



## **WHO DOES THE REAL ESTATE AGENT REPRESENT?**

The following pages contain information about who the real estate salesperson or broker represents in a real estate transaction. **Usually, the listing real estate agent represents the Seller or Landlord, as does the real estate agent showing a customer the property as a sub-agent for the other real estate office.** There are options open to both Buyers/Tenants and Sellers/Landlords and the real estate agents must clearly (and in writing) disclose the identity of the parties they are representing. Please take the time to read the following Disclosure Law excerpts.

I believe that it is the best and most honest approach for everyone involved in the buying/selling/leasing process to know exactly who I represent. As Buyer(s) or Tenant(s), you must acknowledge that you are aware that I am either acting as a sub-agent of the Seller or Landlord, or acting as your (Buyer's/Tenant's) agent. **At first, as is the normal practice, I will be representing the sellers or landlords.** If, at some later point in your property search, you decide that you want me to represent you as a buyer's or tenant's agent, I will discuss the pros and cons with you. In any case, the disclosure acknowledgement should be signed before any offers are made. If you have any questions about the Disclosure Law excerpts, please do not hesitate to ask me.

***NOTE: In most situations, the Listing Broker will pay the Buyer's Broker commission, BUT there are instances when the Listing Broker or Seller refuses to pay the commission and therefore the Buyer is responsible for paying their Buyer Broker's commission.***

**New Agency Disclosure Requirements for New York State:**

Prior to the revisions to Section 443 of the Real Property Law, only one agency relationship disclosure form was required for buyer/seller and landlord/tenant transactions. The combined form used the terms "seller/landlord" and "buyer/tenant" interchangeably. On and after January 1, 2007, the combined form will no longer be permitted and, rather, two separate disclosure forms will be required; one for seller/buyer transactions and another for landlord/tenant transactions. The two forms provide expanded, clearer definitions of the different agency relationships and explain the fiduciary duties owed by brokers and salespeople under each type of agency relationship.

The revised statute also defines dual agency. While the concept of dual agency is not new, Real Property Law, Section 443 now provides a clear definition of this type of agency relationship. A dual agent is defined by the revised statute as, "an agent who is acting as a buyer's agent and a seller's agent in the same transaction."

The revised statute also adds a definition for "designated sales associate." A designated sales associate is defined by the statute as: " a licensed real estate salesman or associate broker, working under the supervision of a real estate broker, who has been assigned to represent a client when a different client is also represented by such real estate broker in the same transaction." Essentially, a broker who is acting as a dual agent will be permitted to appoint two different real estate salespersons and/or associate brokers to represent each party to the transaction. The representative broker is still required to provide supervision to the designated sales associates. For this reason, and as in a pure dual agency situation, when designated sales associates are appointed, the consumers are not afforded all of the fiduciary duties inherent in a single agency arrangement. Specifically, the designated sales associate and representative broker cannot provide the fiduciary duty of undivided loyalty. The new agency disclosure form contains a disclaimer to this fact.

The link to these two disclosure forms is at [www.dos.state.ny.us/lens/realestate.html](http://www.dos.state.ny.us/lens/realestate.html). In accordance with statute, each is required to be printed on a one page, two-sided form.

### **Text of the Revised Statute** (Bill A4135-C)

AN ACT to amend the real property law, in relation to the real estate agency disclosure form and to repeal subdivision 4 of section 443 of such law relating thereto **The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Subdivision 1 of section 443 of the real property law is amended by adding two new paragraphs i and j to read as follows:

**i. "Dual agent" means an agent who is acting as a buyer's agent and a seller's agent in the same transaction.**

**j. "Designated sales associate" means a licensed real estate salesman or associate broker, working under the supervision of a real estate broker, who has been assigned to represent a client when a different client is also represented by such real estate broker in the same transaction.**

§ 2. Subdivision 4 of section 443 of the real property law is REPEALED and a new subdivision 4 is added to read as follows:

**4. a. For buyer-seller transactions, the following shall be the disclosure form:**

**NEW YORK STATE DISCLOSURE FORM**  
**FOR**  
**BUYER AND SELLER**

**THIS IS NOT A CONTRACT**

**New York state law requires real estate licensees who are acting as agents of buyers or sellers of property to advise the potential buyers or sellers with whom they work of the nature of their agency relationship and the rights and obligations it creates. This disclosure will help you to make informed choices about your relationship with the real estate broker and its sales associates. Throughout the transaction you may receive more than one disclosure form. The law requires each agent assisting in the transaction to present you with this disclosure form. A real estate agent is a person qualified to advise about real estate. If you need legal, tax or other advice, consult with a professional in that field.**

