



WORKING WITH A REAL ESTATE PROFESSIONAL WHAT YOU NEED TO KNOW

[From Tennessee Code Annotated, Title 62, Chapter 13: Effective April 17, 1996]

62-13-403. A licensee who provides real estate services in a real estate transaction shall owe all parties to such transaction the following duties, except as provided otherwise by Section 62-13-405, in addition to other duties specifically set forth in this chapter or the rules of the commission:

1. Diligently exercise reasonable skill and care in providing services to all parties to the transaction;
2. Disclose to each party to the transaction any adverse facts of which licensee has actual notice or knowledge (“Adverse facts” means conditions or occurrences “that have negative impact on the value of real estate, significantly reduce the structural integrity of improvements to real property, or present a significant health risk to occupants of the property”);
3. Maintain for each party to a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency or sub-agency agreement entered into by the licensee to represent either or both of the parties in a transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure, information required to be disclosed under this part, and information otherwise required to be disclosed pursuant to this chapter. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;
4. Provide services to each party to the transaction with honesty and good faith;
5. Disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party;
6. Timely account for trust fund deposits and all other property received from any party to the transaction; and
7. (a) Not engage in self-dealing nor act on behalf of licensee's immediate family, or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of such interest and the timely written consent of all parties to the transaction; and
(b) Not recommend to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services under the Tennessee Real Estate Broker License Act of 1973, without timely disclosing to the party who receives the referral, the licensee's interest in such referral or the fact that a referral fee may be received.

62-13-404. Any licensee who acts as an agent in a transaction regulated by the Tennessee Real Estate Broker License Act of 1973 owes to such licensee's client in that transaction the following duties:

1. To obey all lawful instructions of the Client when such instructions are within the scope of the agency agreement between licensee and licensee's client.
2. To be loyal to the interests of the client. A licensee must place the interests of the client before all others in negotiation of a transaction and in other activities except where such loyalty duty would violate licensee's duties to a customer under Section 62-13-402 or a licensee's duties to another client in a dual agency.

Note: No agency relationship exists without a *written* Agency Agreement.

The following definitions will help you understand agency disclosures on offers you will make or receive:

Facilitator: “Facilitator” means any licensee (a) who assists one or more parties to a transaction who has not entered into a specific written agency agreement representing one or more of the parties; or (b) whose specific written agency agreement provides that if the licensee or someone associated with the licensee also represents another party to the same transaction, such licensee shall be deemed to be a facilitator and not a dual agent, provided that notice of assumption of facilitator status is provided to the buyer and seller immediately upon such assumption of facilitator status, to be confirmed in writing prior to execution of the contract. A facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. The term “transaction broker” may be used synonymously with, or in lieu of, “facilitator” as used in any disclosures, forms or agreements under the act. *The Realty Association* as a real estate brokerage company appoints individual designated agents and/or facilitator licensees, and in no case shall be considered to be a dual agent in this transaction.

Designated Agent for the Seller. A Listing Agreement with The Realty Association has been entered into and the licensee has been named by the Managing Broker as the Designated Agent for the Seller for this listing.

Designated Agent for the Buyer. A Buyer Agency Agreement has been entered into between the Buyer and the licensee. The Managing Broker has named this licensee as the Designated Agent for the Buyer in this transaction.