be agents of the seller, under the new law, the assumption is that the agent is the agent of the buyer unless there is a written agreement existing between the seller and the agent.

Nebraska Buyer Agency

The new law is technically not called “buyer agency” but is commonly referred to by that name to set it apart from common law agency. Buyer agency is a new idea to many experienced agents. As we all know, change does not come easy. Accepting the new law has not come without resistance. In fact, because the current (buyer agency) law allows an agent a choice of representing a party as a common law agent, many agents continue to do so. However, doing so does not relieve the agent of disclosing their relationship with the party they may be talking to.

The relationship between the parties and the agents is illustrated in Figure 1. Notice that in the traditional (common law) agency both the listing agent and any sub-agents are agents of the seller. The buyer is unrepresented. The agents owe a fiduciary responsibility to the seller. In buyer agency, each party has their own agent who owes that party a fiduciary duty.

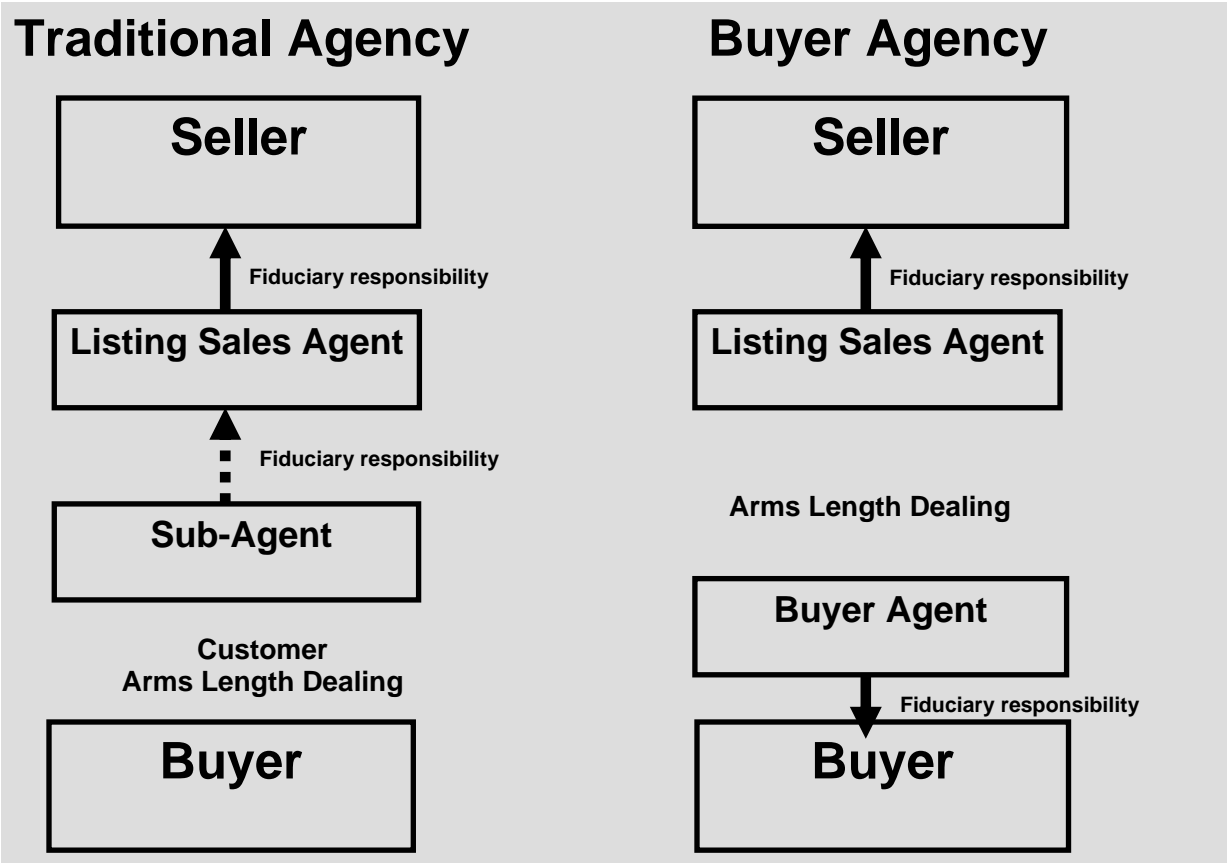


Figure 1

It is important to understand the distinction between traditional (common law) agency and modern statutory agency. In statutory agency, the buyer is deemed the client rather than the seller except where a written agreement exists between the agent and the seller. Under common law agency, the seller is owed the fiduciary duty of confidentiality, care, obedience, accounting, loyalty and disclosure (CCOALD) by all agents unless they had a written agreement with the buyer. Under statutory agency all agents involved in the transaction owe the fiduciary duty to the buyer unless the agent has a written agreement with the seller (there are other exceptions such as dual agents and transactional facilitators).

While most agents tried to be fair and honest with buyers and attempted to provide good service to them prior to the enactment of buyer agency, their loyalty was with the seller. Even certain conditions of the property could not to be disclosed under common law agency.

The Buyer's Agent

Under the statutory agency law, agents (unless they have entered into a written agreement with the seller) owe the fiduciary responsibility to the buyer who is their

client. That means that the buyer/client is owed the care, confidentiality, obedience, accounting, loyalty and disclosure in the following ways:

1. To perform the terms of any written agreement made with the client;
2. To exercise reasonable skill and care for the client;
3. To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
 - a. Seeking a price and terms which are acceptable to the client
 - b. Presenting all written offers to and from the client in a timely manner
 - c. Disclosing in writing to the client adverse material facts actually known by the licensee; and
 - d. Advising the client to obtain expert advice as to material matters about which are beyond the agent's expertise
4. To account in a timely manner for all money and property received;
5. An agent acting as a buyer's or tenant's agent shall not disclose any confidential information about the client. Confidential information about the Buyer includes: that the buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property; what the motivating factors are for the party buying or leasing the property; and that the buyer or tenant will agree to financing terms other than those offered.
