NATIONAL ASSOCIATION *of* REALTORS®

Written Buyer Agreements

State Groupings & Exemplar Language

August 2024

Table of Contents

Introduction 4

1. Agency Disclaimer Requirements 5

    Description of Agency Relationships Available 6

    Description of the Relationship Being Entered Into: 6

    State-Provided Disclosures or Disclosures of Laws of the State 7

2. Permitted Contracting Parties to an Agreement 8

    Contracting Between the Client and the "Brokerage" 9

    Contracting Between the Client and the "Broker" 9

    Contracting Permitted for Non-Brokers 10

3. Permitted and Prohibited Types of Agreements 11

    Dual Agency – Permitted 11

    Dual Agency – Prohibited 12

    Subagency or Designated Agency 13

    Nonagency Relationships 14

    Other Prohibited Agreements 15

    Statutes that Assume the Client Is the Buyer 17

    Additional Considerations 18

4. Defined Length or Term of Agreement 18

    Length as Defined by a Start Event and an End Event 18

    Statute Defines Events that End the Relationship 19

    Definite End Date Required 20

5. Duties Upon Termination 21

    Duty of Accounting 21

    Duty of Maintaining Confidentiality 22

    Additional Considerations 23

6. Permitted Compensation and Disclosure Requirements 24

    Allowing More Than One Party to Compensate the Broker 24

    Requirement to Disclose when Compensation is Shared 25

Notices That Payment Does Not Create Relationship 26
Amount of Compensation 26
Additional Considerations 27
7. Defining and Disclosing Conflicts of Interest 27
As Created by Dual Agency 28
As Between the Broker or Agent and the Client 29
As Between the Client and Other Clients 30
Additional Considerations 30

Introduction

The recent NAR settlement resulted in changes to the practice of real estate for its members by requiring MLS participants to enter into written agreements with their buyers. These requirements are in conjunction with any state laws governing the same agreements, with the state laws taking priority over the NAR requirements.[1]

Currently, 25 states have buyer-broker agreement laws in effect (or taking effect later this year) that regulate these agreements alongside seller-broker agreements. As states consider adding or updating legislation that interacts with the new NAR written buyer agreement requirements, these 25 states are a valuable resource to understand what laws currently exist in other jurisdictions and how others are currently protecting clients within their jurisdictions. This report is not intended to analyze all seller disclosure or listing agreement requirements from all states, but rather, the intent is to summarize and analyze the agreement laws of only those 25 states with written buyer agreement laws in effect.[2] The states covered in this report include the following:

1. Alaska
2. Arkansas
3. Connecticut
4. Georgia
5. Hawaii
6. Idaho
7. Indiana
8. Iowa
9. Maryland
10. Minnesota
11. Missouri
12. Nebraska
13. New Hampshire
14. New Jersey
15. North Carolina
16. North Dakota
17. Ohio
18. Oregon
19. Pennsylvania
20. South Carolina
21. Utah
22. Vermont
23. Virginia
24. Washington
25. Wisconsin

State laws pertaining to agreements vary greatly, but patterns emerged in several key areas. The below groups have been selected to provide support in understanding the role state legislation has in regulating agreements in a manner that promotes consumer protection. Examples of how states have written their laws have been provided for each group. In every instance, the exemplary language that was selected is the most reflective of

[1] NAR Settlement FAQs

[2] In each of these 25 states, the legislation governing buyer broker agreements is the same legislation governing seller broker agreements with only minor differences, if any, between the rules regarding these two types of agreements.

what the legislations of the other states encompass. This report sets out seven major criteria that are material to the agreements and regulated by state legislation. These seven criteria are:

1. Agency disclaimer requirements;
2. Permitted contracting parties to an agreement;
3. Permitted and prohibited types of agreements;
4. Defined length or term of agreement;
5. Duties upon termination;
6. Permitted compensation and disclosure requirements; and
7. Defining and disclosing conflicts of interest.

Each of these seven criteria regulates agreements in a manner that promotes sound real estate practices and consumer protection. Agency disclaimers, when required, provide consumers with an informed understanding of the nature of the relationship with their broker or agent. Permitted contracting parties vary by state with some allowing brokerages, brokers, or other licensees being the party able to enter into the agreement with the client. The states may also permit only certain types of agreements, depending on what they believe is best for consumers in their state. There are also variations in how states require the length of the agreement to be defined and what duties toward clients they may require of brokers or agents upon termination of the agreement. Compensation may be regulated by placing guidelines on who may receive compensation and how, and what disclosures need to be made to the client regarding these arrangements. Finally, states may describe what constitutes a conflict of interest in the agreements and how parties must disclose those conflicts, if permitted.

