Introduction to the Home Buying Process

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No matter how many deals I close (for my clients), I always remember how stressful and confusing it was for me, personally, to buy my first home. The process was intimidating and I was overwhelmed trying to understand everything and put my trust in a Real Estate Agent that I barely knew.

Bottom line? I felt completely out of control while I was making one of the most important purchases of my life. A purchase that was going to affect my day-to-day life (where I lived and raised my family) and the implications this purchase was going to have on my current budget and financial future.

It is from this perspective that I conduct my business as a REALTOR®/Associate Broker. It is important for me to treat my clients with respect and I spend a majority of my time (while working with a client) educating them on the process.

I want them to fully understand the overview of the process before they make an offer. I hold their hand through each step, giving them more detailed information at every twist and turn - outlining their options and what will be needed or expected from them. I also explain what I will be doing on the backend, behind the scenes, to facilitate their purchase.

I believe in full transparency, because that is how I want to be treated. I care more about my client(s) getting the right house than I do about making a dollar from them purchasing the wrong one. My professional reputation matters more to me than any one deal!

The first two real estate forms you will encounter are The Consumer Notice & The Exclusive Buyer's Agency Contract. I have provided links on my website to blank copies of each for your reference. Let's discuss...

Consumer Notice

This is a formal document that any Real Estate Agent is legally required by RELRA (The Real Estate Licensing and Registration Act) to present to you before discussing any of your real estate questions or concerns.

In a nutshell, The Consumer Notice outlines your Rights as a Consumer and the Responsibilities of any Real Estate Professional that you interact with.

Let's break this down into simple terms.

The first portion of this document explains **Agency**. Agency defines the relationship status between a Real Estate Agent and a Client (Consumer) and how those relationships differ and why they matter.

The most important part of this document is the last sentence before the acknowledgement signing box on the last page, which states:

Before you disclose any financial information to a licensee, be advised that unless you select a business relationship by signing a written agreement, the licensee is NOT representing you. A business relationship is NOT presumed.

The Consumer Notice must be signed, but it is not a Contract. It provides proof that you have been "read your rights". You can sign 20 Consumer Notices, if you interview 20 Real Estate Agents, but **you can only establish Agency with one**.

NAR Settlement

Before we do a deep dive into Agency in the next segment, I want to address this frustration from a legal standpoint and then from a human perspective.

Home Buyers get very frustrated that they can't just go see a house without signing a bunch of papers. They have the misconception that any Real Estate Agent should be able to open the door.

First the Legal Standpoint:

Effective August 17th, 2024, NAR (the National Association of Realtors) reached a landmark settlement that had a significant regulatory shift in Real Estate practice and industry rules nationwide.

This affects you (The Buyer) by the mandatory rule required BEFORE touring a home of Buyer Representation (Agency).

A Buyer must sign a written agreement with their agent. **This is a contract.** This contract must clearly state the agent's compensation and establish a legal working relationship between Buyer and Agent, that prohibits the Buyer from working with another Agent.

<u>Now the Human Perspective:</u>

Real Estate agents work for free most of the time. We do not get paid an hourly wage or salary. We do not earn one penny until closing. Period. When we work with a Buyer, we may show one house or 50 houses before our client(s) find the right one for their needs and preferences. We develop a close working relationship with our client that can last for several weeks or even a year in certain cases. We put much effort, time and energy into our clients.

Establishing Agency protects both Buyer and Agent.

Note: I encourage you to Google the NAR Settlement yourself to review all of the changes (if you are so inclined); however, these are the two main takeaways:

1) You must sign a written **Buyer Agency Contract (BAC)** with a Licensed Real Estate Professional to establish Agency before touring homes together.

2) Offers of compensation from the Seller to Buyers' Agents can no longer be displayed, advertised or communicated on the MLS (Multiple Listing Service).

Agency

In the Consumer Notice, you can read the Legal Descriptions of the Agency relationships a consumer may enter into with a Licensee (Licensed Real Estate Professional).

