

buyers who are seeking to buy property. Normally, this coincidence presents no problem. However, on occasion, situations may arise where the buyer who is being represented by a brokerage firm becomes actively and substantially interested in purchasing a property only to learn that the buyer's brokerage firm also represents the seller of that very same property. This situation presents such a high potential for conflicts and divided loyalties that the continued representation by the same real estate brokerage firm of both seller and buyer in the same transaction should not continue. Other alternatives must be explored. When this dual agency situation arises, alternatives include referring the seller or buyer to another brokerage firm for representation by that other firm. A limited agency agreement involving the seller, buyer and brokerage firm for that particular property is another choice. Sometimes, terminating the broker's representation of the seller or buyer (or both) for that particular transaction is required. Each of these choices requires some thought.

In a referral situation, a real estate brokerage firm with whom a seller or buyer has a written agreement will refer the seller or buyer to another real estate brokerage firm so that the seller or buyer may be represented by that firm. In that circumstance, the relationship with the initial brokerage firm can either terminate as to the particular property that has created the conflict or can terminate entirely. If you enter into an agreement with the brokerage firm to whom you are referred to by your original brokerage firm, that new firm may, under certain circumstances, pay some of its compensation to the referring firm.

Under a limited agency arrangement, the seller service and buyer service agreements are terminated as to the particular property in question and replaced by a written, signed agreement known as a limited agency agreement with respect to that property. Under a limited agency agreement the real estate brokerage firm will act as a limited agent on behalf of both the seller and the buyer after obtaining informed consent of both the seller and the buyer to the limited agency relationship. If this situation occurs, your real estate brokerage firm will review with you a limited agency representation agreement which will replace the seller service or buyer service agreement as to the particular property in question. You will have the opportunity to make the choice whether, in

your view, the benefits of continuing with the same brokerage firm, acting as a limited agent, outweigh any negative or offsetting consequences. You should discuss with the real estate brokerage firm, at the time you enter into either a seller service or buyer service agreement, the particular real estate brokerage firm's policy with respect to handling these issues.

Additionally, on occasion, a brokerage firm representing two separate buyer clients may find that the buyer clients have each developed an active, substantial interest in the same property. This presents a potential for a conflict of interest on the part of the brokerage firm. Each real estate brokerage firm has its own separate policy as to the manner in which it will handle this potential problem. You should discuss this with your real estate brokerage firm at the time you enter into a buyer service agreement.

A brokerage firm representing a seller may compensate a broker's agent or a brokerage firm representing a buyer out of the agreed upon transaction fee it has with the seller. This does not create an agency relationship between or among the brokerage firms. In any seller service or buyer service agreement which you may sign, the circumstances concerning these commission allocation agreements will be disclosed.

## REALTORS® Commitment to Excellence

The purchase and sale of real estate are significant decisions. REALTORS® are dedicated to training and educating themselves to identify, explain and provide information as well as valuable direction and guidance concerning the various issues that will arise in the purchase and sale of real estate. Engaging a REALTOR® to act as your agent will assist you in being better able to purchase the property you desire or to accept the purchase offer that is most advantageous to you.

### Received and acknowledged.

Buyer       Seller      (check one)

Buyer       Seller      (check one)

Date \_\_\_\_\_



# A CONSUMER'S GUIDE TO REPRESENTATION BY A REALTOR®



*This brochure is made available  
through the  
VERMONT ASSOCIATION OF  
REALTORS®, INC.  
to enhance the public's knowledge  
of the role of REALTORS®  
in real estate transactions.*

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## **Introduction to Representation by REALTORS®.**

People who market real estate in Vermont are required to meet certain licensing standards established by the State of Vermont and administered by the Vermont Real Estate Commission. Every Vermont real estate broker and salesperson must hold a license issued by the State of Vermont.

Brokers and salespersons are sometimes referred to as REALTORS®. However, not every broker or salesperson who is licensed by the state is a REALTOR®. In order for a broker or salesperson to be a REALTOR®, she or he must meet the standards and criteria established by the National Association of REALTORS® and be a member of the Vermont Association of REALTORS® as well as belong to a local board of REALTORS®. These voluntary associations have been formed for the purpose of educating and training their members to resolve the often complex issues that arise in buying and selling real estate.