1. Agency Disclaimer Requirements

An agency disclaimer for brokerage services can either be a part of the overall agreement between the broker or agent and the client, or it can be its own separate document. With variations between the states, an agency disclaimer protects both the client and the broker or agent by clearly describing the nature of the relationship, what is being selected as the nature of the relationship, and the laws that affect it.

States vary in how they require agency disclaimers to be made, with some requiring a standalone document and others requiring it to be a precursor to an agreement. Some examples of the format states may prescribe the disclaimer to be given include in a form provided by the state, as a standard brokerage policy within the agreement, or in a standalone statement that does not create an agency relationship. Below are the types of

information commonly found to be required in agency disclaimers by states, with states at times requiring a mix of these types of information:[3]

- A description of agency relationships available;
- A description of the relationship being entered into; or
- State-Provided Disclosures or Disclosures of Laws of the State.

Description of Agency Relationships Available

Eight states require, as a part of their mandatory agency disclosure laws, that brokerage firms and their brokers or agents provide a description of agency relationships available to clients and the subsequent duties owed. These states are:

1. Idaho
2. Indiana
3. Minnesota
4. Nebraska
5. New Jersey
6. Ohio
7. Pennsylvania
8. South Carolina

Exemplar language from South Carolina (S.C. Code § 40-57-370):

> *A licensee shall provide at the first practical opportunity to all potential buyers and sellers of real estate with whom the licensee has substantive contact:*
>
> *(1) a meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate brokerage firm, including an explanation of customer and client services;*

Description of the Relationship Being Entered Into:

Fourteen states require the broker or agent to describe the relationship being entered into between themself and the client. Some variation exists as to whether a disclosure is needed if the client is entering into an agreement with a licensee versus a broker,[4] and if

[3] For example, Washington requires both a description of the relationship being entered into and a state-provided disclosure of the law of real estate agency. Wash. Rev. Code § 18.86.120.
[4] Maryland: Md. Code, Bus. Occ. & Prof. § 17-530.

specific relationships, other than dual agency, require additional disclosures.[5] These states include:

1. Connecticut[6]
2. Hawaii
3. Idaho
4. Iowa
5. Maryland
6. New Jersey
7. North Carolina
8. North Dakota
9. Ohio
10. Pennsylvania
11. South Carolina
12. Virginia
13. Washington
14. Wisconsin

Exemplar language from North Dakota (N.D. Admin. Code 70-02-03-15):

> *Agency disclosure required. In all real estate transactions the licensee is the agent of the seller unless all parties otherwise agree in writing. The agency relationship must be disclosed in writing to the parties before the signing of a written contractual agreement. The disclosure language must state at least the following information in substantially this form:*
>
> > *"I _____, a real estate licensee, stipulate that I am representing the _____ (Buyer/Seller) in this transaction. [signature line] Licensee"*
>
> *Each licensee in the transaction shall make such a disclosure.*

State-Provided Disclosures or Disclosures of Laws of the State

Nine states require brokers or agents to include in their agency disclosures information provided by the state regarding the real estate laws of that state. These states include:

1. Idaho

[5] Wisconsin: Wis. Admin. Code REEB § 24.07.

[6] Connecticut requires the agency disclaimer be given to potential buyers or sellers that are unrepresented parties to the transaction or are entering into dual agency relationships with the broker. Conn. Agencies Regs. § 20-325d-2.

2. New Hampshire
3. New Jersey
4. North Carolina
5. Oregon
6. South Carolina
7. Vermont
8. Washington
9. Wisconsin

Exemplar language from North Carolina (21 NCAC § 58A .0104(c):

> *(c) In every real estate sales transaction, a broker shall, at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker's name and license number thereon, review the publication with the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker and a consumer where the consumer or broker begins to act as though an agency relationship exists and the consumer begins to disclose to the broker personal or confidential information. The "Working with Real Estate Agents" publication may be obtained on the Commission's website at www.ncrec.gov or upon request to the Commission.*

2. Permitted Contracting Parties to an Agreement

In the agreement formation process, states vary in how they protect the parties to the contract, including the manner in which parties may enter into an agreement for representation. The applicable state laws regulate who (brokerage, broker, licensee, etc.) is allowed to enter into the agreements with clients, thereby limiting which broker or agent is able to be held liable to the contract.