**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS**  
**SELLER'S AGENT**

**A seller's agent is an agent who is engaged by a seller to represent the seller's interests. The seller's agent does this by securing a buyer for the seller's home at a price and on terms acceptable to the seller. A seller's agent has, without limitation, the following fiduciary duties to the seller: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A seller's agent does not represent the interests of the buyer. The obligations of a seller's agent are also subject to any specific provisions set forth in an agreement between the agent and the seller. In dealings with the buyer, a seller's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.**

**BUYER'S AGENT**

**A buyer's agent is an agent who is engaged by a buyer to represent the buyer's interests. The buyer's agent does this by negotiating the purchase of a home at a price and on terms acceptable to the buyer. A buyer's agent has, without limitation, the following fiduciary duties to the buyer: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A buyer's agent does not represent the interests of the seller. The obligations of a buyer's agent are also subject to any specific provisions set forth in an agreement between the agent and the buyer. In dealings with the seller, a buyer's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the buyer's ability and/or willingness to perform a contract to acquire seller's property that are not inconsistent with the agent's fiduciary duties to the buyer.**

**BROKER'S AGENTS**

**As part of your negotiations with a real estate agent, you may authorize your agent to engage other agents whether you are a buyer or seller. As a general rule, those agents owe fiduciary duties to your agent and to you. You are not vicariously liable for their conduct.**

### **DUAL AGENT**

**A real estate broker may represent both the buyer and the seller if both the buyer and seller give their informed consent in writing. In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the buyer and seller. The obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent, and the buyer and seller. An agent acting as a dual agent must explain carefully to both the buyer and seller that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the buyer and seller are giving up their right to undivided loyalty. A buyer or seller should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation.**

### **DUAL AGENCY WITH DESIGNATED SALES ASSOCIATES**

**If the buyer and the seller provide their informed consent in writing, the principals or the real estate broker who represents both parties as a dual agent may designate a sales associate to represent the buyer and another sales associate to represent the seller to negotiate the purchase and sale of real estate. A sales associate works under the supervision of the real estate broker. With the informed consent of the buyer and the seller in writing, the designated sales associate for the buyer will function as the buyer's agent representing the interests of the buyer and the designated sales associate for the seller will function as the seller's agent representing the interests of the seller in the negotiations between the buyer and seller. A designated sales associate cannot provide the full range of fiduciary duties to the buyer or seller. The designated sales associate must explain that like the dual agent under whose supervision they function, they cannot provide undivided loyalty. A buyer or seller should carefully consider the possible consequences of a dual agency relationship with designated sales associates before agreeing to such representation.**

**This form was provided to me by the company named below:**

**Licensee or Associate of Licensee: \_\_\_\_\_ (signature) of**

**Company: \_\_\_\_\_**

**The above-named company, which is licensed as a real estate broker, is(check one)**

**the seller's agent       a dual agent**

**the buyer's agent       a dual agent with designated sales associates**

**the broker's agent**

**If dual agent with designated sales associates is checked:**

**\_\_\_\_\_ is appointed to represent the buyer; and**

**\_\_\_\_\_ is appointed to represent the seller in this transaction.**

**(I)(We) acknowledge receipt of a copy of this disclosure form:**

**Signature of  Buyer(s) and/or  Seller(s):**

\_\_\_\_\_

\_\_\_\_\_

**Date: \_\_\_\_\_ Date: \_\_\_\_\_**

**b. For landlord-tenant transactions, the following shall be the disclosure form:**

**NEW YORK STATE DISCLOSURE FORM**  
**FOR**

## LANDLORD AND TENANT

### THIS IS NOT A CONTRACT

New York state law requires real estate licensees who are acting as agents of landlords and tenants of real property to advise the potential landlords and tenants with whom they work of the nature of their agency relationship and the rights and obligations it creates. This disclosure will help you to make informed choices about your relationship with the real estate broker and its sales associates. Throughout the transaction you may receive more than one disclosure form. The law requires each agent assisting in the transaction to present you with this disclosure form. A real estate agent is a person qualified to advise about real estate. If you need legal, tax or other advice, consult with a professional in that field.

### DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS LANDLORD'S AGENT

A landlord's agent is an agent who is engaged by a landlord to represent the landlord's interest. The landlord's agent does this by securing a tenant for the landlord's apartment or house at a rent and on terms acceptable to the landlord. A landlord's agent has, without limitation, the following fiduciary duties to the landlord: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A landlord's agent does not represent the interests of the tenant. The obligations of a landlord's agent are also subject to any specific provisions set forth in an agreement between the agent and the landlord. In dealings with the tenant, a landlord's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

### TENANT'S AGENT

A tenant's agent is an agent who is engaged by a tenant to represent the tenant's interest. The tenant's agent does this by negotiating the rental or lease of an apartment or house at a rent and on terms acceptable to the tenant. A tenant's agent has, without limitation, the following fiduciary duties to the tenant: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A tenant's agent does not represent the interest of the landlord. The obligations of a tenant's agent are also subject to any specific provisions set forth in an agreement between the agent and the tenant. In dealings with the landlord, a tenant's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

### BROKER'S AGENTS

**As part of your negotiations with a real estate agent, you may authorize your agent to engage other agents whether you are a landlord or tenant. As a general rule, those agents owe fiduciary duties to your agent and to you. You are not vicariously liable for their conduct.**

### **DUAL AGENT**

**A real estate broker may represent both the tenant and the landlord if both the tenant and landlord give their informed consent in writing. In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the landlord and the tenant. The obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent, and the tenant and landlord. An agent acting as a dual agent must explain carefully to both the landlord and tenant that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the landlord and tenant are giving up their right to undivided loyalty. A landlord and tenant should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation.**

**DUAL AGENT WITH  
DESIGNATED SALES ASSOCIATES**

**If the tenant and the landlord provide their informed consent in writing, the principals or the real estate broker who represents both parties as a dual agent may designate a sales associate to represent the tenant and another sales associate to represent the landlord. A sales associate works under the supervision of the real estate broker. With the informed consent in writing of the tenant and the landlord, the designated sales associate for the tenant will function as the tenant's agent representing the interests of the tenant and the designated sales associate for the landlord will function as the landlord's agent representing the interests of the landlord in the negotiations between the tenant and the landlord. A designated sales associate cannot provide the full range of fiduciary duties to the landlord or tenant. The designated sales associate must explain that like the dual agent under whose supervision they function, they cannot provide undivided loyalty. A landlord or tenant should carefully consider the possible consequences of a dual agency relationship with designated sales associates before agreeing to such representation. This form was provided to me by the company named below:**

**Licensee or Associate of Licensee: \_\_\_\_\_ (signature) of**

**Company: \_\_\_\_\_**

**The above-named company, which is licensed as a real estate broker, is**

**(check one)**

- the landlord's agent**       **a dual agent**  
 **the tenant's agent**       **a dual agent with designated sales associates**  
 **the broker's agent**

**If dual agent with designated sales associates is checked:**

\_\_\_\_\_ **is appointed to represent the tenant; and**

\_\_\_\_\_ **is appointed to represent the landlord in this transaction.**

**(I) (We) acknowledge receipt of a copy of this disclosure form:**

**Signature of [-] Landlord(s) and/or [-] Tenant(s):**

\_\_\_\_\_  
\_\_\_\_\_

**Date:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**c. The buyer-seller form and the landlord-tenant form shall each be a one page, two-sided form, printed front and back.**

§ 3. This act shall take effect January 1, 2007.

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**Increased Educational Requirements and Miscellaneous Changes:**

Chapter 183 amended Section 440 of the Real Property Law. The bill has many purposes:

The bill creates a statutory definition of office manager. This will be a licensed associate real estate broker who elects to work as an office manager under the name and supervision of another individual broker or one who is licensed under a partnership, trade name, limited liability company or corporation. It provides that a branch office may be under the supervision of a duly appointed office manager or (as before) the direct supervision of the broker.

The bill increases educational requirements by requiring an applicant for a real estate broker's license to furnish proof of attending at least 120 hours, formerly 90 hours, of approved real estate courses and that the applicant has actively participated in the general real estate brokers business as a licensed real estate salesman under the supervision of a licensed real estate broker for a period of not less than two years, formerly one year, or has had equivalent experience in general real estate business for a period of at least three years, formerly two years.