 - a. An agent may disclose confidential information when required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation.
 - b. An agent shall disclose in writing to any customer (the seller) all adverse material facts actually known by the licensee which may include facts concerning the client's financial ability to perform the terms of the transaction.

While representing the buyer as a client, our duty to the seller, the customer is to disclose the agency relationship with the buyer, be fair and honest about the buyer's ability to perform, and to provide good service.

The Seller's Agent

If an agent is representing the seller, that is, the agent has entered into a written agreement (most often a Listing Agreement) with the seller/client, the fiduciary relationship is defined as follows:

1. To perform the terms of the written agreement
2. To exercise reasonable skill and
3. To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
 - a. Seeking a price and terms which are
 - b. Presenting all written offers to and from the client in a timely manner
 - c. Disclosing in writing to the client all adverse material facts actually known by the agent; and

- d. Advising the client to obtain expert advice as to material matters about which are beyond the expertise of the agent
4. To account in a timely manner for all money and property received;
5. A seller's agent shall not disclose any confidential information about the client unless required by law. Confidential information includes: that the seller or landlord is willing to accept less than the asking price or lease rate for the property; what the motivating factors are for the party selling or leasing the property; and that the seller or landlord will agree to financing terms other than those offered.
6. A seller's agent shall disclose in writing to any customer (potential buyers) all adverse material facts which may include:
 - a. Any environmental hazards affecting the property
 - b. The physical condition of the property
 - c. Any material defects in the property
 - d. Any material defects in the title to the property; or
 - e. Any material limitation on the client's ability to perform under the terms of the contract.

While representing the seller as a client, our duty to the buyer, as our customer is to disclose the agency relationship with the buyer, be fair and honest about the condition of the property and the title to the property, and to provide good service.

Dual Agent

Under common law, dual agency was not an option, the agent was always an agent of the seller. Under the new law, an agent may represent both parties. The agent must however disclose the dual agency and must have the **informed written consent** of both parties. Informed written consent means that the parties have a clear understanding of the agency alternatives available and that they have agreed to have the agent represent both of them. The law requires that the agent treat both buyer and seller as clients and the agent owes each of them the fiduciary responsibility as set out previously except that the dual agent:

1. may disclose any information to one client that is relevant to the transaction or client, except the agent may not disclose:
 - a. That a buyer is willing to pay more than the purchase price
 - b. That a seller is willing to accept less than the asking price
 - c. What the motivating factors are for any client buying or selling
 - d. That a client will agree to financing terms other than those offered.

