

2021-2022 General Update Course

Section One

The New WWREA Disclosure Form



1. Chris sees an ad for a property listed by ABC Realty in Asheville that he is interested in purchasing. He calls the firm and inquires whether the property is still available. Stan, the listing agent, indicates the property is still on the market and is listed at \$675,000. Chris tells Stan that he is preapproved for \$713,000, and would like to submit an offer on the property.

Has first substantial contact occurred? Yes/No Why or why not?

What mandatory disclosure must Stan review with Chris?

2. Alicia attends an open house in Fuquay-Varina. She is not represented by a real estate agent. Alicia enters the house and is immediately impressed by the floorplan. She asks Don, the listing agent, if the house is available for a quick move-in. Don says, "Yes," and Alicia is enthused. She tells Don she needs to purchase a home within 30 days to start a new job and will send an offer to him by the end of the day.

Has first substantial contact occurred? Yes / No

What must Don do at this point to comply with License Law and Commission rules?

3. Felicia has reviewed and explained the WWREA disclosure and her fiduciary duties to Corey, a prospective buyer, but he still has additional questions regarding compensation and the specific duties of a buyer agent.

What additional resource can Felicia provide to Corey?

LEARNING OBJECTIVES

By the end of this section, you should be able to:

- describe the key sections of the new WWREA Disclosure Form;
- explain the requirements set forth in Rule 58A .0104(c);
- differentiate between the WWREA Disclosure and the “Questions & Answers on: Working With Real Estate Agents” brochure; and
- identify when licensees were required to begin using the WWREA Disclosure.

OVERVIEW: WHY CHANGE THE WWREA PUBLICATION?

In January 2020, the Consumer Federation of America (“CFA”) published a report entitled, “Why Required Real Estate Agent Disclosures about Representation Fail and How They Can Be Improved.” The report contains a list of recommendations for improving agency disclosure forms. The Commission’s *Working With Real Estate Agents* (WWREA) brochure ranked in the middle as compared to other states’ publications. The report can be viewed [here](#).

In response to the report, the Commission decided to reevaluate the WWREA brochure, which had been in use for approximately 25 years. The Commission decided that, although the brochure contained good information, changes in technology, communication methods, and the faster pace of real estate transactions had made its format less user friendly.

Consequently, the Commission has replaced the former brochure with a new WWREA publication to be used by licensees, called the ***Working With Real Estate Agents Disclosure*** (*hereafter known as WWREA Disclosure*).

Like its predecessor, the WWREA Disclosure:

- explains the various agency relationships that are available to consumers in a real estate sales transaction; and
- warns the consumer not to share any confidential information with the licensee until an agency agreement is created.

The format and design of the WWREA Disclosure is vastly different from the former brochure. When printed, it is a one-page, double-sided form with one side for sellers and one side for buyers. In zip forms, it will be two pages.

Each side/page of the new form is reprinted on the following pages, along with descriptions of each section.

THE NEW WWREA DISCLOSURE FORM

SIDE 1 - FOR SELLERS

Let's start with side 1, which is the seller side. There are 5 primary sections of this side of the form:

- residential and commercial sales,
- notes and notices,
- agency options and explanations,
- reference to the Q&A brochure, and
- signatures.

A description of each section is provided below.

Seller Side - Overview

1 → Applies to residential and commercial sales

2 → Notes and notices

3 → Agency options & explanations (to be checked by broker)

4 → Reference to Q&A brochure

5 → Signatures

This form is required for use in all sales transactions, including residential and commercial.

Working With Real Estate Agents Disclosure (For Sellers)

IMPORTANT
This form is not a contract. Signing this disclosure only means you have received it.

- In a real estate sales transaction, it is important that you understand whether an agent represents you.
- Real estate agents are required to (1) review this form with you at first substantial contact - before any listing agreement, receiving your confidential information and (2) give you a copy of the form after you sign it. This form is for your protection.
- Do not share any confidential information with a real estate agent or assume that the agent is acting in your behalf until you have entered into a written agreement with the agent to represent you. Otherwise, the agent can share your confidential information with others.

Note to Agents: Check all relationship types below that may apply in this seller.

Seller's Agency (listing agent): The agent who gave you this form (and the agent's firm) must enter into a written listing agreement with you before they begin to market your property for sale. If you sign the listing agreement, the listing firm and its agents would then represent you. The buyer would either be represented by an agent affiliated with a different real estate firm or be unrepresented.

Dual Agency: Dual agency will occur if your listing firm has a buyer-client who wants to purchase your property. If you agree in a written agency agreement, the real estate firm, and any agent with the same firm (company) would be permitted to represent you and the buyer at the same time. A dual agent's loyalty would be divided between you and the buyer, but the firm and its agents must treat you and the buyer fairly and equally and cannot give either an advantage over the other party.