The bill also gives the Department of State greater latitude to approve new technologies for the delivery of real estate qualifying education courses, principally through computer based distance learning, and provides that such courses may be approved by the Department as satisfying part of the educational requirements. At the same time it increase the sales qualifying course from 45 hours to 75 hours.

The bill will eliminate the current exemption from continuing education requirements for those brokers licensed after the effective date (July of 2008) who do not have fifteen years of experience by that time.

Real estate license identification cards shall now need to contain a photograph of the licensee, and the minimum age for a broker has been raised to twenty years.

**Text of the Revised Statute:**

(Bill A08053)

AN ACT to amend the real property law, in relation to real estate brokers and real estate salesmen  
**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Section 440 of the real property law is amended by adding a new subdivision 6 to read as follows:

**6. "Office manager" means a licensed associate real estate broker who shall by choice elect to work as an office manager under the name and supervision of another individual broker or another broker who is licensed under a partnership, trade name, limited liability company or corporation. Such individual shall retain his or her license as a real estate broker as provided for in this article; provided, however, that the practice of real estate sales and brokerage by such individual as an associate broker shall be governed exclusively by the provisions of this article as they pertain to real estate salesmen. Nothing contained in this subdivision shall preclude an individual who is licensed as an associate broker who elects to work as an office manager from also retaining a separate real estate broker's license under an individual, partnership, trade name, limited liability company or corporation.**

§ 2. The first undesignated paragraph of section 440-a of the real property law, as amended by chapter 324 of the laws of 1998, is amended to read as follows: No person, co-partnership, limited liability company or corporation shall engage in or follow the business or occupation of, or hold himself or itself out or act temporarily or otherwise as a real estate broker or

real estate salesman in this state without first procuring a license therefor as provided in this article. No person shall be entitled to a license as a real estate broker under this article, either as an individual or as a member of a co-partnership, or as a member or manager of a limited liability company or as an officer of a corporation, unless he or she is ~~[nineteen]~~ **twenty** years of age or over, a citizen of the United States or an alien lawfully admitted for permanent residence in the United States. No person shall be entitled to a license as a real estate salesman under this article unless he or she is over the age of eighteen years. No person shall be entitled to a license as a real estate broker or real estate salesman under this article who has been convicted in this state or elsewhere of a felony, and who has not subsequent to such conviction received executive pardon therefor or a certificate of good conduct from the parole board, to remove the disability under this section because of such conviction. No person shall be entitled to a license as a real estate broker or real estate salesman under this article who does not meet the requirements of section 3-503 of the general obligations law.

§ 3. Paragraphs (b) and (c) of subdivision 1 of section 441 of the real property law, paragraph (b) as amended by chapter 324 of the laws of 1998 and paragraph (c) as amended by chapter 81 of the laws of 1995, are amended to read as follows: (b) Such further information as the department may reasonably require shall be furnished by the applicant including sufficient proof of having taken and passed a written examination and answered such questions as may be prepared by the department to enable it to determine the trustworthiness of the applicant if an individual, or of each member of a co-partnership or each member of a limited liability company or each officer of a corporation for whom a license as a broker is asked, and his or their competency to transact the business of real estate broker in such a manner as to safeguard the interests of the public. In determining competency, the department shall require proof that the person being tested to qualify to apply for a broker's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, and leases, a general and fair understanding of the obligations between principal and agent, as well as of the provisions of this section. The applicant must also furnish proof that he has attended for at least ~~[ninety]~~ **one hundred twenty** hours and has successfully completed a real estate course or courses approved by the secretary of state as to method and content and supervision which approval may be withdrawn if in the opinion of the secretary of state said course or courses are not being conducted properly as to method, content and supervision, and that either the applicant has actively participated in the general real estate brokerage business as a licensed real estate salesman under the supervision of a licensed real estate broker for a period of not less than ~~[one year]~~ **two years** or has had the equivalent experience in general real estate business for a period of at least 49 ~~[two]~~ **three** years, the nature of which experience shall be established by affidavit duly sworn to under oath and/or other and further proof required by the department of state. **Computer-based and distance-learning courses may be approved by the department so long as providers demonstrate the ability to monitor and verify participation by the applicant for the specified time period. Notwithstanding the foregoing authority to approve computer-based and distance-learning courses, the department may prescribe that specified subjects or hours must be presented in a classroom setting.**

(c) In the event the applicant shall be a licensed salesman under this article and shall have submitted acceptable proof pursuant to the provisions of either paragraph (d) of subdivision one-A of this section or paragraph (a) of subdivision three of this section of having attended and successfully completed [~~forty-five~~] **seventy-five** hours of an approved real estate course or courses within [~~four~~] **eight** years of the date of the application, the department may accept and credit same against the [~~ninety~~] **one hundred twenty** hours required hereunder.

