

NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

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Q. A buyer approached me about submitting an offer on my listing, but they don't have a buyer's agent – am I automatically a dual agent?

A. No. There is nothing automatic about agency relationships. You *may* become a Dual Agent, but your agency relationship with the prospective buyer – if any – depends on several factors. Start by considering your relationship with the seller. Once you have entered into a Listing Agreement with a seller, you owe that seller the fiduciary duties of undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality, and accounting. As a result, you may only enter into Dual Agency if you have obtained informed, written consent from your seller. The buyer is also required to provide informed, written consent to Dual Agency.

If both the seller and buyer consent to Dual Agency, the fiduciary duties owed to each party shift. A dual agent cannot fully satisfy the duties of loyalty, disclosure, and obedience to lawful instructions, A dual agent still fully owes duties of confidentiality of material information and accounting for funds to both parties. If either party to the transaction is uncomfortable with the limitations of Dual Agency, the listing agent may retain their full agency relationship with the seller and treat the buyer as a customer. In that circumstance, the seller's agent has no agency relationship with the buyer but remains obligated to treat all parties honestly. Although there is no agency relationship with the buyer in this situation, you are still obligated to provide the buyer with the Mandatory Real Estate Licensee-Consumer Relationship Disclosure form stating that you are the seller's agent in the transaction.

Q. The listing agent called and told me my buyer's offer was accepted, but before the seller signed it, they accepted a different offer – can they do that?

A. Probably. The Statute of Frauds requires agreements for the sale of land to be in writing and signed by the party against whom enforcement is sought. If the offer from the buyer has not been signed by the seller (the party against whom enforcement would be sought in this situation), an enforceable contract between the parties would not exist. Unless and until an offer is signed by

the seller, that seller is free to enter into a contract with another buyer. This, of course, assumes the buyer's offer has not been accepted through another means, which is a discussion for another month.

As a best practice, listing agents should not relay acceptance of a buyer's offer until the seller has signed.

Q. My seller received a full price offer – they have to accept it, right?

A. No, a seller is free to accept or reject any offer *so long as* their decision does not violate Fair Housing. A seller is never obligated to accept an offer simply because it comes in at full price. There may be other terms in the offer, such as financing, inspections, or closing dates that could make even a full priced offer unappealing to a seller.

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