2. A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by law or failure to disclose the information would constitute fraudulent misrepresentation.

Compensation of Buyer's Agent

Under common law agency many real estate agents, to sell more properties, cooperated with other brokers and agents and shared their listings. Ultimately many of these sharing arrangements resulted in the formation of multiple listing services where the agents would pool their listings to make them available to any cooperating agent to sell. The listing agent would receive the commission for the sale of the property (when the transaction closes) and would share that commission with the agent who obtained the buyer.

Some would argue that with the new law, agents should now be compensated by the buyer, but in fact, the law specifically provides that the buyer is not obligated to pay the buyer's agent. Therefore it is important for the agent representing the buyer to enter a written agreement with the buyer for some compensation, either to share a commission split with the seller's agent or for some other compensation method.

Buyer Representation Agreements

The Buyer's Agency Agreement is similar to the Listing agreement in that it could be an exclusive right, an exclusive agency, or an open agency. If it is an exclusive right, the buyer may have to compensate the agent even if the buyer purchases a property from a for sale by owner or another agent. If it is an exclusive agency, the buyer could buy the property directly from an owner, but would owe a commission if they used an agent. An open agency would not require that the buyer pay a commission unless the buyer purchased a property the agent located and negotiated.

There are a number of compensation plans available to buyer agents but the most common is to continue the commission sharing plan that has worked for years under multiple listing service agreements and arrangements. The agent and the buyer are free to negotiate any compensation plan that they feel best suits their needs.

Agency Disclosure

Many states have adopted an agency disclosure requirement. The disclosure is most often required to be given at some designated point. In Nebraska, that instance is at the

“earliest practicable opportunity during or following the first significant contact”. What this phrase means may have to be interpreted by the courts, but using a common sense approach, the agent should disclose any agency relationship with a client to a customer as soon as possible. Similarly, the agent should disclose to a potential client that they are desiring to represent the prospect as a client if they are making a cold call (for example an agent calling on potential sellers of real estate). In addition to disclosing the agency relationship, many states along with Nebraska are required to provide buyers and sellers with a written disclosure which explains brokerage relationships (Seller Agency, Buyer Agency, Dual Agency and Dual Agency) and informs the prospective client or customer who they would be representing.

Conclusion

For decades real estate brokers and agents operated their trade working for the seller as their client. As more and more buyers came to rely on the real estate professional for advice about the value of property and for help negotiating the transaction, they began hiring their own agents. Recent legislation in Nebraska and other states has made the buyer broker/agent a reality. With it comes new roles and opportunities for the agents. Real estate agents must disclose their relationships with the parties and at least for the seller’s agent, the relationship must be defined in writing. For the public, the new legal definitions and requirements are more in line with the expectations of the consumer.

Self-Check Test

None.

Study Guide

1. Know obligation to client and customer for each buyer and seller agent
2. Know what is required of the dual agent
3. Know which party the agent is deemed to represent under both traditional and statutory agency types
4. Know what information must be disclosed and what must remain confidential under buyer, seller and dual agency

Nebraska Revised Reissue Statutes

Chapter 76 Real Estate. Article 24 Agency Relationships

Source: Laws 1994, LB 883
 Laws 2002, LB 863

76-2401. Legislative findings.

The Legislature finds, determines, and declares that (1) the application of the common law of agency to the relationships between real estate brokers or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property has resulted in misunderstandings and consequences that are contrary to the best interests of the public, (2) the real estate brokerage industry has a significant impact upon the economy of the State of Nebraska, and (3) it is in the best interests of the public to codify in statute the relationships between real estate brokers or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property.

76-2402. Definitions, where found.

For purposes of sections [76-2401](#) to [76-2430](#), the definitions found in sections [76-2403](#) to [76-2415](#) shall be used.

76-2403. Adverse material fact, defined.

Adverse material fact shall mean a fact which (1) significantly affects the desirability or value of the property to a party and is not reasonably ascertainable or known to a party or (2) establishes a reasonable belief that another party will not be able to, or does not intend to, complete that party's obligations under a contract creating an interest in real property.

