

(1) The Real Estate Consumers Agency and Disclosure Act (RECAD) requires the qualifying broker to adopt and maintain an agency disclosure office policy which sets out the types of brokerage services which his or her company and licensees may offer or accept and general information on how the company and licensee are compensated for brokerage services. The purpose of this rule is to specify the form and content of the agency disclosure office policy. Any paper or electronic format for the office agency disclosure office policy is acceptable, including the use of devices such as loose leaf ring notebooks.

(2) The qualifying broker shall provide all ~~of~~ his or her licensees with a copy of the agency disclosure office policy. The qualifying broker shall explain the agency disclosure office policy to all ~~of~~ his or her licensees at least once a year.

(3) The qualifying broker shall have all ~~of~~ his or her licensees sign a form which acknowledges that he or she has received a copy and a satisfactory explanation of the contents of the agency disclosure office policy.

(4) Under RECAD a qualifying broker may choose to offer the following services to the public: single agency, ~~subagency~~, ~~limited consensual~~ dual agency, and transaction ~~brokerage facilitator~~. Under RECAD a qualifying broker is not limited to offering only one of these services and is not required to offer all ~~of~~ these services.

- a. A single agent is engaged by and represents only one party in a real estate transaction. Buyers' agents and sellers' agents are examples of single agents. A written agency agreement with the client is required for a qualifying broker and his or her licensees to become a single agent. The licensee when acting as an agent must loyally represent the best interests of the client ahead of the interests of any other party. In a real estate transaction in which a real estate licensee is employed as an agent, the licensee is obligated to advise and advocate for the best interests of his or her client. All qualifying brokers who offer single agency shall include a copy of their agency agreement form(s) in their office policy. However, this form does not have to be provided to consumers when the agency disclosure office policy is provided.

When two or more licensees under the same qualifying broker are in separate agency agreements with a different party in the same transaction, the qualifying broker can designate those licensees as single agents as to the licensee's client. The designation must be in writing and done as soon as reasonably possible. A designated single agent is a type of single agent, not a dual agent, and neither the qualifying broker, the designated single agent, nor any other licensee involved in the transaction shall be assumed to have knowledge as to any other party with whom the licensee has not entered an agency agreement. A designated single agent has the same duties and responsibilities as a single agent.

~~b. A subagent acts for and helps another broker in performing brokerage services for a client. A subagent owes the same duties to the client (also called the principal) which the agent owes to the client. A written agency agreement with the client's qualifying broker is required for a qualifying broker and his or her licensees to become a subagent. All qualifying brokers who offer subagency shall obtain written permission from their client to do so and shall include a copy of their subagency agreement form(s) in their office policy.~~

~~e.b. A limited consensual dual agent is an agent for both the buyer and the seller. A limited consensual dual agent represents more than one client in a transaction and owes the duties of agents set out in RECAD, except where the duties to one client will violate the duties owed to other clients. A written agreement is required for a qualifying broker and his or her licensees to become a limited consensual dual agent. A dual agent is a licensee, who is an individual acting as an agent for both the buyer and the seller. This may only be done with the written, informed consent of all parties. This type of agent must also be loyal and faithful to each client, except where the duties owed to the clients conflict with one another. All qualifying brokers who offer limited consensual dual agency shall include their limited consensual dual agency agreement form(s) in their office policy but are not required to provide the form to consumers or customers when providing the agency disclosure office policy.~~

~~d.c. A transaction broker assists one or more parties. A transaction facilitator describes a brokerage arrangement whereby the real estate licensee assists one or more~~

parties, who are customers, in a contemplated real estate transaction, without being the agent, fiduciary, or advocate of that party to the transaction. The transaction facilitator can act as an intermediary between buyers and sellers. A licensee can serve as a transaction facilitator to a single party or to both the buyer and seller. A licensee can also represent one party as an agent and serve as a transaction facilitator for the other party in the transaction. In the absence of an agency agreement, a licensee is presumed to be acting as a transaction facilitator for any otherwise unrepresented party to whom the licensee is providing brokerage services. without being an agent or fiduciary or advocate for that party. A transaction broker may provide brokerage services to consumers or customers with or without a written agreement. All qualifying brokers who offer transaction ~~broker~~ facilitator services ~~by that require a~~ written agreement shall include their transaction facilitator ~~brokerage~~ agreement form(s) in their office policy. However, this form does not have to be provided to consumers when the agency disclosure office policy is provided.

(5) All qualifying brokers shall include in their office policy a copy of the disclosure form required by Ala. Admin Code § ~~Alabama Real Estate Commission Rule~~ 790-X-3-.13. Further, all qualifying brokers shall include in their office policy a copy of their sales contract forms containing the agency disclosure required to be in each offer to purchase by Code of Ala., 1975, § 34-24-82 ~~Section 34-27-8~~ Code of Ala. 1975, as amended. The sales contract does not have to be provided to consumers when the agency disclosure office policy is provided.

Author: Alabama Real Estate Commission

Statutory Authority: Code of Ala. 1975, §§ 34-27-83, 34-27-87.

History: New Rule: Filed January 25, 1996; effective February 29, 1996. **Amended:** Filed August 3, 1998; effective September 7, 1998. **Amended:** Filed _____; effective _____.