

INITIAL AGENCY DISCLOSURE PAMPHLET[OAR 863-015-0215 \(5\)](#)

- 1 *This pamphlet describes the legal obligations of real estate agents in Oregon. Real estate agents must provide this information to*
2 *you when they have sufficient contact information for you, unless they reasonably believe you already have a copy.*
- 3 *This pamphlet is informational only. Neither the pamphlet nor its delivery to you should be interpreted as evidence of intent to*
4 *create an agency relationship between you and a real estate agent or a principal broker.*
- 5 *As used in this pamphlet, "principal broker" means a real estate agent authorized to control and supervise the professional real*
6 *estate activity of other agents.*

Real Estate Agency Relationships

- 8 An "agency" relationship is a voluntary legal relationship in which a licensed real estate agent, agrees to act on behalf of a buyer or
9 a seller (the "client") in a real estate transaction.
- 10 Oregon law provides for three types of agency relationships between real estate agents and their clients:
- 11 **Seller's Agent** - Represents the seller only;
12 **Buyer's Agent** - Represents the buyer only; and
13 **Disclosed Limited Agent** - Represents both the buyer and seller, or multiple buyers who want to purchase the same property.
14 Representation of more than one client in the same transaction can be done only with the written permission of all clients.
- 15 When different agents associated with the same firm establish agency relationships with different parties in the same transaction,
16 the principal broker authorized to control and supervise the agents ("Authorized Principal Broker"), the principal broker responsible
17 for the firm ("Managing Principal Broker"), and other agents may be Disclosed Limited Agents, depending on the specific situation:
- 18 1. Agent(s) in the Same Firm Representing Different Parties. When one or more agents associated with the same firm establish
19 agency relationships with different parties in a transaction, the firm's Managing Principal Broker is the Disclosed Limited
20 Agent of all parties. The Authorized Principal Broker of an agent involved is a Disclosed Limited Agent of the agent's client.
- 21 2. Agents Supervised by the Same Authorized Principal Broker Representing Different Parties. If (a) more than one of a firm's
22 agents are involved in a transaction, (b) those agents are representing different parties, and (c) those agents are supervised
23 by the same Authorized Principal Broker, then the Authorized Principal Broker is the Disclosed Limited Agent of the agents'
24 clients.
- 25 3. Agent(s) Supervised by the Same Authorized Principal Broker Representing More than One Party. If one or more of a firm's
26 agents who are supervised by the same Authorized Principal Broker establish agency relationships with more than one
27 client in a transaction, the agent(s) and the agent's Authorized Principal Broker are Disclosed Limited Agents of those clients.
- 28 4. Team Member(s) Representing More than One Party. If one or more members of the same real estate team represent more
29 than one party in a transaction, all members of the real estate team, the team's Authorized Principal Broker and the firm's
30 Managing Principal Broker are Disclosed Limited Agents of those parties.

31 The agents who are not Disclosed Limited Agents represent only the buyer or seller with whom they have already established an
32 agency relationship unless all parties agree otherwise in writing.

33 *The actual agency relationships between the seller, buyer and their agents in a real estate transaction must be acknowledged at the*
34 *time an offer to purchase is made. Please read this pamphlet carefully before entering into an agency relationship with a real estate*
35 *agent.*

Definition of "Confidential Information"

37 Generally, agents must not disclose confidential information about their clients. "Confidential information" is information
38 communicated to the agent or the agent's firm by the buyer or seller of one to four residential units regarding the real property

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39 transaction, including but not limited to price, terms, financial qualifications or motivation to buy or sell. "Confidential information"
40 does not mean information that:

- 41 a. The buyer instructs the agent or the agent's principal broker to disclose about the buyer to the seller, or the seller
42 instructs the agent or the agent's principal broker to disclose about the seller to the buyer; and
- 43 b. The agent or the agent's principal broker knows or should know failure to disclose would constitute fraudulent
44 representation.

45 **Duties and Responsibilities of Seller's Agent**

46 Under a written listing agreement to sell property, an agent represents only the seller unless the seller agrees in writing to allow the
47 agent to also represent the buyer. An agent who represents only the seller owes the following affirmative duties to the seller, the other
48 parties and the other parties' agents involved in a real estate transaction:

- 49 1. To deal honestly and in good faith;
- 50 2. To present all written offers and other communications to and from the parties in a timely manner without regard to whether
51 the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and
- 52 3. To disclose material facts known by the agent and not apparent or readily ascertainable to a party;

53 A Seller's Agent owes the seller the following affirmative duties;

- 54 1. To exercise reasonable care and diligence;
- 55 2. To account in a timely manner for money and property received from or on behalf of the seller;
- 56 3. To be loyal to the seller by not taking action that is adverse or detrimental to the seller's interest in a transaction;
- 57 4. To disclose in a timely manner to the seller any conflict of interest, existing or contemplated;
- 58 5. To advise the seller to seek expert advice on matters related to the transactions that are beyond the agent's expertise;
- 59 6. To not disclose confidential information from or about the seller except under subpoena or court order, even after termination
60 of the agency relationship; and
- 61 7. Unless agreed otherwise in writing, to make a continuous, good faith effort to find a buyer for the property, except that a
62 Seller's Agent is not required to seek additional offers to purchase the property while the property is subject to a contract
63 for sale.