76-2404. Affiliated licensee, defined.

Affiliated licensee shall mean an associate broker as defined in section [81-885.01](#) or a salesperson as defined in such section who is under the supervision of a designated broker.

76-2405. Brokerage relationship, defined.

Brokerage relationship shall mean the relationship created between a designated broker and a client pursuant to sections [76-2401](#) to [76-2430](#) relating to the performance of services of a broker as defined in section [81-885.01](#) and shall also mean the relationship created between the client and the designated broker's affiliated licensees pursuant to sections [76-2401](#) to [76-2430](#).

76-2406. Confidential information, defined.

Confidential information shall mean information made confidential by statute, rule, regulation, or written instructions from the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee.

76-2407. Client, defined.

Client shall mean a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections [76-2401](#) to [76-2430](#) and is the seller, landlord, buyer, or tenant to whom the licensee owes the duty as set forth in such sections.

76-2408. Commission, defined.

Commission shall mean the State Real Estate Commission.

76-2409. Customer, defined.

Customer shall mean a seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with a licensee.

76-2410. Designated broker, defined.

Designated broker shall have the same meaning as in section [81-885.01](#).

76-2411. Dual agent, defined.

Dual agent shall mean a limited agent who, with the written informed consent of all parties to a contemplated real estate transaction, has entered into a brokerage relationship with and therefor represents both the seller and buyer or both the landlord and tenant.

76-2412. Licensee, defined.

Licensee shall mean a designated broker, an associate broker, and a salesperson all as defined in section [81-885.01](#).

76-2413. Limited agent, defined.

Limited agent shall mean a licensee whose duties and obligations to a client are those set forth in sections [76-2417](#) to [76-2419](#).

76-2414. Single agent, defined.

Single agent shall mean a limited agent who has entered into a brokerage relationship with and therefor represents only one party in a real estate transaction. A single agent may be one of the following:

(1) Buyer's agent, which shall mean a licensee who represents the buyer in a real estate transaction;

(2) Landlord's agent, which shall mean a licensee who represents the landlord in a leasing transaction;

(3) Seller's agent, which shall mean a licensee who represents the seller in a real estate transaction; and

(4) Tenant's agent, which shall mean a licensee who represents the tenant in a leasing transaction.

76-2415. Subagent, defined.

Subagent shall mean a designated broker, together with his or her affiliated licensees, engaged by another designated broker to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to section [76-2417](#) or [76-2418](#) as does the client's primary designated broker.

76-2416. Licensee; act as agent, when; agency relationships authorized; compensation, when.

(1) When engaged in any of the activities enumerated in subdivision (2) of section [81-885.01](#), a licensee may act as a limited agent in any transaction as a single agent, subagent, or dual agent. The licensee's general duties and obligations arising from the limited agency relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to sections [76-2420](#) to [76-2422](#). Alternatively, when engaged in any of the activities enumerated in subdivision (2) of section [81-885.01](#), a licensee may act as an agent in any transaction in accordance with a written contract as described in subsection (6) of section [76-2422](#).

(2) A licensee shall be considered a buyer's or tenant's limited agent unless:

(a) The designated broker enters into a written seller's agent or landlord's agent agreement with the party to be represented pursuant to subsection (2) of section [76-2422](#);

(b) The designated broker enters into a subagency agreement with another designated broker pursuant to subsection (5) of section [76-2422](#);

(c) The designated broker enters into a written dual agency agreement with the parties to be represented pursuant to subsection (4) of section [76-2422](#); or

(d) The designated broker enters into a written agency agreement pursuant to subsection (6) of section [76-2422](#).

(3) Sections [76-2401](#) to [76-2430](#) shall not obligate any buyer or tenant to pay compensation to a licensee unless the buyer or tenant has entered into a written agreement with the designated broker specifying the compensation terms in accordance with subsection (3) of section [76-2422](#).

(4) A licensee may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent or as a subagent if the licensee complies with sections [76-2401](#) to [76-2430](#) in establishing the relationships for each transaction.