Designated Dual Agency: If you agree in a written agency agreement, the real estate firm would represent both you and the buyer, but the firm would designate one agent to represent you and a different agent to represent the buyer. Each designated agent would be loyal only to their client.

Buyer Agent Working with an Unrepresented Seller (For Sale By Owner, "FSBO"): The agent who gave you this form will not be representing you and has no loyalty to you. The agent will represent only the buyer. Do not share any confidential information with this agent.

Note to Sellers: For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on Working With Real Estate Agents" brochure at [www.ncrre.com/Publications_Q&A_Brochures](#) or ask your agent for a copy of it.

Seller's Signature _____ Seller's Signature _____ Date _____

Agent's Name _____ Agent's License No. _____ Firm Name _____

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1. Residential and Commercial Sales

This statement appears at the top of the form: “This form is required for use in all sales transactions, including residential and commercial.” The statement is a reminder that Commission rule 58A .0104(c) requires the use of this form in ALL sales transactions, as follows:

Rule 58A .0104(c) specifies:

In every real estate transaction, a broker shall at first substantial contact with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication “Working With Real Estate Agents”... review the publication with the buyer or seller...



Must I provide and review the WWREA Disclosure with prospective commercial sellers?

Yes. Rule 58A .0104(c) indicates that the Working With Real Estate Agents publication is provided and reviewed with every prospective buyer or seller in every real estate **sales** transaction. This includes residential and commercial transactions.



Are brokers required to provide the WWREA Disclosure in property management/lease transactions?

No. The WWREA Disclosure is not required to be reviewed in property management/lease transactions per Rule 58A .0104(c).

IMPORTANT NOTE: Even though use of the WWREA Disclosure is not required in property management/lease transactions, brokers are still required to disclose their agency status to prospective clients in those types of transactions. Brokers may choose to use the WWREA form to assist in the explanation. Also, NC REALTORS® provides a landlord/tenant version of the WWREA Disclosure form for its members.

2. Notes and Notices

A series of notes and notices provide the prospective seller important information, as follows:

- **This form is not a contract.**

When a licensee is providing and reviewing the WWREA Disclosure with prospective sellers it is instrumental that the licensee makes them aware that they are not entering into a contract for brokerage services. Signing this disclosure does not create a binding contract between the licensee and consumer.

- **Signing this disclosure only means you have received it.**

Under License Law and Commission rules, a licensee is obligated to provide and review this disclosure with a prospective seller. This note informs the prospective seller that their signature on this disclosure form only acknowledges their receipt of the form.

- **In a real estate sales transaction, it is important that you understand whether an agent represents you.**

This note highlights the importance of the seller understanding whether or not the licensee who is providing the form will represent their interests in the transaction. Remember that the licensee cannot represent the interests of the seller without a written agency agreement.

- **Real estate agents are required to (1) review this form with you at first substantial contact before asking or receiving your confidential information and (2) give you a copy of the form after you sign it.**

This notice informs the seller that the licensee is supposed to give them the form at first substantial contact. It further defines first substantial contact for the seller.

- **Do not share confidential information with a real estate agent or assume that the agent is acting on your behalf until you have entered into a written agreement with the agent to represent you. Otherwise, the agent can share your confidential information.**

This notice cautions the seller not to provide confidential information to the licensee or assume that the licensee works for the seller until they have agreed upon representation in a written agency agreement.

If the seller does share confidential information, the licensee may share this confidential information with others.

3. Agency Options

In the Agency Options section of the WWREA Disclosure form, licensees will identify the agency services their firms and/or companies offers for sellers. The Note to Agent instructs the licensee to check all of the agency relationship types that *may* apply to the seller.

It is imperative for licensees to realize that the seller is NOT agreeing to a specific agency representation type at this time. The licensee is simply identifying and explaining the type of agency services their firm and/or company offers to sellers.

Seller's Agency

This subsection will be checked by the licensee if the firm/company offers seller agency. The form explains*:

The agent who gave you this form (and the agent's firm) must enter into a written listing agreement with you before they begin to market your property for sale. If you sign the listing agreement, the listing firm and its agents would then represent you. The buyer would either be represented by an agent affiliated with a different real estate firm or be unrepresented.

*The licensee must explain the basics of seller agency and answer the consumer's questions about it versus just relying on the form's explanation.

Dual Agency

This subsection will be checked by the licensee if their firm/company offers dual agency. The form explains*:

Dual agency will occur if your listing firm has a buyer-client who wants to purchase your property. If you agree in a written agency agreement, the real estate firm, and any agent with the same firm (company), would be permitted to represent you and the buyer at the same time. A dual agent's loyalty would be divided between you and the buyer, but the firm and its agents must treat you and the buyer fairly and equally and cannot help you gain an advantage over the other party.

