

# Real Estate Brokerage Services Disclosure

Below is the real estate agency disclosure information pamphlet created to be distributed by real estate agents to prospective Clients. This pamphlet is meant to inform the public about the types of agency relationships they can encounter in a real estate transaction in Alabama. In Alabama, it is the law for all real estate licensed practitioners to provide a “prospective client” the **types of agency relationships available** with their brokerage. *Please understand*, not every brokerage offers each type of agency relationship, however, as a Consumer; you should be informed of what agency relationships are available with their firm. You should also know all the types of agency relationships available in the State of Alabama. With that said, please take time reading the below explanation of, The Real Estate Consumers Agency and Disclosure Act, known as; “RECAD.”

## What Consumers Need To Know When Working with a Real Estate Broker

As real estate transactions have become more complex and varied, the types of real estate brokerage arrangements available to the public have evolved to meet the changing needs of consumers entering this market. This booklet is intended to provide buyers and sellers with a description of the different types of brokerage arrangements so that consumers can choose the type of brokerage services best suited to their needs.

**Know Your Rights**---- At the initial contact between a licensee (both sales persons and brokers) and the public, the licensee shall be considered to be a transaction broker. As soon as reasonably possible and before the exchange of confidential information, Alabama law requires the licensee to provide you with a written disclosure form that describe different types of brokerage arrangements. You are encouraged to read and sign this disclosure form.

After disclosure you may then choose the type of brokerage agreement best suited to your needs. This brokerage agreement will contain a statement of the specific brokerage services the broker will provide. In the absence of a signed brokerage agreement, the transaction brokerage relationship will remain in effect. Make sure you talk to the real estate licensee with whom you are working to determine the type of services you need or will receive under alternative brokerage arrangements.

**Customer or Client?-----** The most important thing you need to know when working with real estate licensee is whether you are a client or a customer. A licensee owes certain duties to a Client that's different from the services the licensee performs for a customer.

**Agent and Client-----** An agent is a person who acts for or represents you in negotiations with other parties. The client or principal is the person the agent represents. The licensee when acting as an agent must loyally represent the best interest of the client by placing the interests of the client ahead of the interests of any other party. In a real estate transaction, when a real estate salesperson is employed as an agent, the salesperson is obligated to negotiate the best price and terms for his or her client.

**What is a Customer?-----** A customer is a person who is provided services by a real estate broker, but who is not a client of the broker. In this case, the real estate licensee is not acting as an agent. The actual services you receive from a real estate broker depend on the arrangement that is established between you and the licensee. The different types of real estate agreements are described below.

There are basically three types of real estate brokerage relationships that can be established between the consumer and a real estate licensee: Single agency, limited consensual dual agency, a contract brokerage arrangement.

**Transaction Brokerage-----** Transaction brokerage 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. This means that real estate brokers and salespeople can act as intermediaries between buyers and sellers. With this type of brokerage arrangement, home buyers and sellers are customers and not clients of the licensees with whom they are working. The basic function of the licensee is to bring buyers and sellers together so that a real estate sale can be completed. Sellers will employ the licensee to help market the real estate by identifying qualified buyers and showing their properties to prospective purchasers. This will usually also involve advertising properties for sale in newspapers and other media. Sellers will commonly also rely on the expertise, experience, advice of the real estate licensee to help make their property ready for sale and determine an appropriate asking price. Buyers, in turn, rely on the services of brokers to find and show them suitable real estate that they can afford and have the desired characteristics. Real estate professionals may also help consumers obtain mortgage financing as well as assist them with finalizing the real estate sale and recording the deed and other documents associated with the sale.

Transaction brokerage arrangements are usually best suited for consumers who are primarily interested in the marketing services and expertise that can be provided by real estate professionals, but who do not need an agent to represent them in the negotiations for the sale or purchase of real estate. Under a transaction brokerage, the licensee must provide brokerage services to parties honestly and in good faith and avoid showing favoritism to either buyer or seller. Alabama law also requires all licensees exercise reasonable care and skill when providing brokerage services, answer all questions completely and accurately, and present all written purchase offers to sellers promptly and in a truthful manner.