76-2417. Seller's agent or landlord's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the client;

(b) To exercise reasonable skill and care for the client;

(c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(ii) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;

(iii) Disclosing in writing to the client all adverse material facts actually known by the licensee; and

(iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(d) To account in a timely manner for all money and property received;

(e) To comply with all requirements of sections [76-2401](#) to [76-2430](#), the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and

(f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

(2) A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(3)(a) A licensee acting as a seller's or landlord's agent owes no duty or obligation to a buyer, a tenant, or a prospective buyer or tenant, except that a licensee shall disclose in writing to the buyer, tenant, or prospective buyer or tenant all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts pertaining to: (i) Any environmental hazards affecting the property which are required by law to be disclosed; (ii) the physical condition of the property; (iii) any material defects in the property; (iv) any material defects in the title to the property; or (v) any material limitation on the client's ability to perform under the terms of the contract.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer, tenant, or prospective buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(5)(a) A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

76-2418. Buyer's agent or tenant's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of any written agreement made with the client;

(b) To exercise reasonable skill and care for the client;

(c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(ii) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(iii) Disclosing in writing to the client adverse material facts actually known by the licensee; and

(iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(d) To account in a timely manner for all money and property received;

(e) To comply with all requirements of sections [76-2401](#) to [76-2430](#), the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and

(f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

(2) A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

(3)(a) A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a seller, a landlord, or a prospective seller or landlord, except that the licensee shall disclose in writing to any seller, landlord, or prospective seller or landlord all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts concerning the client's financial ability to perform the terms of the transaction.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5)(a) A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the buyer's or tenant's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

76-2419. Dual agent; powers and duties; confidentiality; immunity; imputation of knowledge or information.

(1) A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a written agreement pursuant to section [76-2422](#).

(2) A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections [76-2417](#) and [76-2418](#) unless otherwise provided for in this section.

(3) Except as provided in subsections (4) and (5) of this section, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is relevant to the transaction or client. A dual agent shall disclose to both clients all adverse material facts actually known by the licensee.

(4) The following information shall not be disclosed by a dual agent without the informed written consent of the client to whom the information pertains:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(c) What the motivating factors are for any client buying, selling, or leasing the property; and

(d) That a client will agree to financing terms other than those offered.

(5)(a) A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation.

(b) No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure.

(c) A dual agent does not terminate the dual-agency relationship by making any required or permitted disclosure.

(6) In a dual-agency relationship there shall be no imputation of knowledge or information between any client and the dual agent or among persons within an entity engaged as a dual agent.

76-2420. Designated broker; written policy; relationships.

(1) Every designated broker shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

(2) A designated broker shall not be required to offer or engage in more than one of the brokerage relationships enumerated in section [76-2416](#).

76-2421. Licensee offering brokerage services; duties.

(1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall:

(a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and

(b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing.

(2) When a seller, landlord, buyer, or tenant has already entered into a written agreement for brokerage services with a designated broker or when a buyer or tenant has a brokerage relationship under sections [76-2401](#) to [76-2430](#) without a written agreement, no other licensee shall be required to make the disclosures required by this section.

(3) Before engaging in any of the activities enumerated in subdivision (2) of section [81-885.01](#), a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the seller or landlord and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a seller's or landlord's agent or subagent may perform with the customer.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section [81-885.01](#), a licensee working as an agent or subagent of the buyer or tenant with a seller or landlord who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the buyer or tenant and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a buyer's or tenant's agent or subagent may perform with the customer.

(5) The written disclosure required pursuant to subsections (1), (3), and (4) of this section shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgment of disclosure shall not constitute a contract with the licensee. If the customer fails or refuses to sign the disclosure, the licensee shall note that fact on a copy of the disclosure and retain the copy.

(6) A licensee shall not be required to give the written disclosures required by this section to a corporation, limited liability company, partnership, limited liability partnership, or similar entity or to any entity which, if doing business in the State of Nebraska, would be required to be registered with the Secretary of State when such corporation, limited liability company, partnership, limited liability partnership, or entity is purchasing, leasing, or selling real property (a) on which there are five or more residential dwelling units, (b) which is subdivided for five or more residential dwelling units, or (c) any portion of which is zoned or assessed by the county assessor as commercial or industrial property.