<u>The BAC (Exclusive Buyer Agency Contract) is a contract and what you will be signing if/when you choose a Buyer's Real Estate Agent to work with.</u>

In the Consumer Notice, you will see that there are 4 types of **<u>Agency</u>** that can be established. Seller Agent (typically referred to as a Listing Agent), Buyer Agent, Dual Agent and Designated Agent.

Let's discuss the basics.

Fiduciary Duty: A legal and ethical obligation for one party (the fiduciary) to act solely in the best financial interests of another party (the beneficiary or principal), prioritizing their needs above their own. Key components include duties of loyalty, care, good faith, confidentiality and full disclosure.

A **Seller Agent (Listing Agent)** has a signed contract with the Seller. This means they work for the Seller's best interests. They have fiduciary duties to the Seller.

A **Buyer Agent** has a signed contract with the Buyer. This means they work for the Buyer's best interests. They have fiduciary duties to the Buyer.

A **Dual Agent** is an Agent that works for both Buyer's and Seller's best interest, they have fiduciary duties to both and must have written consent from both parties.

A **Designated Agent** is an agent that has been designated by the Broker of the selected real estate company to act exclusively for the Buyer or Seller. – *Century 21 Frontier Realty does not use Designated Agency, so I can't personally offer any further insight into this type of Agency.*

Exclusive Buyer Agent Contract

I mentioned earlier that I have provided a link for a blank BAC (Exclusive Buyer Agency Contract). You should take the time to review it in full, but let's go over a few key points now…

Key Terms:

REAL ESTATE SALESPERSON (Typically referred to as an Agent): Is a Licensed Real Estate Professional that must be backed by (associated with) a Broker/Brokerage in order to conduct Real Estate transactions.

REALTOR®: Is a Licensed Real Estate Salesperson (or Broker) who is a member of NAR (National Association of Realtors) and abides by a strict code of ethics.

BROKER OF RECORD: Is an individual who began as a Licensed Real Estate Salesperson and met the required educational and experiential credentials to become a Licensed Broker and who is legally responsible for the actions and compliance of the entire Real Estate Brokerage Company (and most often, also the owner).

ASSOCIATE BROKER: Is an individual who began as a Licensed Real Estate Salesperson and met the required educational and experiential credentials to become a Licensed Broker, but who chooses to work for another Broker/Brokerage.

(1) Who? (Important Parties)

The reason I am explaining these distinctions is because on Pg 1, Line 14 it states: "Buyer understands that this Exclusive Buyer Agency Contract is between Broker and Buyer." You will be required on Line 15 to confirm that you have not established Agency with another Broker.

On Pg 1, Line 1 you will see your Real Estate Agent's Broker (Company) information on the left side and your Real Estate Agent's information on the right side. Both have fiduciary duties to you once you sign this document.

(2) How Long? (Understanding Term)

You will see on Pg 1, starting on line 17, Item 1 "Starting & Ending Dates of Buyer Agency Contract (also called "Term"). Lines 18 through 25 outline the following:

A) That there is no law that determines the duration of this contract, other than what the Real Estate professional and Buyer have discussed and agreed upon.

   Most Buyer Agents will want you to commit to a minimum of 3 months, 6 months or 1 year; however, you have the right to discuss and decide that upfront before signing. Keep in mind, that this can be a lengthy process so 3 to 6 months is not an unreasonable term.

B) States the start date (usually date of signing) and must state an end date of the agreed upon term, which cannot exceed one year and may not include an automatic extension.

C) If Buyer is negotiating or has entered into an Agreement of Sale, this contract ends upon settlement. Meaning, that if you work with a Buyer Agent and they are working with a Selling (Listing) Agent on your behalf to facilitate the purchase of a property, your Buyer Agency Contract shall remain in effect until closing.

(3) How Much? (Understanding Broker's Fees)

Item 2, beginning on Pg 1, Line 26 is something that you will want to discuss in full with your Buyer's Agent prior to signing.

Earlier, I mentioned the NAR Settlement. Prior to that settlement and the subsequent Real Estate law changes that were enacted, it was assumed that Seller pays all Real Estate Commissions. A Seller agreed to a percentage of the sale price to be split in some way between the Seller (Listing) Agent and the Buyer Agent, when they signed their Listing Contract.