States vary in three ways in which parties they allow to enter into an agreement:

- Contracting between the client and the "brokerage"
- Contracting between the client and the "broker"
- Contracting Permitted for Non-Brokers

Contracting Between the Client and the "Brokerage"

Eight states describe the contracting parties to an agreement as between the client and the brokerage. Two of these states, Missouri and Nebraska, use language about "the broker and affiliated licensees" to the same effect as referring to a brokerage. The states with language referring to the contracting party as "the brokerage" are:

1. Idaho
2. Missouri
3. Nebraska
4. New Jersey
5. South Carolina
6. Vermont
7. Washington
8. Wisconsin

Exemplar language from Idaho (Idaho Code § 54-2084):

> *(1) A buyer or seller is not represented by a brokerage in a regulated real estate transaction unless the buyer or seller and the brokerage agree, in a separate written document, to such representation. No type of agency representation may be assumed by a brokerage, buyer or seller or created orally or by implication.*

Exemplar language from Missouri (Mo. Rev. Stat. § 339.780):

> *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.*

Contracting Between the Client and the "Broker"

While not specifying that the agreement exists between a brokerage and the client, eleven states describe the contracting parties as between the broker and the client. Some states use different terms for a broker such as "agent," or "licensee." These states are:

1. Connecticut

2. Georgia
3. Indiana
4. Iowa
5. Maryland
6. North Carolina
7. Ohio
8. Oregon
9. Pennsylvania
10. Utah
11. Virginia

Exemplar language from North Carolina (21 NCAC § 58A .0104):

> *AGENCY AGREEMENTS AND DISCLOSURE*
>
> *(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing and signed by the parties thereto. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction shall be in writing and signed by the parties at the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be in writing and signed by the parties thereto not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another.*

Contracting Permitted for Non-Brokers

Seven states, by their statutory language, allow individuals other than brokers and brokerage firms to enter into agreements, such as agents, licensees, or salespersons. These states are:

1. Alaska
2. Arkansas
3. Connecticut
4. Hawaii
5. Minnesota
6. New Hampshire
7. North Dakota

Exemplar language from Minnesota (Minn. Stat. §§ 82.66):

> *Subd. 2. Buyer's broker agreements.*

(a) Requirements. Licensees shall obtain a signed buyer's broker agreement from a buyer before performing any acts as a buyer's representative.

3. Permitted and Prohibited Types of Agreements

Brokers or agents and their clients can select the nature of their agency relationship within the bounds of what the legislation permits. Often, legislation will describe a series of permissible relationships such as buyer or seller (single) agency, dual agency, subagency, or any other sort of agency relationship the state deems permissible. It is also possible that the legislation will describe prohibited types of agreements or instances where certain disclosures need to be made for the relationship to proceed. There are also some states that assume the nature of the type of agreement when the agreement is silent.

States vary in how they regulate the following common types of agreements:

- Dual agency;
- Subagency or designated agency;
- Nonagency relationships;
- Other prohibited agreements; or
- Statutes that assume the client is the buyer.

Dual Agency – Permitted

Most often, brokers and agents represent one party to a transaction in a single agency agreement. Consider rephrasing – "Dual agency occurs when the broker or agent is instead representing both parties, the buyer and the seller." Many states regulate these types of agreements to ensure that the representation is fair and fully known to all parties. Twenty-three of the states with buyer broker laws, by their statutory language, allow dual agency, but there are disclosure and consent requirements that must be followed. Each state's disclosure and consent laws vary. The states that permit dual agency are:

1. Arkansas
2. Connecticut
3. Hawaii
4. Georgia
5. Idaho
6. Indiana
7. Iowa

8. Maryland[7]
9. Minnesota
10. Missouri
11. Nebraska
12. New Hampshire
13. New Jersey
14. North Carolina
15. North Dakota
16. Ohio
17. Oregon
18. Pennsylvania
19. South Carolina
20. Utah
21. Virginia
22. Washington
23. Wisconsin

Exemplar language from Washington (Wash. Rev. Code § 18.86.060):

> *Limited dual agent—Duties—Showing of property. (Effective January 1, 2024.)*
>
> *(1) A broker may act as a limited dual agent only with the written consent of both parties to the transaction, set forth in the services agreement.*
> *[The statutory provision continues to explain the specific duties owed by dual agents.]*

Dual Agency – Prohibited

Two of the states with buyer/broker agreement laws in place expressly prohibit dual agency agreements. These states are:

1. Alaska
2. Vermont

Exemplar language from Vermont (04-290 Code Vt. R. 04-030-290):

> *(b) A buyer service agreement shall contain: [. . .]*

[7] Note: Maryland previously prohibited dual agency, but now permits it in limited circumstances. https://www.mdrealtor.org/Legal-Resources/Frequently-Asked-Questions#9935

(4) a provision for avoiding dual agency and other conflicts with respect to the brokerage firm's seller service agreements, including the requirements of subsection 4.3(e) and 4.4 applicable to representation of buyers;

Subagency or Designated Agency

A common arrangement that statutes provide for is a type of subagency or designated agency, where another broker or agent is brought into the agency relationship to help represent the client. Subagency occurs when the broker or agent enters into an agreement with brokers or agents from another brokerage to help further the transaction, without representing another party to the transaction. Designated agency occurs when separate brokers or agents from the same brokerage are selected to represent either the buyer or seller in a dual agency transaction. Furthermore, the terminology the states use to describe subagency or designated agency varies, and language other than "subagency" or "designated agency" that a specific state uses is described below next to that state.