Licensees must also keep confidential any information given to them in confidence, unless disclosure of this information is required by law. For sellers, this means that licensees must answer a buyer's questions about the condition of the property completely honestly. In addition, the buyer must be told about any hidden defects known to the licensee that could affect the health or safety of occupants.

**Single Agency----** A single agency arrangement describes a relationship whereby the real estate licensee represents only one party in a real estate sale transaction. In the case of a single agency brokerage arrangement, the real estate licensee represents either the buyer or the seller, but not both parties to the real estate transaction. This type of brokerage arrangement is most appropriate for consumers who need the advice and negotiating skills of real estate professionals in addition to their marketing services. If a seller enters into single agency agreement with a real estate broker, the broker is referred to as a seller's agent. Under this arrangement the broker must represent only the seller in the negotiations with buyers. Here the broker will seek the highest possible price and best possible sale terms for the seller. This type of brokerage arrangement can involve the use of subagents, especially in situations where properties are marketed through a multiple listing service.

Subagents are empowered to act for another broker in performing real estate services for that broker. The subagent owes the same duties to the broker's client as the broker. If a broker is an agent to the seller, then the subagent is also the seller's agent. When examining properties advertised through a multiple listing service it is important for buyers to determine whether the licensee that is showing them properties is acting in the capacity of a transaction broker, seller's agent or as a subagent of the seller.

Buyers should exercise care with respect to the information they reveal to licensees working as seller agents. For example, if you are the customer it would not be wise to tell a licensee the maximum price you would be willing to pay for a particular property when considering making a formal purchase offer. If you are the customer, the broker's primary responsibility is to the seller. In this case, the licensee, as the seller's agent, must convey such information to the seller.

A buyer's agent describes a real estate licensee who is employed by and represents only the buyer in a real estate transaction. This relationship is created by a written contract. This contract should clearly state the service the agent will perform for the buyer as well as specify how the licensee is paid for services rendered in connection with the real estate sale. In this case, the buyer is the client or principal and the real estate broker is the agent of and represents the buyer in dealings with sellers.

This type of real estate brokerage agreement should be used when the buyer needs guidance and representation when negotiating with sellers to purchase real estate. Buyers moving to a new location and who are unfamiliar with local market conditions would be those consumers most likely to benefit from this type of agency arrangement. It is becoming increasingly common in multiple listing situations for the selling broker (a licensee working with and showing properties to the buyer) to be an agent of the buyer and the listing broker to represent the owner-seller. Here, both the buyer and seller, working through their respective agents, could negotiate at arm's length with the benefit of professional help.

**Limited Consensual Dual Agent----** Limited consensual dual agency is an agency relationship where the real estate brokerage company represents both the buyer and the seller in the same real estate transaction.

Consensual dual agency requires the licensee to obtain the written consent of both the buyer and the seller to act as their agent. The two most common circumstances where dual agency is encountered are (1) when two or more salespersons licensed under the same broker each represent a different party to the transaction, and (2) when one licensee represents both the buyer and seller in the same sales transaction.

One major advantage of limited consensual dual agency is that it allows broader marketing opportunities than single agency arrangements. With this type of contract, salespeople can show houses of owners that they represent as agents to their buyer clients. Consensual dual agency is common in the larger real estate markets where real estate companies often have a large number of properties listed for sale. Many of these properties may be desirable to their buyers. With a dual agency agreement, the properties can be shown to their buyer clients.

In the case of dual agency, the principle function of the licensee is to help both parties reach a mutually satisfactory outcome to their negotiations. The dual agent must avoid showing favoritism to either-party and refrain from revealing confidential information that could prove detrimental to one side or the other. Although buyers and sellers may not benefit from the full range of services or agent loyalty that could otherwise be provided with a single agency arrangement, consensual dual agency

does offer consumers more assistance and guidance than would be possible under a contract brokerage agreement.

When considering signing a dual agency agreement, it is very important that you talk with the broker to determine the types of services that will be provided, and what types of information you will share with the broker and broker's other clients.

**Conclusion---** After reading this consumer information booklet, you should sign a brokerage agreement that contains a statement of the services to be provided by the real estate professional. Remember, if you do not sign a brokerage agreement, by law, the licensee working with you will be considered a transaction broker. Ask your real estate licensee to clarify and explain anything in this booklet that you do not fully understand before signing a contract for real estate brokerage services. You are encouraged to sign the disclosure form and retain copy for your records.