64 None of the above affirmative duties of an agent may be waived, except #7. The affirmative duty listed in #7 can only be waived by
65 written agreement between seller and agent.

66 Under Oregon law, a Seller's Agent may show properties owned by another seller to a prospective buyer and may list competing
67 properties for sale without breaching any affirmative duty to the seller.

68 Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent's expertise, including
69 but not limited to investigation of the condition of property, the legal status of the title or the seller's past conformance with law.

70 **Duties and Responsibilities of Buyer's Agent**

71 An agent, other than the Seller's Agent, may agree to act as the Buyer's Agent only. The Buyer's Agent is not representing the seller,
72 even if the Buyer's Agent is receiving compensation for services rendered, either in full or in part, from the seller or through the
73 Seller's Agent.

74 An agent who represents only the buyer owes the following affirmative duties to the buyer, the other parties and the other parties'
75 agents involved in a real estate transaction:

- 76 1. To deal honestly and in good faith;
- 77 2. To present all written offers and other communications to and from the parties in a timely manner without regard to whether
78 the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and
- 79 3. To disclose material facts known by the agent and not apparent or readily ascertainable to a party.

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80 A Buyer's Agent owes the buyer the following affirmative duties:

- 81 1. To exercise reasonable care and diligence;
- 82 2. To account in a timely manner for money and property received from or on behalf of the buyer;
- 83 3. To be loyal to the buyer by not taking action that is adverse or detrimental to the buyer's interest in a transaction;
- 84 4. To disclose in a timely manner to the buyer any conflict of interest, existing or contemplated;
- 85 5. To advise the buyer to seek expert advice on matters related to the transaction that are beyond the agent's expertise;
- 86 6. To not disclose confidential information from or about the buyer except under subpoena or court order, even after termination
- 87 of the agency relationship; and
- 88 7. Unless agreed otherwise in writing, to make a continuous, good faith effort to find property for the buyer, except that a
- 89 buyer's agent is not required to seek additional properties for the buyer while the buyer is subject to a contract for purchase.

90 None of these affirmative duties of an agent may be waived, except #7. The affirmative duty listed in #7 can only be waived by written

91 agreement between buyer and agent.

92 Under Oregon law, a Buyer's Agent may show properties in which the buyer is interested to other prospective buyers without

93 breaching an affirmative duty to the buyer.

94 Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent's expertise, including

95 but not limited to investigation of the condition of property, the legal status of the title or the seller's past conformance with law.

96 **Duties and Responsibilities of an Agent**

97 **Who Represents More than One Client in a Transaction**

98 One agent may represent both the seller and the buyer in the same transaction, or multiple buyers who want to purchase the same

99 property, only under a written "Disclosed Limited Agency Agreement" signed by the seller and buyer(s).

100 Disclosed Limited Agents owe the following duties to their clients:

- 101 1. To the seller, the duties listed above for a seller's agent;
- 102 2. To the buyer, the duties listed above for a buyer's agent; and
- 103 3. To both buyer and seller, except with express written permission of the respective person, the duty not to disclose to the
- 104 other person:
 - 105 a. That the seller will accept a price lower or terms less favorable than the listing price or terms;
 - 106 b. That the buyer will pay a price greater or terms more favorable than the offering price or terms; and
 - 107 c. Confidential information as defined above.

108 Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent's expertise.

109 The principal broker and the real estate agents representing either seller or buyer shall owe the following duties to the seller and

110 buyer:

- 111 1. To disclose a conflict of interest in writing to all parties;
- 112 2. To take no action that is adverse or detrimental to either party's interest in the transaction; and
- 113 3. To obey the lawful instructions of both parties.

114 No matter who they represent, an agent must disclose information the agent knows or should know that failure to disclose would

115 constitute fraudulent misrepresentation.

116 ***You are encouraged to discuss the above information with the agent delivering this pamphlet to you. If you intend for that***

117 ***agent, or any other Oregon real estate agent, to represent you as a Seller's Agent, Buyer's Agent, or Disclosed Limited***

118 ***Agent, you should have a specific discussion with the agent about the nature and scope of the agency relationship. Whether***

119 ***you are a buyer or seller, you cannot make an agent your agent without the agent's knowledge and consent, and an agent***

120 ***cannot make you their client without your knowledge and consent.***

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