Designated and Subagency Permitted

Several states allow parties to enter into both designated and subagency relationships. The thirteen states that permit both designated and subagency, even if they require additional disclosures and consents, are:

1. Connecticut
2. Hawaii
3. Iowa
4. Maryland – where a designated agent is referred to as a "dual agent" or an "intra-company agent"
5. Missouri – where designated agency is referred to as authorization of "affiliated licensees"
6. Nebraska
7. New Hampshire
8. New Jersey
9. North Carolina
10. North Dakota – where a designated agent is referred to as an "appointed agent"
11. Ohio
12. South Carolina
13. Wisconsin

Exemplar language from Nebraska (Neb. Rev. Stat. § 76-2415; 2422):

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.

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

[. . .]

(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.

Designated Permitted; Subagency Expressly Prohibited

Two states allow designated agency relationships to be formed, but forbid subagency relationships in the agreement. The states that permit designated agency, but explicitly prohibit subagency, are:

1. Alaska
2. Indiana – referred to as an "in-house agency relationship"

Designated Permitted; Subagency Not Explicitly Prohibited

In Virginia, designated agency is permitted, but subagency is neither explicitly permitted nor prohibited.

Nonagency Relationships

Twelve states allow brokers and agents to enter into nonagency relationships with clients, such as facilitator agreements and transaction broker agreements. Relationships such as neutral licensee agreements, facilitator agreements, or transaction broker agreements allow the parties to a transaction to more easily transfer the property from one party to the other by using a neutral person to help move things along. These states include:

1. Alaska
2. Connecticut
3. Georgia

4. Idaho
5. Indiana
6. Iowa
7. Minnesota
8. Missouri
9. New Jersey
10. Ohio
11. Pennsylvania
12. South Carolina

Exemplar language from Missouri (Mo. Rev. Stat. §§ 339.710; 339.780):

> *339.710. Definitions.*
>
> *(23) "Transaction broker", any licensee acting pursuant to sections 339.710 to 339.860*, who:*
>
> *(a) Assists the parties to a transaction without an agency or fiduciary relationship to either party and is, therefore, neutral, serving neither as an advocate or advisor for either party to the transaction;*
> *(b) Assists one or more parties to a transaction and who has not entered into a specific written agency agreement to represent one or more of the parties; or*
> *(c) Assists another party to the same transaction either solely or through licensee affiliates. Such licensee shall be deemed to be a transaction broker and not a dual agent, provided that, notice of assumption of transaction broker status is provided to the buyer and seller immediately upon such default to transaction broker status, to be confirmed in writing prior to execution of the contract.*
>
> *339.780. Brokerage services [. . .]*
>
> *6. A designated broker who intends to act as a transaction broker and who expects to receive compensation from the party he or she assists shall enter into a written transaction brokerage agreement with such party or parties contracting for the broker's service. The transaction brokerage agreement shall include a licensee's duties and responsibilities specified in section 339.755 and the terms of compensation.*

Other Prohibited Agreements

Eleven states prohibit certain types of agreements that are not related to single or dual agency. Net listings – arrangements where the broker or agent is allowed to keep any net

amount from a sale that is over the seller's set price – are the most common type of agreement that is banned. The states that prohibit these agreements, and those similar to them, are:

1. Connecticut
2. Georgia
3. Indiana
4. Iowa
5. Missouri
6. New Hampshire
7. New Jersey
8. Utah
9. Vermont
10. Virginia
11. Wisconsin

There are ten other states where net listings are strongly discouraged but are not legally prohibited. These states are:

1. Hawaii
2. Idaho
3. Maryland
4. Minnesota[8]
5. North Carolina
6. North Dakota
7. Ohio
8. Oregon
9. Pennsylvania
10. Washington

Exemplar language from Wisconsin (Wis. Admin. Code REEB §§ 24.075; 24.10):

> *REEB 24.075 Tie-in arrangements. Licensees shall not:*
>
> *(1) Condition the sale of real estate owned by the licensee or whose sale is effectively controlled by the licensee to a buyer upon the buyer's agreement to purchase another parcel or real estate.*
>
> *(2) Condition the sale of real estate owned by the licensee or whose sale is effectively controlled by the licensee upon the buyer's agreement to list the real*

[8] The only codified prohibition of net listings in Minnesota pertains to the sale of manufactured homes.

estate or other real estate owned by the buyer with the licensee. Note: The following are 2 common examples of activities which would violate this subsection: (1) requiring a builder to list a speculation home with the licensee; and (2) requiring a buyer to list a present home with the licensee.