*The licensee must explain the basics of dual agency and answer the consumer's questions about it versus just relying on the form's explanation.

Designated Dual Agency

This subsection will be checked by the licensee if their firm/company offers designated dual agency. The form explains*:

If you agree in a written agency agreement, the real estate firm would represent both you and the buyer, but the firm would designate one agent to represent you and a different agent to represent the buyer. Each designated agent would be loyal only to their client.

*This type of agency is designed to overcome a seller's concern about a dual agent's undivided loyalty with the buyer.

*The licensee must explain the basics of designated dual agency and answer the consumer's questions about it versus just relying on the form's explanation.

Buyer Agent Working With an Unrepresented Seller (For Sale By Owner, "FSBO")

This subsection will be checked by the licensee if they are working with a buyer as a buyer's agent under a buyer agency agreement and the seller is unrepresented in the transaction (e.g. For Sale By Owner, "FSBO"). The form explains*:

The agent who gave you this form will not be representing you and has no loyalty to you. The agent will represent only the buyer. Do not share any confidential information with this agent.

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.

*Although the agent is a buyer agent, there is value in the agent reviewing dual and designated dual agency options with the "FSBO" if the firm/company offers these types of agency relationships. The FSBO may determine that they want/need the assistance of the agent later during the transaction.



Does the seller check the applicable Agency Options on the WWREA Disclosure?

No. The seller does not check the applicable agency options on the WWREA Disclosure. The licensee checks all of the Agency Options that are offered by the licensee’s firm/company. Additionally, the licensee provides an explanation of these Agency Options to the seller so they can make an informed decision regarding the agency option that is best for them when and if they enter into an agency agreement.



Which relationship type(s) should I check under Agency Options?

The licensee should check all of the Agency Options that are offered by their firm and/or company. Moreover, the licensee should review all of the agency options on the WWREA Disclosure that are checked.



Do I review the Designated Dual Agency option with the prospective seller?

It depends. If your firm and/or company offers designated dual agency, then this agency option should be checked and explained to the seller.



FOR DISCUSSION

Sonya is a broker with XYZ Realty. Fran, a seller, asks Sonya to list her home. During the listing meeting, Sonya takes out the WWREA Disclosure and shows the Seller Side to Fran. Sonya says, “I have to provide this form to you so you can choose which agency option you want. Our company has a lot of buyers that may be interested in your house, so your best options are dual and designated agency. I’ll explain how it all works when we get an offer.” Sonya checks the dual and designated agency options, signs the form, and passes it to Fran to sign. When she returns to the office later that day, Sonya scans the signed WWREA disclosure and emails a copy to Fran per the firm policy.

Did Sonya comply with the requirements in Commission Rule 58A .0104(c)? Why or why not? _____

4. Reference to the Q&A brochure

After the Agency Option descriptions, a Note to Seller states:

For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on: Working With Real Estate Agents" brochure at www.ncrec.gov (Publications, Q&A Brochures) or ask an agent for a copy of it.

The Commission has published a brochure entitled, "Questions and Answers on: Working With Real Estate Agents." This brochure provides detailed information about a broker's duties, obligations, compensation, and information regarding the expiration and termination of agency agreements.

The Q&A brochure is a supplemental resource that the Commission strongly encourages licensees to review with prospective buyers and sellers to help explain and answer questions about agency relationships.



Is the Q&A brochure a mandatory disclosure per Rule 58A .0104(c)?

No. The Q&A brochure is not the mandatory publication referenced in Rule 58A .0104(c). The Q&A brochure is a supplemental resource that the Commission strongly encourages licensees to review with prospective buyers and sellers to help explain and answer questions about agency relationships.

5. Signatures

Once the licensee has reviewed the WWREA Disclosure with the seller, the licensee should request the seller's signature and date. The seller's signature acknowledges that the licensee has reviewed the disclosure with them; it does not create a contract. Once all of the signatures have been affixed, the licensee should provide the seller with a copy of the disclosure and retain a copy for their records. The licensee may provide the disclosure in a hard copy or electronic format to the seller.

If a prospective seller refuses to sign the WWREA Disclosure, the licensee should still sign their own name and enter their license number and firm/company name on the form, note that the seller refused to sign, and provide a copy to the prospective seller. The licensee should also retain a copy for their records.



Is the seller entering into an agency agreement when they sign the WWREA Disclosure?

No. The seller is not entering into an agency agreement with the licensee by signing the disclosure. Also, the seller is NOT selecting the type of agency relationship they would like to enter into with the licensee at this time. The licensee is simply disclosing and explaining the agency options that are offered by the firm and/or company.



What if the seller refuses to sign the WWREA Disclosure?