In Vermont, real estate brokerage firms can enter into agreements with sellers to market the seller's property. They can also enter into agreements with buyers to locate, assist and negotiate on the buyer's behalf for the purchase of property. Real estate brokerage firms also can act as agents of the brokerage firm that is marketing the seller's property. When real estate agents act in this capacity, they are referred to as broker's agents. They act as agents of the real estate firm that is marketing the property. Broker's agents are not the agents of the seller themselves, but they do represent the interests of the seller. Real estate brokerage firms can also act as broker's agents for real estate brokerage firms who represent buyers. In this capacity, they are broker's agents representing the interests of the buyer, although they do not directly represent the buyer.

In all cases, the REALTOR® must disclose to you whom he or she is representing. You should also inquire as well as to whom the REALTOR® is representing.

## **Representation of Sellers of Property by REALTORS®.**

The first and most important step in obtaining the services of a REALTOR® to assist you in the sale of your property and to market the property on your behalf is to enter into a written, signed agreement between yourself and a real estate brokerage firm. This written, signed agreement is referred to as a marketing agreement or a seller service agreement. Under this marketing agreement, you authorize the REALTOR'S® brokerage firm to market your property on the terms and conditions set forth in the agreement. The real estate firm and all of the REALTORS® associated or affiliated with that firm will act as your agents for the sale of your home and you agree to compensate the REALTOR® brokerage firm for services rendered as set forth in the agreement. If the REALTOR® brokerage firm represents both buyers and sellers of property in the marketplace, it will disclose that fact in the marketing agreement. Under certain circumstances, you may be potentially liable for the acts or statements of the real estate brokerage firm with whom you have a marketing agreement.

Among the responsibilities of the brokerage firm that you have selected as your agent is the responsibility to submit to you all offers to purchase the property whether or not they include a deposit, whether or not they are oral or written and whether they are above, below or at the price you are asking for the property. Typically, as part of the marketing agreement, you authorize the brokerage firm to retain broker's agents to assist in providing services in connection with the sale of your home and also to offer cooperation agreements to real estate agents representing potential buyers. The marketing agreement that you enter into establishes the terms and conditions of your relationship with the brokerage firm you have selected to act as your agent. It is a legally binding contract between you as the seller and your real estate brokerage firm. You should read this agreement carefully before you sign it. If there are provisions that you do not understand or you need further information about the circumstances whereby you may be potentially liable for the acts or statements of real estate agents who are acting on your behalf, you should seek the assistance of a competent advisor.

## **Representation of Buyers of Property by REALTORS®.**

As a potential buyer of real estate, you will naturally come into contact with REALTORS® who either represent the seller or act in the seller's interest. These relationships are described earlier in this brochure.

Buyers of real estate may also obtain their own representation by REALTORS® in real estate transactions. By entering into a written signed buyer service agreement with a real estate brokerage firm, you authorize the REALTOR® to act on your behalf as your agent to locate, assist and negotiate for the purchase of property that you deem suitable. Such agreements are known as buyer representation agreements, buyer broker agreements or buyer service agreements. If you enter into a written, signed buyer representation agreement, the real estate firm with whom you enter into the agreement will act as your agent. As with seller service agreements, under certain circumstances you may be potentially liable for the acts or statements of the real estate brokerage firm. The buyer service agreement sets forth the terms and conditions of your relationship with the brokerage firm you have selected to act as your agent. It also sets forth the compensation arrangement between you and the real estate brokerage firm that you have selected to represent you as well as the manner in which that compensation will be paid. You should read this agreement carefully before you sign it. If there is anything you do not understand or need to clarify, you should seek competent assistance and advice before you sign the agreement. Without such a written, signed agreement, any REALTOR® with whom you have dealings concerning the purchase of property is representing the seller or the seller's interests and is not representing you.

## **Representation of Both Sellers and Buyers by the Same REALTOR®.**

Many real estate brokerage firms routinely represent sellers of property and, at the same time, agree to represent persons who are seeking to buy property. In these situations, the brokerage firms will have seller service agreements with sellers of property and at the same time will have buyer service agreements with prospective