(7) Disclosures made in accordance with sections [76-2401](#) to [76-2430](#) shall be sufficient to disclose brokerage relationships to the public.

76-2422. Written agreements for brokerage services; when required.

(1) All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker. A copy of a written agreement for brokerage services shall be left with the client or clients.

(2) Before engaging in any of the activities enumerated in subdivision (2) of section [81-885.01](#), a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section [76-2417](#), the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker, except that if a licensee is a limited seller's agent for a builder, the terms of compensation may be established for a specific new construction property on or before the builder's acceptance of a contract to sell.

(3) Before or while engaging in any of the acts enumerated in subdivision (2) of section [81-885.01](#), a designated broker acting as a single agent for a buyer or tenant may enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section [76-2418](#), the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section [81-885.01](#), a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section [76-2419](#). The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's

agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase property or a lease or letter of intent to lease is entered into for the specific property.

(5) Before engaging in any of the activities enumerated in subdivision (2) of section [81-885.01](#), a designated broker intending to act as a subagent shall enter into a written contract with the primary designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

(6) Before engaging in any of the activities enumerated in subdivision (2) of section [81-885.01](#), a designated broker who intends to establish an agency relationship with any party or parties to a transaction in which the designated broker's duties and responsibilities exceed those contained in sections [76-2417](#) and [76-2418](#) shall enter into a written agency agreement with a party or parties to the transaction to perform services on their behalf. The agreement shall specify the agent's duties and responsibilities, including any duty of confidentiality, and the terms of compensation. Any agreement under this subsection shall be subject to the common-law requirements of agency applicable to real estate licensees.

76-2423. Representation; commencement and termination; when.

(1)(a) The relationships set forth in sections [76-2401](#) to [76-2430](#) shall commence at the time that the licensee begins representing a client and continue until performance or completion of the representation.

(b) If the representation is not performed or completed for any reason, the relationship shall end at the earlier of:

- (i) The date of expiration agreed upon by the parties; or
- (ii) The termination or relinquishment of the relationship by the parties.

(2) Except as otherwise agreed in writing, a licensee shall owe no further duty or obligation after termination or expiration of the contract or representation or completion of performance except the duties of:

(a) Accounting for all money and property related to and received during the relationship; and

(b) Keeping confidential all information received during the course of the relationship which was made confidential by sections [76-2401](#) to [76-2430](#), by instructions from the client, or by the policy of the designated broker unless:

(i) The client to whom the information pertains grants written consent to disclose the information; or

(ii) Disclosure of the information is required by law.

76-2424. Compensation; payment.

(1) In any real estate transaction, the designated broker's compensation may be paid by the seller, the landlord, the buyer, the tenant, or a third party or by sharing the compensation between designated brokers.

(2) Payment of compensation by itself shall not establish an agency relationship between the party who paid the compensation and the designated broker or any affiliated licensee.

(3) A seller or landlord may agree that a single agent designated broker or subagent may share with another designated broker the compensation paid by the seller or landlord.

(4) A buyer or tenant may agree that a single agent designated broker or subagent may share with another designated broker the compensation paid by the buyer or tenant.

(5) A designated broker may be compensated by more than one party for services in a transaction if the parties consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell, or lease.

76-2425. Violation; unfair trade practice; commission; powers.

Violation of any provision of sections [76-2401](#) to [76-2430](#) by a licensee shall constitute an unfair trade practice pursuant to section [81-885.24](#) for which the commission may investigate and take administrative action against the licensee pursuant to the Nebraska Real Estate License Act.

76-2426. Misrepresentation; liability.

(1) A client shall not be liable for a misrepresentation of his or her limited agent arising out of the limited-agency agreement unless the client knew or should have known of the misrepresentation.

(2) A licensee who is serving as a limited agent or subagent of a client shall not be liable for a misrepresentation of his or her client arising out of the brokerage-services agreement unless the licensee knew or should have known of the misrepresentation.

(3) A licensee who is serving as a limited agent of a client shall not be liable for a misrepresentation of any subagent unless the licensee knew or should have known of the misrepresentation.

(4) A licensee who is serving as a subagent shall not be liable for a misrepresentation of the primary limited agent unless the subagent knew or should have known of the misrepresentation.