If the seller refuses to sign the disclosure, the licensee should note on the WWREA Disclosure the seller's refusal to sign and provide their signature. Additionally, the licensee must provide the seller a copy of the disclosure and retain a copy for their records.



Do I provide the seller with a copy of the WWREA Disclosure?

Yes. The licensee must provide the seller with a copy of the WWREA Disclosure per License Law and Commission Rule 58A .0104(c). The Commission does not dictate the format (e.g., hard copy or electronic version) of the WWREA disclosure the licensee provides to the seller.



Do I need to review the "For Buyers" side with the seller?

It depends. If the seller is only listing their property, the licensee is only required to review the seller side of the WWREA Disclosure. However, if the seller is interested in listing their property and purchasing a property, the licensee will need to also review the buyer side with the seller.

SIDE 2 - FOR BUYERS

Side 2 is the buyer side of the WWREA Disclosure. Like the seller side, it has 5 primary sections. Due to the similarities between the form's sides, only a brief description of each of the sections on the buyer side is below. More detail will be given to the differences in the two sides.

Buyer Side - Overview

This form is required for use in all sales transactions, including residential and commercial.

1 → Applies to residential and commercial sales

2 → Notes and notices

3 → Agency options & explanations (to be checked by broker)

4 → Reference to Q&A brochure

5 → Signatures

1. Residential and Commercial Sales

Like the seller side, the buyer side has a statement to inform consumers that the form is required in all residential and commercial transactions.



Must I provide and review the WWREA Disclosure with prospective commercial buyers?

Yes. Rule 58A .0104(c) indicates that the WWREA publication is provided and reviewed with every prospective buyer or seller in every real estate sales transaction. This includes residential and commercial transactions.

2. Notes and Notices

A series of notes and notices appear at the top of the disclosure that are identical to the seller side.

3. Agency Options and Explanations

Like the seller side, the buyer side includes a list of agency options available for buyers, and the licensee should check and explain all options offered by their firm/company.

Buyer Agency

This subsection will be checked by the licensee if the firm/company offers buyer agency. The form explains*:

If you agree, the agent who gave you this form (and the agent's firm) would represent you as a buyer agent and be loyal to you. You may begin with an oral agreement, but your agent must enter into a written buyer agency agreement with you before preparing a written offer to purchase or communicating an oral offer for you. The seller would either be represented by an agent affiliated with a different real estate firm or be unrepresented.

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.

Dual Agency

This subsection will be checked by the licensee if their firm/company offers dual agency. The form explains*:

Dual agency will occur if you purchase a property listed by the firm that represents you. If you agree, the real estate firm and any agent with the same firm (company), would be permitted to represent you and the seller at the same time. A dual agent's loyalty would be divided between you and the seller, but the firm and its agents must treat you and the seller fairly and equally and cannot help you gain an advantage over the other party.*

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.

Designated Dual Agency

This subsection will be checked by the licensee if the firm/company offers designated dual agency. The form explains*:

If you agree, the real estate firm would represent both you and the seller, but the firm would designate one agent to represent you and a different agent to represent the seller. Each designated agent would be loyal only to their client.*

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.

Unrepresented Buyer (Seller subagent)

This subsection will be checked by the licensee if the licensee is representing a seller and an unrepresented buyer contacts them about the seller's property. The licensee would need to explain to the unrepresented buyer that they represent only the interests of the seller in the transaction. The form explains:

The agent who gave you this form may assist you in your purchase, but will not be representing you and has no loyalty to you. The agent will represent the seller. Do not share any confidential information with this agent.

*The licensee must explain this relationship and answer the consumer's questions about it versus just relying on the form's explanation.



Does the prospective buyer check the applicable Agency Options on the WWREA Disclosure?

No. The buyer does not check the applicable agency options on the WWREA Disclosure. The licensee checks all of the Agency Options that are offered by the licensee's firm/company. Additionally, the licensee provides an explanation of these Agency Options to the buyer so they can make an informed decision regarding the agency option that is best for them when and if they enter into an agency agreement.



Which relationship type(s) should I check under Agency Options?

The licensee should check all of the Agency Options that are offered by their firm and/or company. Moreover, the licensee should review all of the agency options on the WWREA Disclosure that are checked.



Do I review the Designated Dual Agency option with the prospective buyer?

It depends. If your firm and/or company offers designated dual agency then this agency option should be checked and explained to the buyer.



Where does the Unrepresented Buyer (Seller subagent) initial to indicate that they understand the licensee is working as a seller subagent?

Unlike the former WWREA brochure, there is no box for an unrepresented buyer to initial. The licensee checks Unrepresented Buyer (Seller subagent). The unrepresented buyer is put on notice that the licensee represents the interest of the seller once the Unrepresented Buyer (Seller subagent) option is explained to them by the licensee.