(3) Condition the sale of vacant real estate owned by the licensee or whose sale is effectively controlled by the licensee upon the buyer's agreement to employ one or more specific builders to make improvements on the real estate unless:

(a) The builder owns a bona fide interest in the real estate; and there is full disclosure as specified under s. 452.133 (3) (c), Stats.
(b) The builder and the licensee or the builder and the owner of the real estate are the same person or are commonly controlled corporations and whose business is selling improved property and not vacant land; and there is full disclosure as specified in s. 452.133 (3) (c), Stats.
(c) The agreement is a bona fide effort to maintain development quality or architectural uniformity and no consideration passes from a builder to a licensee for soliciting this agreement.

REEB 24.10 Net listing prohibited.

Licensees shall not obtain, negotiate or attempt to obtain or negotiate any listing contract providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the firm as commission.

Statutes that Assume the Client Is the Buyer

Two states, by their statutory language, assume that the type of agreement entered into is between the broker or agent and the buyer unless otherwise written and agreed to. These states are:

1. Nebraska
2. Washington

Exemplar language from Washington (Wash. Rev. Code § 18.86.020):

(1) A broker who performs real estate brokerage services for a buyer is a buyer's agent unless the:
(a) Broker's firm has appointed the broker to represent the seller pursuant to a services agreement between the firm and the seller, in which case the broker is a seller's agent;
(b) Broker's firm has appointed the broker to represent the seller pursuant to a services agreement between the firm and the seller, and the broker's firm

has also appointed the broker to represent the buyer pursuant to a services agreement between the firm and the buyer, in which case the appointed broker is a limited dual agent; or
(c) Broker is the seller or one of the sellers.

Additional Considerations

State regulations surrounding the prohibited and permitted types of agreements may vary in language, using terms other than those above but referring to the same things. For example, Indiana uses the term "limited agent" to describe a licensee who represents both the seller and the buyer to a transaction.[9]

4. Defined Length or Term of Agreement

Most states require some sort of term to be set as the length of an agreement so that the client (buyer) isn't bound by an infinitely long-term relationship with the broker or agent. Typically, it is a term set by the parties, but other acts or state laws could alter the termination date of the agreement, such as if the parties agree to terminate the agreement before the termination date.

States vary in how they require the parties to define the length of the agreement, with states either requiring the parties to describe starting and ending events to mark the length, to use set dates of the year, or to use some combination of the two.

Length as Defined by a Start Event and an End Event

Four states refer to the length of the agency relationship from the point of an action or event occurring and then lasting until some other action or event occurs. States that phrase their lengths of the agreement in this manner include:

1. Alaska
2. Idaho
3. Iowa
4. Maryland

Exemplar language from Alaska (Alaska Stat. Sec. 08.88.660):

[9] IN Code § 25-34.1-10-7 (2023). As used in this chapter, "limited agent" means a licensee who, with the written and informed consent of all parties to a real estate transaction, represents both the seller and buyer or both the landlord and tenant and whose duties and responsibilities to a client are only those set forth in this chapter.

Sec. 08.88.660. Duration of relationship.

(a) A licensee relationship with a buyer, lessee, seller, or lessor begins when the licensee represents or provides specific assistance to the buyer, lessee, seller, or lessor and continues until the earliest of the following events occurs:

(1) the licensee completes the representation or specific assistance;

(2) the relationship term agreed on by the buyer, lessee, seller, or lessor terminates;

(3) the licensee and the parties to the relationship terminate the relationship by mutual agreement; or

(4) a party to the relationship terminates the relationship by giving notice to the other party.

(b) The termination of a relationship under (a)(3) or (4) of this section only terminates the licensee relationship and does not affect other contractual rights of the parties to the licensee relationship.

Statute Defines Events that End the Relationship

Eight states, including those above, describe events that end the relationship between the broker or agent and the client. These states are:

1. Alaska
2. Georgia
3. Idaho
4. Indiana
5. Maryland
6. New Jersey
7. Virginia
8. Washington

Exemplar language from Virginia (Va. Code § 54.1-2137):

A. The brokerage relationships set forth in this article shall commence at the time that a client engages a licensee and shall continue until (i) completion of performance in accordance with the brokerage agreement or (ii) the earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage agreement or in any amendments thereto, (b) any mutually agreed upon termination of the brokerage agreement, (c) a default by any party under the

terms of the brokerage agreement, or (d) a termination as set forth in subsection G of § 54.1-2139.