76-2427. Designated broker; appointment of limited agent; effect.

A designated broker entering into a limited agency agreement with a client for the listing of property or for the purpose of representing that person in the buying, selling, exchanging, renting, or leasing of real estate may appoint in writing those affiliated licensees who will be acting as limited agents of that client to the exclusion of all other affiliated licensees. A designated broker shall not be considered to be a dual agent solely because he or she makes an appointment under this section, except that any licensee who personally represents both the seller

and buyer or both the landlord and tenant in a particular transaction shall be a dual agent and shall be required to comply with the provisions of sections [76-2401](#) to [76-2430](#) governing dual agents.

76-2428. Affiliated licensees; powers and duties; immunity.

(1) All affiliated licensees to the extent allowed by their licenses shall have the same duties and responsibilities to the client and customer pursuant to sections [76-2417](#) to [76-2419](#) as the designated broker except as provided in section [76-2427](#).

(2) All affiliated licensees have the same protections from vicarious liability as their designated broker.

76-2429. Sections; supersede common law; extent; construction.

Sections [76-2401](#) to [76-2430](#) shall supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal, except as provided in subsection (6) of section [76-2422](#). Sections [76-2401](#) to [76-2430](#) shall be construed broadly to accomplish their purposes.

76-2430. Commission; rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out sections [76-2401](#) to [76-2430](#).

81-885.01. Terms, defined.

For purposes of the Nebraska Real Estate License Act, unless the context otherwise requires:

(1) Real estate means and includes condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(2) Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker's price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the

foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate;

(3) Associate broker means a person who has a broker's license and who is employed by another broker to participate in any activity described in subdivision (2) of this section;

(4) Designated broker means an individual holding a broker's license who has full authority to conduct the real estate activities of a real estate business. In a sole proprietorship, the owner, or broker identified by the owner, shall be the designated broker. In the event the owner identifies the designated broker, the owner shall file a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the sole proprietorship. In a partnership, limited liability company, or corporation, the partners, limited liability company members, or board of directors shall identify the designated broker for its real estate business by filing a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the partnership, limited liability company, or corporation. The designated broker shall also be responsible for supervising the real estate activities of any associate brokers or salespersons;

(5) Inactive broker means an associate broker whose license has been returned to the commission by the licensee's broker, a broker who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker or have the license issued as an individual broker, or a broker whose license has been placed on inactive status under statute, rule, or regulation;

(6) Salesperson means any person, other than an associate broker, who is employed by a broker to participate in any activity described in subdivision (2) of this section;

(7) Inactive salesperson means a salesperson whose license has been returned to the commission by the licensee's broker, a salesperson who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker, or a salesperson whose license has been placed on inactive status under statute, rule, or regulation;

(8) Person means and includes individuals, corporations, partnerships, and limited liability companies, except that when referring to a person licensed under the act, it means an individual;

(9) Subdivision or subdivided land means any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and following, 15 U.S.C. 1701 and following, as such act existed on January 1, 1973, or real estate located out of this state which is divided or proposed to be divided into twenty-five or more lots, parcels, or units;

(10) Subdivider means any person who causes land to be subdivided into a subdivision for himself, herself, or others or who undertakes to develop a subdivision but does not include a public agency or officer authorized by law to create subdivisions;

(11) Purchaser means a person who acquires or attempts to acquire or succeeds to an interest in land;

(12) Commission means the State Real Estate Commission;

(13) Broker's price opinion means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of listing, purchase, or sale;

(14) Comparative market analysis means an analysis, opinion, or conclusion prepared by a person licensed under the act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of listing, purchase, or sale;

(15) Distance education means courses in which instruction does not take place in a traditional classroom setting, but rather through other media by which instructor and student are separated by distance and sometimes by time; and

(16) Regulatory jurisdiction means a state, district, or territory of the United States, a province of Canada or a foreign country, or a political subdivision of a foreign country, which has implemented and administers laws regulating the activities of a broker.

RRS 81-885.01 Source: Laws: 1973, LB 68; 1979, LB 68; 1983, LB 182; 1990, LB 350; 1991, LB 118; 1993, LB 121; 1999, LB 618; 2002, LB 863; 2007, LB26.