*The unrepresented buyer is informed that the agent is working as a seller subagent during the review of the disclosure. The agent may communicate with the unrepresented buyer further in writing if they so choose to explain their duties as a seller subagent. Also, the contract between the seller and unrepresented buyer will further specify that the agent is working as a seller subagent.

4. Reference to Q&A brochure

Like the seller side, a Note to Buyer appears after the agency options section, as follows:

For more information on an agent's duties and services, refer to the NC Real Estate Commission's "Questions and Answers on: Working With Real Estate Agents" brochure at the [Commission's website](#) (Go to Publications, then Q&A Brochures) or ask an agent for a copy of it.

5. Signature

This section is for the buyer's and licensee's signatures.



Is the buyer entering into an agency agreement when they sign the WWREA Disclosure?

No. The buyer is not entering into an agency agreement with the licensee by signing the Disclosure. Also, the buyer is NOT selecting the type of agency relationship they would like to enter into with the licensee at this time. The licensee is simply disclosing and explaining the agency options that are offered by the firm and/or company.



What if the buyer refuses to sign the WWREA Disclosure?

If the buyer refuses to sign the disclosure, the licensee should note on the WWREA Disclosure the buyer's refusal to sign and provide their signature. Additionally, the licensee must provide the buyer a copy of the disclosure and retain a copy for their records.



Do I provide the buyer with a copy of the WWREA Disclosure?

Yes. The licensee must provide the buyer with a copy of the WWREA Disclosure per License Law and Commission Rule 58A .0104(c). The Commission does not dictate the format (e.g. hard copy or electronic version) of the WWREA disclosure the licensee provides to the buyer.



Do I need to review the "For Sellers" side with the prospective buyer?

It depends. If the buyer is only purchasing property, the licensee is only required to review the buyer side of the WWREA Disclosure. However, if the buyer is also interested in listing a property, then the licensee will need to also review the seller side with the buyer.

RULE 58A .0104(C) HAS NOT CHANGED

The requirements for licensees as specified in Rule 58A .0104(c) have not changed.

Specifically, Rule 58A .0104(c) still requires licensees to provide and review the “Working With Real Estate Agents” publication with ALL prospective buyers and sellers at first substantial contact. The publication referenced in the rule is now the *WWREA Disclosure*.



What does “provide and review” mean?

This rule still requires the licensee to do more than just give the disclosure to the prospective buyer or seller to read, attach the disclosure to an email, or insert a link in the signature line of their email.

The licensee is required to provide and review the WWREA disclosure in all real estate sales transactions. The licensee must explain the following to the prospective buyer or seller:

- the notes/notices section,
- the agency options section,
- the note to seller and/or note to buyer sections, and
- the request for signature(s) of every prospective buyer or seller.

Once the disclosure has been provided and reviewed, the licensee needs to reach an agreement with the prospective buyer or seller regarding whether the licensee will work with them as their agent or the agent of another party.



What is “First Substantial Contact?”

First substantial contact is defined in Rule 58A .0104(c) as:

- contact between a licensee and consumer where the consumer or licensee begins to act as though an agency relationship exists; and
- the consumer begins to disclose personal/confidential information to the licensee.

Put simply, first substantial contact occurs at the point in time when a prospective buyer or seller begins to share information that could harm their negotiating position. Examples of personal/confidential information include:

- financial circumstances, such as buyer loan preapproval amount;
- family situations, such as divorce; or
- employment situations, such as starting a new job.



What if First Substantial Contact does not happen face-to-face?

Under Rule 58A .0104(c), if first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means, the licensee is required “at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication [disclosure] to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter.”

In other words, the licensee must get a copy to the consumer within 3 calendar days and find a way to review the publication. Simply forwarding a copy of the publication is not enough.

BEST PRACTICES: The agent should develop a plan on how to discuss the WWREA Disclosure with the prospective buyer or prospective seller when first substantial contact occurs during a conversation.

WWREA Disclosure: Record Retention

Pursuant to Rule 58A .0108(a), licensees shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed or terminated. Also, 58A .0108(b)(8) specifies that disclosure documents must be retained. Thus, the WWREA Disclosure must be retained by the licensee and by the firm/company.

The WWREA Disclosure must be retained for three years after:

- all funds held by the licensee in connection with the transaction have been disbursed to the proper party or parties, or
- conclusion of the transaction,

whichever occurs later.

If a licensee’s agency agreement expires or is terminated without a sale, the licensee shall retain a copy of the disclosure form for three years after:

- the expiration or termination of the agency agreement, or
- the buyer agent stops working with the buyer, or
- the disbursement of all funds held by or paid to the licensee in connection with the transaction

whichever occurs later.