*Article courtesy of: Alabama Real Estate Commission*

## **Questions: RECAD, Megan's Law by Charles R. Sowell**

The following article was written by Charles R. Sowell, General Counsel for the Alabama Real Estate Commission, and originally appeared in the Alabama Real Estate Commission Newsletter: UPDATE, Summer 1998. The entire article is provided with permission of the author.

It should be noted that the information ***provided pertains to the agents, the clients and customers they serve*** who reside in Alabama.

RECAD QUESTION:

I have an agency listing agreement to sell my client's home. He wants to sign a buyer's broker agreement with another company to find him a replacement home while my company tries to sell his existing home. It is okay with me, but can he do this? I mean, can he enter into two agency agreements at the same time?

ANSWER: Yes he can. A listing agreement and a buyer's broker agreement create agency relationships for two separate purposes. One is to sell a property. The other is to buy a property. I have never seen a version of either which would prevent the hiring of two agents at the same time. RECAD certainly does not prohibit it.

## **ANOTHER RECAD QUESTION:**

**I am a builder/developer who only sells my own properties. Specifically, I have agents on site in my subdivisions who are there to sell my homes. When potential buyers come to my properties, does this make my on site agents limited consensual dual agents?**

**ANSWER: My goodness, no. You are both the qualifying broker and the owner of the properties. To put it simply, you should not pretend you do not represent yourself. Your agents should be trained carefully to treat potential buyers as customers. Your company has no agency relationship with them. There might be very rare occasions where you sell a home to a family member or close friend. If the relationship is so close that you truly cannot treat them as customers, then you will have to act as a limited consensual dual agent, unless they engage a buyer's broker or an attorney to negotiate on their behalf.**

**Click on the link below for:**

**[ALABAMA REAL ESTATE COMMISSION "RECAD" FORMS](#)**

## **MEGAN'S LAW QUESTION:**

**I own a home listed with a real estate company. I have relocated out of State My neighbor has given my listing agent a copy of a notice from the sheriff's office. This notice has a picture with information on a man who is a criminal sexual offender. He is being released from prison, and is moving into my neighborhood. I really need to sell my home. Does my agent have to tell buyers about this?**

**ANSWER: There is no law or court case which answers this question. That means we have to make an educated guess. The law on the sale of existing homes in Alabama does say that potential buyers have to be told about defects which could affect the health or safety of a buyer or occupant of the house. You can bet that a family injured by such a person will likely file suit against you, and all agents involved in the sale. If a case like this gets to a jury, and it probably would, I do not think you have to be a lawyer to figure the likely result. We advise brokers who have listings to get consent of the owner to make the disclosure. If the owner refuses, then the broker and the owner have to decide whether to take the risk. For a broker and the agents involved it means possible loss of their licenses, and the loss of every asset which is not judgment proof. I know of no broker who has taken that risk. I advise you not to take it, either.**

**NOTE: A sexual offender notification law like ours in Alabama is commonly referred to as Megan's Law. This is because of a tragic, terrible crime committed by a recently released sexual offender some years ago in New Jersey, I believe it was. His victim was a little girl. Her name was Megan. His prior victims were children. No law gave notice to the neighborhood of his release. Public outcry lead to the enactment of notification laws in many states Alabama's Community Notification Act is at Section 15-20-20 Code of Alabama 1975, as amended. In an interesting move some other states have made it law that real estate licensees have no duty to disclose this information.**

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## Alabama's Criminal Sex Offenders Registration

An [overview of Megans law](#) and a United States site map of additional information is maintained by KlaasKids Foundation • P.O. Box 925, Sausalito, CA 94966 Tel: (415) 331-6867 • Fax: (415) 331-5633 • Email: [klaaskids@pacbell.net](mailto:klaaskids@pacbell.net)

Alabama Department of Public Safety maintains the [List of Registered Sex Offenders](#) which can be accessed by zip code, or county and a list of criminal sex offenders with no known addresses. They also maintain a [Missing and Exploited Children list](#).