§ 4. Paragraph (d) of subdivision 1-A of section 441 of the real property law, as amended by chapter 81 of the laws of 1995, is amended to read as follows:

(d) Anything to the contrary herein notwithstanding, on and after the effective date of this paragraph, no salesman's license or conditional license shall be issued by the department unless the application therefor has been accompanied by proof that prior to such application the applicant has attended at least [~~forty-five~~] **seventy-five** hours and successfully completed a real estate course or courses approved by the secretary of state as to method and content and supervision, which approval may be withdrawn if in the opinion of the secretary of state said course or courses are not properly conducted as to method, content and supervision. **Computer-based and distance-learning courses may be approved by the department so long as providers demonstrate the ability to monitor and verify participation by the applicant for the specified time period. Notwithstanding the foregoing authority to approve computer-based and distance-learning courses, the department may prescribe that specified subjects or hours must be presented in a classroom setting.**

§ 5. Paragraph (a) of subdivision 3 of section 441 of the real property law, as amended by chapter 319 of the laws of 1993, is amended to read as follows: (a) No renewal license shall be issued any licensee under this article for any license period commencing November first, nineteen hundred ninety-five unless such licensee shall have within the two year period immediately preceding such renewal attended at least twenty-two and one-half hours and successfully completed a continuing education real estate course or courses approved by the secretary of state as to method, content and supervision, which approval may be withdrawn if in the opinion of the secretary of state such course or courses are not being conducted properly as to method, content and supervision. The licensee shall provide an affidavit, in a form acceptable to the department of state, establishing the nature of the continuing education acquired and shall provide such further proof as required by the department of state. The provisions of this paragraph shall not apply to any licensed real estate broker who is engaged full time in the real estate business and who has been licensed under this article **prior to July first, two thousand eight** for at least fifteen consecutive years immediately preceding such renewal.

§ 6. Subdivisions 3 and 6 of section 441-a of the real property law, subdivision 3 as amended by chapter 961 of the laws of 1981 and subdivision as amended by chapter 61 of the laws of 1989, are amended to read as follows:

3. Place of business; business sign required. Except as otherwise provided in this article, each licensed real estate broker shall have and maintain a definite place of business within this state, and

shall conspicuously post on the outside of the building in which said office is conducted a sign of a sufficient size to be readable from the side walk indicating the name and the business of the applicant as a licensed real estate broker, unless said office shall be located in an office, apartment or hotel building, in which event the name and the words "licensed real estate broker" shall be posted in the space provided for posting of names of occupants of the building, other than the mail box. Where the applicant for a real estate broker's license maintains more than one place of business, the broker shall apply for and the department shall issue a supplemental license for each branch office so maintained upon payment to the department of state for each supplemental license so issued the same fee prescribed in this article for a license to act as a real estate broker. **Each such branch office shall be under the direct supervision of the broker to whom the license is issued, or a representative broker of a corporation or partnership or manager of a limited liability company holding such license, or a duly appointed office manager.** Such fee shall accompany such application and shall be non-refundable. For purposes of this subdivision, the principal residence of a real estate broker or salesman shall not be deemed a place of business solely because such broker or salesman shall have included the residence telephone number in his business cards.

6. Pocket card. The department shall prepare, issue and deliver, **with the assistance of the department of motor vehicles,** to each licensee a pocket card in such form and manner as the department shall prescribe, but which shall contain the **photo,** name and business address of the licensee, and, in the case of a real estate salesman, the name and business address of the broker with whom he or she is associated and shall certify that the person whose name appears thereon is a licensed real estate broker or salesman, as may be. Such cards must be shown on demand. In the case of loss, destruction or damage, the secretary of state may, upon submission of satisfactory proof, issue a duplicate pocket card upon payment of a fee of ten dollars.

§ 7. This act shall take effect July 1, 2008.