Roy calls ABC Realty to inquire about hiring a buyer agent because he found property in Selma that he would like to purchase. Julie, a real estate broker with ABC Realty, is on desk duty. Julie advises Roy that she can meet him at the property. Once Roy and Julie arrive at the property, Roy begins to share his budget and preapproval amount with Julie. Julie immediately stops Roy and provides and reviews the WWREA Disclosure. Julie writes her name, license number, and firm name on the disclosure form. Roy also signs and dates the form.

Do Commission rules require Julie to provide a hard copy to Roy?

THE NEW BROCHURE: “QUESTIONS AND ANSWERS ON: WORKING WITH REAL ESTATE AGENTS”

The Commission transformed the old WWREA brochure into a new Q&A brochure titled “Questions & Answers on: Working With Real Estate Agents.” The brochure includes expanded content and is an additional resource for licensees and consumers.

The Commission recommends licensees familiarize themselves with the content and share the Q&A brochure with prospective buyers and sellers as an additional resource when providing and reviewing the WWREA Disclosure.

Expanded Content

The Q&A brochure includes all information that was part of the former brochure such as:

- the types of agency relationships;
- the duties to the seller;
- the duties to the buyer; and
- compensation of licensees.

Newly-added content includes:

- a statement highlighting the Commission's commitment to Racial Equity and Fair Housing,

The Commission is committed to the principles of excellence, fairness, and respect for all people. It is our goal to ensure that brokerage activities are conducted in fairness to all and to end discrimination in the sale or rental of all real estate. In residential sales and rental transactions, agents must comply with the Fair Housing Act which prohibits discrimination on the basis of the race, color, religion, sex, national origin, handicap, or familial status of any party or prospective party. For more information on the NC Fair Housing Act, click [here](#).

- an explanation of broker compensation,

Question: How is a buyer agent compensated?

Answer: A buyer agent can be compensated in different ways. For example, you can pay the agent out of your own pocket. Or the agent may seek compensation from the seller or listing firm first, but require you to pay if the listing firm refuses. Whatever the case, be sure your compensation arrangement with your buyer agent is clearly indicated in a buyer agency agreement before you make an offer to purchase property and that you carefully read and understand the compensation provision.

- information regarding the expiration of agency agreements for buyers,

Question: What happens if the buyer agency agreement expires?

Answer: If the buyer agency agreement expires after you entered into a contract to purchase a property, then your agent may continue to represent you through the date of the closing and you may be responsible for compensating the firm in accordance with the provisions of the buyer agency agreement. If you are not under contract to buy a property when your buyer agency agreement expires, then your agent must immediately stop representing you unless you first enter into a new buyer agency agreement with the agent."

- information regarding the expiration of agency agreements for sellers,

Question: What happens if the listing agreement expires?

Answer: If the listing agreement expires after you enter into a contract to sell your property, then the listing agent and firm may continue representing you through the date of the closing and you may be responsible for compensating the listing firm in accordance with the provisions of the listing agreement. If the listing agreement expires without your property going under contract, then the listing agent and firm must immediately stop marketing your property unless you first enter into a new listing agreement with the firm.

- information regarding whether or not an agency agreement may be terminated, and

Question: If I hire a real estate agent or firm to represent me, can I terminate the agency agreement before it expires?"?

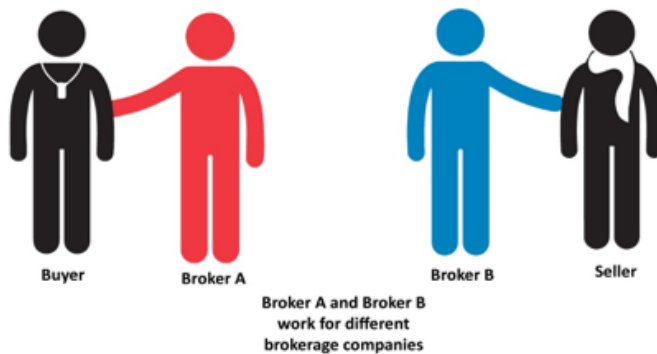
Answer: Maybe. An agency agreement is a contract between a buyer or seller and a real estate firm. Most agency agreements do not contain a provision allowing a buyer or seller to terminate the agreement before it expires without the consent of the other party. Generally, one party cannot terminate the agreement without the consent of the other party. If you and the firm both agree to terminate the agreement, then you both should sign a written agency termination agreement. If the agent asks for compensation in exchange for terminating the agreement, then you can agree or disagree or try to negotiate the amount of compensation. If an agency agreement contains a penalty or fee for early termination, the provision specifying the penalty or fee must be set forth in a clear and conspicuous manner. If you are not able to reach an agreement on the termination of the agency agreement, then you may consult your own attorney or simply wait until the agency agreement expires. The Real Estate Commission does not have the authority to terminate agency agreements or to force a real estate agent to terminate an agreement."