Definite End Date Required

Many states require that the contracting parties to a broker relationship agreement include a definitive end date to the agreement. These states are:

1. Arkansas
2. Connecticut
3. Georgia
4. Hawaii[10]
5. Indiana
6. Maryland
7. Minnesota
8. Nebraska
9. New Hampshire[11]
10. New Jersey
11. North Carolina
12. North Dakota
13. Ohio
14. Pennsylvania
15. Vermont[12]
16. Virginia[13]
17. Washington

Exemplar language from Arkansas (Ark. Admin. Code 235.10.2):

> *10.2 Expiration Date for Agency Agreements or Contracts*
>
> *A licensee shall put a specific determinable duration or a specific expiration date on all written agency agreements or contracts or any extensions thereof. (Examples: Listing and Buyer Representation Agreements or Contracts)*

[10] Hawaii requires definite end dates only for exclusive listings. Haw. Code R. § 16-99-3 - 3.1.
[11] New Hampshire also requires agreements to list a definite start date. N.H. Code Admin. R. Rea 404.04(b)(1).

Default Termination Dates

Two of the twenty states analyzed, Vermont and Virginia, not only require definite termination dates in their broker agreements, but they also statutorily include default termination dates when the agreement is silent on the matter. Below are how these states handle default termination dates:

1. Vermont prohibits agreements to be longer than one year and prohibits automatic extensions. 04-290 Code Vt. R. 04-030-290
2. Virginia law gap-fills with an automatic termination date of 90 days after the date of the agreement. Va. Code § 54.1-2137(B)(1)

5. Duties Upon Termination

Upon termination of the relationship between the broker or agent and the client, many states require the broker or agent to maintain certain duties toward the client, whether the agreement outlines these duties or not. The two most common among the states that have buyer/broker laws are the duty of accounting and the duty of confidentiality.

States can choose whatever duties upon termination they wish and are not limited to any singular duty. For example, while New Hampshire only requires the duty of maintaining confidentiality, Alaska requires both the duty of accounting and the duty of maintaining confidentiality.

Duty of Accounting

The duty of accounting generally refers to the obligation a broker or agent has to keep accurate records and accountings of any money or property received by the broker or agent in the course of their relationship with the client. These eleven states that require the broker or agent to maintain the duty of accounting after termination are:

1. Alaska
2. Idaho
3. Indiana
4. Iowa
5. Missouri
6. Nebraska
7. New Jersey
8. Ohio
9. South Carolina

10. Virginia
11. Washington

Exemplar language from Washington (Wash. Rev. Code § 18.86.070):

> *(2) Except as otherwise agreed to in writing, a broker owes no further duty after termination of the agency relationship, other than the duty:*
>
> *(a) To account for all moneys and property received during the relationship; and*
> *(b) To not disclose confidential information.*

Duty of Maintaining Confidentiality

Many states require brokers or agents to maintain the duty of confidentiality after the termination of the agreement. Typically, this refers to any information deemed confidential by the nature of the relationship or otherwise indicated by the client that it is meant to be confidential. Many states will often include exceptions for when the duty of confidentiality may be broken, such as if the information becomes public by another source, the client gives permission to disclose the information, or there is a legal requirement to disclose the information. The fourteen states that require the broker or agent to maintain the duty of confidentiality are:

1. Alaska
2. Connecticut
3. Idaho
4. Indiana
5. Iowa
6. Missouri
7. North Dakota
8. Nebraska
9. New Hampshire
10. New Jersey
11. Ohio
12. South Carolina
13. Virginia
14. Washington

Exemplar language from Alaska (Alaska Stat. Sec. 08.88.660):

> 3. *Each licensee owes a duty of confidentiality to a party being represented in a real estate transaction. The following information may not be disclosed without the informed, written consent of the party being represented:*

a. *That the party being represented is willing to pay more than the purchase price or lease price offered for the property.*
b. *That the party being represented is willing to accept less than the purchase price or lease price being asked for the property.*
c. *What the motivating factors are for the buying, selling, or leasing of the property by the party being represented.*
d. *That the party being represented will agree to terms for financing of the property other than those which are offered.*

4. *A licensee shall also keep confidential all information received from a party being represented, which has been made confidential by request or instruction of that party.*
5. *The obligation of confidentiality set forth in subsections 3 and 4 continues in effect during the time a party is being actively represented, and continues on after the termination, expiration, or completion of the representation until one of the following occurs:*
    a. *The party being represented permits the disclosure by subsequent word or conduct.*
    b. *Disclosure is required by law, by court order, or order of the commission.*
    c. *The information is made public through disclosure from a source other than the licensee.*

Additional Considerations

Outside of the duties above, states may require any additional duties upon termination and may alter the conditions of those duties. For example, where some states may provide for situations where the duty of confidentiality no longer applies (see above Alaska example), other states may not provide for those same situations.[14]

States may vary in other ways regarding termination by including other requirements outside of those states above. For example, Minnesota requires the agreement to state that it may be cancelled and the terms under which to do so.[15] North Carolina allows parties to include a provision in their agreement for penalizing early termination of the agreement.[16]

[14] For example, Virginia law states that confidentiality must be maintained ". . . unless otherwise provided by law or the client consents in writing to the release of such information." Va. Code § 54.1-2137.
[15] Minn. Stat. §§ 82.66(1)(b)(6); 82.66(2)(b)(4).
[16] 21 NCAC § 58A .0104(a).