That information was displayed openly on the MLS (multiple listing services website where all **REALTORS®** in that MLS have access to all details about listed properties).

If, for example, a Seller was offering 3% to the Buyer's Agent, it was openly defined on the MLS. Now, that is no longer allowed. That doesn't mean that Sellers no longer pay Buyer Agents. It means they don't have to. Sellers can still choose to offer compensation, but they cannot advertise it on the MLS. Instead, your agent must find out what the seller is offering by contacting the Listing Agent directly. These commissions are ultimately established between you and your Buyer Agent in your contract, and then your Buyer Agent will negotiate to have the Seller cover that amount as part of your written purchase offer.

What this means for you?

You will need to understand this upfront when you sign your BAC. This contract will usually contain 2 fees:

1) Brokerage Fee: A fixed amount that most brokerages charge per real estate transaction. This covers administrative fees, document storage fees, etc. It can have differing names, but this is a fixed fee that you will pay upon closing.

2) Broker Commission: This is typically a variable amount in the form of a percentage of the sale price. This amount is paid to the Brokerage (Company) and then a portion will be allocated to the Real Estate Agent.

Every company is different. Each handles these line items differently. Most of these fees *can potentially* be wrapped up in your lending or negotiated to be paid by the Seller depending on a number of factors. ***These are great questions for your initial conversation when you are searching for your Buyer's Agent.***

IMPORTANT NOTE: Pennsylvania law requires your Real Estate Agent to provide you with an Estimated Cost Sheet PRIOR to you signing an offer on a property. This statement gives you an accurate estimate of your out-of-pocket costs, and they will work closely with your Lender to ensure all financing figures match perfectly.

(4) The Rest (Legal Jargon)

Pages 2 thru 4 are very self-explanatory. If you have any questions on any line item, please get clarification from your Buyer's Agent before signing.

A few items that I do want to address quickly…

Pg 2, Line 62, Item 3. Dual Agency: If you have carefully chosen your Buyer's Agent and they happen to have Listings that you would be interested in, there is nothing inherently wrong with using Dual Agency. I have acted as a Dual Agent in many transactions.

Pg 3, Line 105, Item 10. Deposit Money: When you place an offer to purchase a home or property, you will be required to put up Deposit Money, often referred to as Earnest Money or Hand Money. This is money you pay (usually to the Buyer Brokerage, sometimes to the Seller (Listing) Brokerage) upfront. Out of pocket. This money gets held in an Escrow Account and will be credited toward your final closing costs.

I will explain Hand Money in more detail, in subsequent print outs, but for now I wanted to point out the fact that the BAC outlines scenarios where you could forfeit your hand money. One of your Buyer's Agent's highest priorities is protecting your hand money by following the rules of the contract and ensuring you do so, as well.

Pg 4, Line 158, Item 15. Recovery Fund: This outlines information that protects consumers who take legal action against a Real Estate Agent for fraud, misrepresentation or deceit in a real estate transaction. If there is a final court ruling (civil judgement), this Fund repays a consumer who is unable to collect the judgement after trying all lawful ways of doing so. There is a phone number provided in the contract for your reference.

Pg 4, Line 167, Item 16 (B). Additional Terms: This is the area where you would have stated that you are only signing a BAC for a one property commitment or any other special or specific terms that you and your Buyer's Agent discuss and agree to include in your contract.

Pg 4, Line 182: Buyer has read and received the Consumer Notice… Signing the BAC states clearly that you have acknowledged the Consumer Notice that we discussed earlier.

In conclusion:

1) **The Consumer Notice must be signed, but is not a contract.**

2) **The BAC (Exclusive Buyer Agency Contract) must be signed and is a contract.**

3) **You must sign a written BAC (Exclusive Buyer Agency Contract) to establish Agency to begin to have access to home showings.**

Note: Open Houses are the only scenario where you are free to tour homes without signing any paperwork. Sometimes this is a low-key way to begin your initial comparison shopping. However, many times Buyers want to place an offer on something they see and go through the Seller (Listing) Agent without taking the time to interview that agent. They are required to sign a BAC to make an offer and have now established Agency.