- agency diagrams (e.g. buyer agency and seller agency, dual agency, and designated dual agency) for consumers who prefer a visual format.

Agency Diagrams

The agency diagrams are provided to assist prospective buyers and sellers with understanding the various agency relationships that may be offered by a firm and/or company.

Buyer Agency and Seller Agency



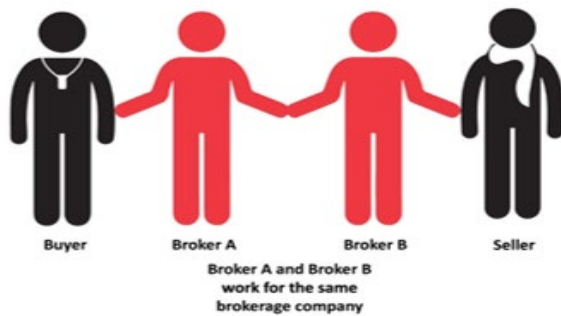
This diagram is an example of two brokers working for two different firms. Broker A and their firm represents the buyer. Broker B and their firm represent the seller. This agency diagram is a typical example of a co-brokerage transaction.

Dual Agency



This diagram shows one broker and/or sole practitioner who works for both the buyer and seller in the same transaction. Both the prospective buyer and prospective seller must consent and provide written authority to the broker and/or sole practitioner to engage in dual agency.

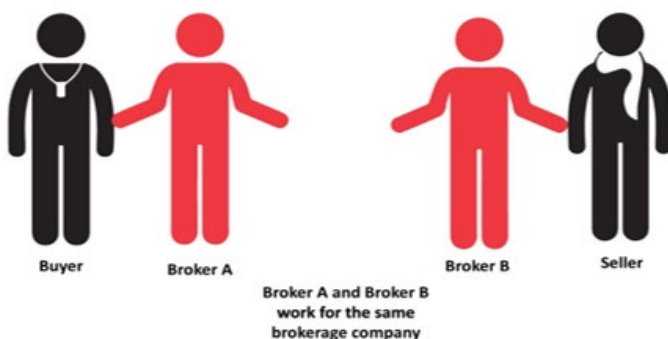
Dual Agency



This diagram is an example of the most common form of dual agency. This example displays two brokers who are both affiliated with the same firm and/or company. Broker A is working directly with the buyer and Broker B is working directly with the seller. The firm and/or company and all of its brokers represent both the buyer and the seller. The brokers have divided loyalty between the buyer and seller. Both the prospective buyer and seller must consent and provide written authority for the firm and/or company to engage in dual agency.

***IMPORTANT NOTE:** If there are two agents affiliated with the same firm representing the buyer and seller in the transaction, this is considered dual agency. Although Broker A and Broker B work for the same firm, they have not been designated to represent only the interest of the buyer and/or seller. Designated dual agency does not exist automatically *unless* it is stated in the written office policies.

Designated Dual Agency



This diagram displays a space between Broker A and Broker B. Broker A and Broker B work for the same firm and/or company and the firm/company represents both the buyer and seller in the same transaction. However, Broker A has loyalty only to the Buyer and Broker B has loyalty only to the seller.

Although the buyer and seller are both clients of the firm/company, the buyer has a designated agent and the seller has a designated agent. The designated agents represent only the interests of their respective clients. Also, both the prospective buyer and seller must consent and provide their written authority to the firm/company to practice designated dual agency.

In order for a firm/company and its affiliated brokers to legally engage in designated agency, the designated brokers must NOT have/know confidential information about the opposing parties prior to designation. In other words, the agent designated for the buyer must not have/know confidential information about the seller, and vice versa.

WHEN MUST LICENSEES BEGIN USING THE NEW FORM?

Licensees were required to begin using the WWREA Disclosure form with all prospective buyers and sellers in all real estate sales transaction effective July 1, 2021.

The WWREA Disclosure can be viewed and downloaded online. To access it:

1. go to www.ncrec.gov;
2. click on the *Publications* menu;
3. click on *Publications* in the dropdown list;
4. click on Disclosure Forms; and
5. scroll down to the “Working with Real Estate Agents Disclosure Form (required effective July 1, 2021)” and click on either *English* and/or *Spanish PDF*.

As stated previously, the Commission strongly encourages each licensee to provide prospective buyers and sellers with a copy of the “Questions and Answers on: Working with Real Estate Agents” brochure as a supplemental resource to the WWREA Disclosure when explaining the agency options and brokerage services, etc. To access the Q&A brochure:

1. go to www.ncrec.gov;
2. click on the *Publications* menu;
3. click on *Publications* in the dropdown list;
4. click on Q&A Brochures;
5. scroll down to “Working with Real Estate Agents (Required Effective July 1, 2021)”;
6. select one of the links to either purchase or download the brochure.