6. Permitted Compensation and Disclosure Requirements

For consumers to be protected in their agreements, they need to understand how compensation is being calculated, how payments are going to be made, and to whom. Many states require compensation disclosures and regulate how the brokers or agents may be paid by parties to the agreement or by each other.

States vary greatly on how they regulate compensation and what they require to be disclosed to and consented to by clients. The following are common areas of concern addressed by state legislatures:

- Allowing more than one party to compensate the broker;
- Requirement to disclose when compensation is shared;
- Notices that payment does not create a relationship; and
- The amount of compensation.

Allowing More Than One Party to Compensate the Broker

States may regulate which party to a transaction is allowed to compensate the broker or agent, even outside of dual agency agreements where the broker or agent can be compensated by more than one party. Of the states that do, several of them allow brokers or agents to be compensated by more than one party, such as any third party, other brokers, or by any other party to the transaction. For example, Nebraska permits multiple parties to the transaction to compensate the broker if consented to, but no third parties may compensate. As another example, Arkansas allows for multiple parties to compensate the broker, but there are specific disclosure requirements in place. These eleven states that have language allowing more than one party to compensate, in some form, are:

1. Alaska
2. Arkansas
3. Connecticut
4. Hawaii
5. Iowa
6. Maryland
7. Missouri
8. Nebraska
9. New Jersey
10. Ohio
11. Washington

Exemplar language from Washington (Wash. Rev. Code § 18.86.080):

(1) In any real estate transaction, a firm's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between firms.

[. . .]

(3) A seller may agree that a seller's agent's firm may share with another firm the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent's firm may share with another firm the compensation paid by the buyer.

(5) A firm may be compensated by more than one party for real estate brokerage services in a real estate transaction.

Requirement to Disclose when Compensation is Shared

When states allow compensation to be shared between brokerages in a transaction, even if those firms represent other parties to the transaction, they often require disclosure of that shared compensation. This protects the client because it affords the client the ability to know where the money they are charged for is truly going. These eleven states are:

1. Georgia
2. Hawaii
3. Indiana
4. Iowa
5. Maryland
6. Missouri
7. Nebraska
8. New Jersey
9. Oregon
10. Vermont
11. Washington

Exemplar language from Nebraska (Neb. Rev. Stat. § 76-2424):

(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.

Notices That Payment Does Not Create Relationship

A common clause found in state codes is the notice that compensation of any type or any form of consideration for a service does not inherently create a relationship between the broker or agent and the client. The twelve states that include such language are:

1. Alaska
2. Hawaii
3. Idaho
4. Indiana
5. Iowa
6. Missouri
7. New Jersey
8. Ohio
9. Oregon
10. South Carolina
11. Virginia
12. Washington

Exemplar language from Idaho (Idaho Code § 54-2089):

> *54-2089. BROKER COMPENSATION. Payment of compensation or a written agreement only for payment of compensation to a brokerage shall not constitute an agreement for agency representation or otherwise create an agency relationship.*

Amount of Compensation

Fourteen states require agreements to include the amount of compensation or a clear method of calculating compensation. This is to promote clear communication and transparency about how much the client will have to pay at the end of the transaction. These states are:

1. Arkansas
2. Connecticut
3. Georgia
4. Hawaii
5. Maryland
6. Minnesota
7. New Hampshire
8. New Jersey
9. North Dakota

10. Ohio
11. Pennsylvania
12. Vermont
13. Virginia
14. Washington

Exemplar language from North Dakota (N.D. Admin. Code 70-02-03-05.1):

> *All buyer's broker agreements must be in writing and must include:*
>
> 1. *[. . .]*
> 2. *The amount of commission or other compensation.*
> 3. *A clear statement explaining the services to be provided to the buyer, and the events or condition that will entitle the licensee to a commission or other compensation.*

Additional Considerations

How states regulate compensation varies greatly. Other ways states have regulated compensation, unique to themselves or few others, include:

- Requiring disclosure of which party is compensating the broker[17]
- Providing a statutory notice regarding compensation[18]
- Permitting brokers to share compensation with an out-of-state broker[19]
- Requiring non-brokers to be paid only by their associated broker[20]
- Forbidding non-licensed persons from being compensated[21]
- Regulating referral fees[22]

7. Defining and Disclosing Conflicts of Interest

A conflict of interest can arise at any time when an outside influence or person to the agreement interferes with the broker's or agent's ability to perform professionally or fulfill their duties to the client. Conflicts of interest should generally be avoided, but, when

