

# What You Should Know About Agency in Texas

The Texas Legislature enacted an amendment to the Texas Real Estate License Act which became effective January 1, 1996. Among other things, the amendment changes the permitted agency relationship between a real estate broker and its client. Ebby Halliday Real Estate, Inc., d/b/a Ebby Halliday, REALTORS®, and Ellen Terry, REALTORS® will now act as an Intermediary in transactions in which both the seller and buyer are working with associates of the company.

Through more than 50 years of doing business in the Metroplex - service to you, the sellers and buyers of property, has been our firm's priority. We strive daily to provide the public and our sales associates with current information regarding the sale and leasing of property. In recent years the real estate industry and state legislatures across the country have also sought to better inform buyers and sellers about the legal relationship they may have with the real estate broker.

This Agency Brochure will help explain the agency relationship. Please take the time to read it so that you will feel comfortable working with our company and sales associates in your real estate transactions. Ebby Halliday Real Estate, Inc. is proud to be a leader in the industry and to participate in the effort to provide information about agency to you.

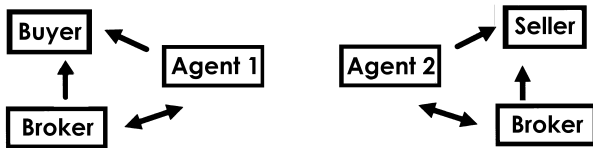
If you have further questions about agency relationships, just ask your Ebby Halliday, REALTORS® or Ellen Terry, REALTORS® associate.

We appreciate the opportunity to serve you.



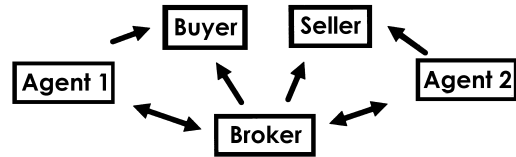
## Description of Agency Relationships

### **EXCLUSIVE AGENCY** (FOR CO-OP TRANSACTIONS)



One type of real estate transaction involves a seller who has listed property for sale with a real estate broker and is presented with an offer to purchase from a buyer who has engaged another broker. Both brokers have individual sales associates to act on behalf of the broker in the transaction. In this transaction the broker for the seller and the broker's sales associate exclusively represent the seller. The other broker and its sales associate working for the buyer exclusively represents the buyer.

### With Two Appointed Licensees Working Separately with Buyer and Seller

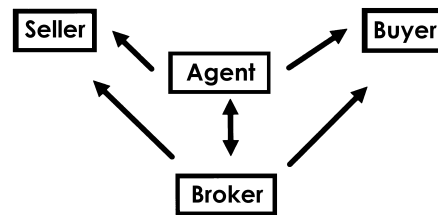


When the Buyer and Seller wish to have the Broker act as an Intermediary in the sale and each have separate agents of the Broker working with them, then Broker may appoint each agent to act as an "Appointed Licensee." Under these circumstances, the Appointed Licensee will carry out the instructions of the parties to whom they are appointed and will render professional advice and opinions to the parties during the transaction.

### **INTERMEDIARY STATUS** (FOR IN-COMPANY TRANSACTIONS)

Intermediary status was created by the Texas Legislature in 1995 and was designed for use when a buyer and seller are represented by the same broker such as when a buyer wishes to purchase a property listed for sale by the Broker. In such a transaction, with the written consent of the parties, the broker may work with both parties to the sale. As an Intermediary, the Broker (1) will treat both the buyer and seller honestly, (2) will not disclose that the seller will accept a price less than the asking price unless authorized in writing to do so by the seller, (3) will not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer, (4) will not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by law. The Broker, with the written consent of the parties, may act as an Intermediary in two different circumstances explained as follows:

### With One Broker Intermediary Representative Working With Both Buyer and Seller



When a Buyer and Seller in the transaction wish to work with the same sales associate of the Broker, then the sales associate will act as a "Intermediary Representative" of the Broker. Such a transaction presents a greater potential for a conflict of interest between the Broker and the parties which precludes the Broker and its Intermediary Representative from promoting the interest of one party over the other. In this situation the Intermediary Representative will not render professional advice or opinions to either party so as to remain fair and impartial to both parties, however may provide information and assistance.

**The Agency Policy of Ebby Halliday Real Estate, Inc.**

The policy of Ebby Halliday Real Estate, Inc. d/b/a Ebby Halliday, REALTORS® and Ellen Terry, REALTORS® is to offer the broadest possible range of services and choices to the company's clients and to provide information to our clients to allow them to make an informed decision about the agency relationship they wish to have with the company and our sales associates.

Exclusive Agency. With exclusive agency Ebby Halliday Real Estate, Inc. will continue to offer the full range of broker services it has offered for over 50 years.

Ebby Halliday Real Estate, Inc. will be the exclusive agent for the buyer when showing builders' properties when such properties are not listed by Ebby Halliday Real Estate, Inc.

Intermediary Status. For those transactions in which both the seller and buyer wish to use the services of Ebby Halliday Real Estate, Inc. then the company will act as an "Intermediary". As an Intermediary the company will work with and carry out instructions of the parties and will (1) treat both the buyer and seller honestly, (2) will not disclose that the seller will accept a price less than the asking price unless authorized in writing to do so by the seller, (3) will not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer and (4) will not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by law. If the parties wish to use the services of two sales associates of the company in the same transaction, then the company will appoint each of the associates as an "Appointed Licensee" who may render their professional advice and opinions to the parties for whom they have been appointed. If both the seller

and buyer wish to use the services of the same sales associate of Ebby Halliday Real Estate, Inc., the company will act as an Intermediary and the sales associate will be the "Intermediary Representative" in the transaction. The Intermediary Representative may provide information and assistance, but will not render professional advice or opinions to either party so as to remain fair and impartial to both parties in the transaction. If, during such a transaction, either party wishes to have a separate sales associate work with them, then the Broker will appoint a separate associate.

Does acting as an intermediary present a conflict? Well, yes it can, and for that reason Ebby Halliday Real Estate, Inc. will only act as an intermediary with the express written consent of our clients. Why would the company want to act as an intermediary? Because it is a benefit to our buyers to consider the large inventory of homes offered for sale by Ebby Halliday Real Estate, Inc. and it is a benefit to our sellers to allow the many buyers who are represented by the company to consider their property for purchase. Moreover, it is a benefit to all our clients to allow them to choose for themselves which real estate agent they wish to work with and to decide for themselves what agency relationship they wish to have with their broker. The policy of Ebby Halliday Real Estate, Inc. provides our clients with the greatest range of choices. Should an Intermediary relationship frighten our clients? No, because ultimately our clients, as they always have, will make the decisions affecting the sale or purchase of their property.

This policy is designed to allow clients of Ebby Halliday Real Estate, Inc. the freedom to choose how their broker will represent them in their real estate transaction.

**AGENCY DISCLOSURE**

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

NAME DATE NAME DATE

## **Statutory Notice Regarding Agency**

*Texas law requires all real estate licensees to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.*

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

**IF THE BROKER REPRESENTS THE OWNER:** The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

**IF THE BROKER REPRESENTS THE BUYER:** The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

**IF THE BROKER ACTS AS AN INTERMEDIARY:** A broker may act as an intermediary between the parties if the broker complies with the Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction: (1) shall treat all parties honestly; (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner; (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property. With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.