Nationally the United States Department of Justice maintains a National Sex Offenders Registration List. Their site includes information which is accessible on the individual state sites. A link to the DoJ website and the individual state web sites is maintained on the FBI Crimes against Children [National/State Sex Offender Registry](#). A list of individual [state laws and definitions of state terms](#) can be found on the web site of Family WatchDog (see below).

### [Family WatchDog](#)

A site with mapping capability to locate offenders when provided an address of concern! As a free site they are to be commended for their efforts in this project. For a small fee they will provide alerts for 3 addresses when an offender moves close to the addresses provided. When a map is provided it will include colored boxes representing location and offender status. With clicking the box an address and picture of the offender is provided.

**Family WatchDog** provides the following statistics:

- 1 of 5 girls will be sexually molested before her 18th birthday.
- 1 of 6 boys will be sexually molested before his 18th birthday.
- The typical sexual predator will assault 117 times before being caught.
- The re-arrest rate for convicted child molesters is 52%.

## The Safe Side Website

**John Walsh**, host of America's Most Wanted and **Julie Clark**, creator of Baby Einstein are promoting a [FREE "Stranger Safety Home Guide"](#) (pdf file 3mb), "Everything you need to have an awesome family discussion with your kids about safety!" and the Safe Side award winning instruction DVD's [\[Store and price list\]](#)

### Amber Alert

From the Department of Justice Web Site:

"**The AMBER Alert™** Program is a voluntary partnership between law-enforcement agencies, broadcasters, transportation agencies, and the wireless industry, to activate an urgent bulletin in the most serious child-abduction cases. The goal of an AMBER Alert is to instantly galvanize the entire community to assist in the search for and the safe recovery of the child." [Active Amber Alerts](#) \* [Code Amber News Service \(CANS\) CodeAmber.Org](#)

### Online Crime reports and statistics

[Montgomeryadvertiser.com](#) is the website of the Montgomery Advertiser and provides online access to local area crime reports.

[Ethical Treatment for All Youth](#)

[Attorney General wants sex offenders' online IDs](#) (Article below)

MONTGOMERY, Ala. (AP) — State Attorney General Troy King says the government doesn't do enough to keep up with the 10,605 registered sex offenders living throughout Alabama.

King says he will propose a bill to the Legislature on Tuesday to strengthen the requirements for sex offenders once they leave prison. It will require them to disclose information about their cars and the names they use to meet people in computer chat rooms and on Internet social sites.

King says that will give a more complete picture of where sex offenders go in the real world and the online world.

[Autauga and Elmore County Crime Reports;](#)

[Montgomery Crime Reports;](#)

[Search and MAP of Montgomery Homicides since January 2007](#)

**Information provided by the City of Montgomery:**

[Crime statistics](#), [Daily Reports](#), [Annual Reports](#),

[Quarterly Newsletter](#),

Information from the **Montgomery County Sheriff:**  
Sheriff's Web Site:

Between the sites below, you should have a good list/idea who & where registered sex offenders are:

1. Montgomery County Alabama Sheriff's Office "Search for Offenders in your area";
2. Registered Sex Offender in Montgomery, Alabama;
3. Alabama Toughens Sex Offender Laws & many other articles;
4. Get a clear picture of the threat to your FAMILY with a "Sex Offender Report."
5. Criminal Records Search 2009 Edition; Statement by the GovCriminalsRecords.Com: **WARNING:** It is always important to be aware of the fact that there are an endless amount of websites all across the internet that falsely advertise the ability to obtain public records.

Some sites charge outrageous prices or may display bogus or incomplete results even after you are charged and may demand additional fees for the actual results. Other sites have been found to violate the privacy of their consumers, by either reporting searches conducted by individuals or even harass their clientele by flooding them with undesired spam mail.

Therefore, it is advised to use a service that is safe and reliable and comes from a well known and respected company.

The above information was put together for your reading and information by: **Ron Hidalgo Realtor®/Broker** associated with **Saunders Realty Residential, Montgomery, Al. 36117**

**Ron P. Hidalgo, REALTOR(R)/Broker since 1984--** A registered collective membership mark that identifies a real estate professional who is a member of the **National Association of REALTORS®** and subscribes to its strict Code of *Ethics*.

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[www.RonSellsAlabama.Com](http://www.RonSellsAlabama.Com)...Needing information about "**The Alabama River Region**" visit

**Ron's Web page.**



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