Questions regarding the WWREA Disclosure and/or the Q&A brochure should be sent to the Commission’s Regulatory Affairs Division at regulatoryaffairs@ncrec.gov.

ANSWER TO DISCUSSION QUESTIONS

For Discussion on Page 1

1. Chris saw a property listed by ABC Realty in Asheville that he is interested in purchasing. He calls the firm and inquires whether the property is still available. Stan, the listing agent, indicates the property is still on the market and is listed at \$675,000. Chris tells Stan that he is preapproved for \$713,000, and would like to submit an offer on the property.

Has first substantial contact occurred? Why or why not?

Answer: Yes, first substantial contact occurred when Chris told Stan the amount of his mortgage approval.

What mandatory disclosure must Stan review with Chris?

Answer: Stan must review the WWREA Disclosure with Chris.

2. Alicia attends an open house in Fuquay-Varina. She is not represented by a real estate agent. Alicia enters the house and is immediately impressed by the floorplan. She asks Don, the listing agent, if the house is available for a quick move-in. Don says, "Yes," and Alicia is enthused. She tells Don she needs to purchase a home within 30 days to start a new job and will send an offer to him by the end of the day.

Has first substantial contact occurred?

Answer: Yes, first substantial contact occurred when Alicia told Don she needs to purchase a home within 30 days.

What must Don do at this point to comply with License Law and Commission rules?

Answer: Don must review the WWREA Disclosure with Alicia.

3. Felicia has reviewed and explained the WWREA disclosure and her fiduciary duties to Corey, a prospective buyer, but he still has additional questions regarding compensation and the specific duties of a buyer agent.

What additional resource can Felicia provide to Corey?

Answer: Felicia can provide the "Questions & Answers on: Working With Real Estate Agents" brochure to Corey.

For Discussion on Page 8

Sonya is a broker with XYZ Realty. Fran, a seller, asks Sonya to list her home. During the listing meeting, Sonya takes out the WWREA Disclosure and shows the Seller Side to Fran. Sonya says, "I have to provide this form to you so you can choose which agency option you want. Our company has a lot of buyers that may be interested in your house, so your best options are dual and designated agency. That way, you won't miss out on those buyers. I'll explain how it all works when

we get an offer.” Sonya checks the dual and designated agency options, signs the form, and passes it to Fran to sign. When she returns to the office later that day, Sonya scans the signed WWREA disclosure and emails a copy to Fran per the firm policy.

Did Sonya comply with the requirements in Commission Rule 58A .0104(c)? Why or why not?

Answer: No. Commission Rule 58A .0104(c) dictates that brokers must provide and review the WWREA publication. Even though Sonya showed the form to Fran and asked her to sign it, Sonya did not take time to explain it. Sonya should have taken time to review each section of the form and to permit Fran to ask questions.

Further, Sonya told Fran that the form was used to choose an agency option, which is inaccurate. The WWREA Disclosure form is a disclosure form, NOT an election form. The WWREA Disclosure form is used to explain ALL options that will be available to prospective buyers and sellers. Consequently, Fran should have taken time to read and explain each of the options that her firm offers to sellers, checked all of those options, and then asked Fran to sign.

After reviewing and signing the WWREA disclosure, Sonya and Fran can discuss a listing agreement, at which time Fran will select types of representation.

For Discussion on Page 18

Roy calls ABC Realty to inquire about hiring a buyer agent because he found a property in Selma that he would like to purchase. Julie, a real estate broker with ABC Realty, was on desk duty. Julie advises Roy that she can meet him at the property. Once Roy and Julie arrive at the property, Roy immediately begins to inform Julie of his budget and preapproval amount. Julie immediately stops Roy and provides and review the WWREA Disclosure. Julie provides her name, license number, and firm name on the disclosure form. Roy also signs and dates the form. Julie must provide a copy to Roy.

Do Commission rules require Julie to provide a hard copy to Roy?

Answer: No. The Commission does not require Julie to provide a hard copy to Roy. The Commission does require the licensee to provide a copy of the WWREA Disclosure to the prospective buyer or seller per Rule 58A .0104(c). The type of copy (e.g., hard copy or electronic version) that is provided to the consumer may be dictated by the firm’s/company’s policies.

NOTE: Safety Tip # 1 in the Commission’s [Safety Brochure](#) is “KNOW WHO YOU ARE DEALING WITH WHEN YOU HAVE NEW CLIENTS OR CUSTOMERS.” Refer to the Brochure for a full discussion of recommended safety protocols.