[17] Alaska (Alaska Stat. Sec. 08.88.655(c)), Vermont (04-290 Code Vt. R. 04-030-290)
[18] Minnesota (Minn. Stat. §§ 82.66(1)(b)(8); 82.66(2)(b)(6))
[19] North Dakota (N.D. Admin. Code 70-02-03-03)
[20] Pennsylvania (63 Pa. Stat. § 455.604), Utah (Utah Code § 61-2f-305), Connecticut (Conn. Agencies Regs. § 20-328-8a(f)), Hawaii (Haw. Code R. § 16-99-3)
[21] Vermont (04-290 Code Vt. R. 04-030-290), Connecticut (Conn. Agencies Regs. § 20-328-8a(e))
[22] Georgia (GA Rules and Reg. § 520-1-.10), Vermont (04-290 Code Vt. R. 04-030-290), Iowa (Iowa Admin. Code r. 193E-11.6)

unavoidable, states often require them to be accompanied by disclosure to and consent from the client.

Several types of conflicts of interest can arise in the creation of or during a relationship between the broker or agent and the client. States have prepared for several of these types of conflicts of interest, but not all states have the same protections in place for every type and handle each differently. Typically, states define and regulate conflicts of interest as those created by dual agency, those arising between the broker or agent and the client, and those arising between the client and another client.

As Created by Dual Agency

Dual agency, while allowed by most states with buyer-broker laws, creates a type of conflict of interest because the broker or agent is representing both the buyer and the seller in the transaction. Because of this, states have specific disclosure or consent requirements that must be followed before the broker or agent is allowed to enter such a relationship. The states that allow dual agency are:

1. Arkansas
2. Connecticut
3. Georgia
4. Hawaii
5. Idaho
6. Indiana
7. Iowa
8. Maryland[23]
9. Minnesota
10. Missouri
11. Nebraska
12. New Hampshire
13. New Jersey
14. North Carolina
15. North Dakota
16. Ohio
17. Oregon
18. Pennsylvania
19. South Carolina

[23] Maryland used to prohibit dual agency, but now permits it in limited circumstances. https://www.mdrealtor.org/Legal-Resources/Frequently-Asked-Questions#9935

20. Utah
21. Virginia
22. Washington
23. Wisconsin

Exemplar language from Virginia (Va. Code § 54.1-2139):

> *Disclosed dual agency and dual representation authorized in a residential real estate transaction.*
>
> *A. A licensee may not act as a dual agent or dual representative in a residential real estate transaction unless he has first obtained the written consent of all parties to the transaction given after written disclosure of the consequences of such dual agency or dual representation. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. Such disclosure shall be in writing and given to both parties prior to the commencement of such dual agency or dual representation.*

As Between the Broker or Agent and the Client

When a broker or agent wishes to engage in the transaction as the other interested party, a conflict of interest arises as they owe a duty to their client during this same time. Nine states in their statutes protect consumers in these situations by mandating certain disclosures and consent requirements. These states are:

1. Connecticut
2. Georgia
3. Hawaii
4. Iowa
5. Minnesota
6. North Carolina
7. North Dakota
8. Pennsylvania
9. Wisconsin

Exemplar language from Minnesota (Minn. Stat. § 82.68):

> *Subd. 2. Financial interests disclosure; licensee.*
>
> *(a) Before the negotiation or consummation of any transaction, a licensee shall affirmatively disclose to the owner of real property that the licensee is a real estate*

broker or agent salesperson, and in what capacity the licensee is acting, if the licensee directly, or indirectly through a third party, purchases for himself or herself or acquires, or intends to acquire, any interest in, or any option to purchase, the owner's property.

(b) When a principal in the transaction is a licensee or a relative or business associate of the licensee, that fact must be disclosed in writing before negotiating or consummating any transaction.

As Between the Client and Other Clients

A handful of states require disclosures and consent for situations where a current broker's or agent's client is in conflict with another client of the broker or agent. As it would be unfair to favor one over the other or try to get a better deal for one over the other, these states have put rules in place to combat this situation. Likewise, states may also put language in place to make it clear when there is no conflict of interest in representing multiple clients. These five states are:

1. Idaho
2. New Jersey
3. Ohio
4. South Carolina
5. Washington

Exemplar language from Washington (Wash. Rev. Code § 18.86.050):

(2)(a) The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.

(b) The representation of more than one buyer by different brokers affiliated with the same firm in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.

Additional Considerations

States may regulate what they consider to be a conflict of interest beyond those relationships listed above. For example, Virginia requires disclosure of not only when a broker or agent has an interest in the property of the client, but also when there is an

interest in the property by any of their family members, members of their brokerage firm, or any entity they own a part of.[24]

[24] Va. Code § 54.1-2138.2.