FULCRUM PACIFIC
OREGON REAL ESTATE AGENCY

Initial Agency Disclosure Pamphlet

Consumers: This pamphlet describes the legal obligations of Oregon real estate licensees to consumers. Real estate brokers and principal real estate brokers are required to provide this information to you at first contact as required by Oregon Administrative Rule (OAR) 863-015-0215.

This pamphlet is informational only. *Neither the pamphlet nor its delivery to you may be interpreted as evidence of intent to create an agency relationship between you and a broker or a principal broker.*

Fair Housing Statement

Oregon's laws protect you from being treated differently because of your race, color, religion, sex, national origin, source of income, domestic violence survivor status, marital status, sexual orientation, or gender identity, or whether you have kids or a disability.

If you think you are being discriminated against when looking for a home or applying for home financing, you can file a complaint with the Oregon Bureau of Labor and Industries at https://complaints.boli.oregon.gov.

Real Estate Agency Relationships

An "agency" relationship is a voluntary legal relationship in which a licensed real estate broker or principal broker (the "agent") agrees to act on behalf of a buyer or a seller (the "client") in a real estate transaction. Oregon law provides for three types of agency relationships between real estate agents and their clients:

- **Seller's Agent** -- Represents the seller only.
- **Buyer's Agent** -- Represents the buyer only.
- **Disclosed Limited Agent** -- Represents both the buyer and seller, or multiple buyers who want to purchase the same property. This can be done only with the written permission of all clients.

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

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Definition of "Confidential Information"

Generally, agents must maintain confidential information about their clients.

"Confidential information" is information communicated to a real estate agent by the buyer or seller of one to four residential units regarding the real property transaction, including but not limited to price, terms, financial qualifications or motivation to buy or sell.

"Confidential information" does not mean information that:

- The buyer instructs the agent to disclose about the buyer to the seller, or the seller instructs the licensee or the licensee's agent to disclose about the seller to the buyer.
- The agent knows or should know failure to disclose would constitute fraudulent representation.

Duties and Responsibilities of a Seller's Agent

Under a written listing agreement (seller representation agreement), an agent represents the seller only. A listing agreement must be entered into prior to the agent acting on behalf of the seller in offering the real property for sale or in finding and obtaining a buyer.

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

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

A seller's agent owes the seller the following affirmative duties:

1. To exercise reasonable care and diligence;
2. To account in a timely manner for money and property received from or on behalf of the seller;
3. To be loyal to the seller by not taking action that is adverse or detrimental to the seller's interest in a transaction;
4. To disclose in a timely manner to the seller any conflict of interest, existing or contemplated;

5. To advise the seller to seek expert advice on matters related to the transaction that are beyond the agent's expertise;
6. To maintain confidential information from or about the seller except under subpoena or court order, even after termination of the agency relationship; and
7. Unless agreed otherwise in writing, to make a continuous, good faith effort to find a buyer for the property, except that a seller's agent is not required to seek additional offers to purchase the property while the property is subject to a contract for sale.

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 agreement between seller and agent.

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

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

Duties and Responsibilities of a Buyer's Agent

Under a written buyer representation agreement, an agent represents the buyer and the buyer's interests only, regardless of the source of compensation. A representation agreement must be entered into before, or as soon as reasonably practicable after, the licensee has started efforts to assist the buyer in purchasing property or in identifying property for purchase.

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

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

A buyer's agent owes the buyer the following affirmative duties:

1. To exercise reasonable care and diligence;

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

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 agreement between buyer and agent.

Under Oregon law, a buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching an affirmative duty to the buyer.

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

Duties and Responsibilities of an Agent Who Represents More than One Client in a Transaction

An agent may represent both the seller and the buyer in the same transaction, or multiple buyers who want to purchase the same property, only under a written Disclosed Limited Agency Agreement signed by both seller and/or buyer(s). A signed Disclosed Limited Agency Agreement is in addition to the required written listing agreement and buyer representation agreement(s).

Disclosed Limited Agents have the following duties to their clients:

1. To the seller, the duties listed above for a seller's agent;
2. To the buyer, the duties listed above for a buyer's agent; and
3. To both buyer and seller, except with express written permission of the respective person, the duty not to disclose to the other person:

a. That the seller will accept a price lower or terms less favorable than the listing price or terms;
b. That the buyer will pay a price greater or terms more favorable than the offering price or terms; or
c. Confidential information as defined above.

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

When different agents under the same principal broker establish agency relationships with different parties in the same transaction, only the principal broker acts as a **Disclosed Limited Agent** for both buyer and seller. The other agents continue to represent only their original party unless all parties agree otherwise in writing. The principal broker and the agents representing either party owe the following duties to both seller and buyer:

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

No matter whom they represent, an agent must disclose information the agent knows or should know that failure to disclose would constitute fraudulent misrepresentation.