

RECAD (Real Estate Consumer's Agency & Disclosure Act)

The Alabama Real Estate Commission has approved Alabama Real Estate Institute to teach Real Estate Consumer's Agency & Disclosure Act (RECAD) in every city in Alabama as a class-room course, and/or via the Internet, or by delivery in the form of CD ROM. RECAD is a Commission approved 3-hour (class-room hours) continuing education (CE) elective course that is part of the 15-hours CE credits required for real estate agents to renew their license both as a salesperson or broker.

Placed into Alabama Law by the legislature and enforced by the Alabama Real Estate Commission, beginning October 1, 1996 and following thereafter, **every Alabama licensed real estate Broker/salesperson must disclose at the earliest possibility, to all consumer's inquiring about the purchase, sale, rent or trade of real estate, the representation options available to the consumer**, by an real estate agency. This process is commonly referred to as "RECAD", or "RECADing".

The explanation is one of the most misunderstood laws governing the practice of the professional real estate Brokers & Agents.

Broker and Agent are to know fluently are the following:

- 1. Understand the roles and duties of licensees.**
- 2. Understand the Agency/Brokerage Services Disclosure and the agency/broker office policy.**
- 3. Thoroughly understand the obligations of all licensees.**
- 4. Be able to explain the required services and consequences involving misrepresentation.**
- 5. Distinguish the four brokerage options:**
(Single Agency, Sub-agency, Transaction Broker, and Limited Consensual dual agency).
- 6. Evaluate the agent's fiduciary duties and the licensee's obligations to all parties.**
- 7. Differentiate between clients and customers.**
- 8. Be able to explain disclosure, caveat emptor and disclosure of defects.**
- 9. Evaluate the liabilities of all parties involved in a transaction.**
- 10. Tell the Chronology of RECAD, and what caused RECAD to become law.**

THE REAL ESTATE BROKERAGE SERVICES DISCLOSURE

***Alabama law requires you, the consumer, to be informed about the types of services which real estate licensees may perform. The purpose of this disclosure is to give you a summary of these services.**

A SINGLE AGENT is a licensee who represents only one party in a sale. That is, a single agent represents his or her client. The client may be either the seller or the buyer. A single agent must be completely loyal and faithful to the client.

Note: Adhere to fiduciary laws.

Fiduciary Duties Of A Real Estate Agent

A real estate broker who becomes an agent of a seller or buyer is deemed to be a **fiduciary**. Other examples of fiduciaries are trustees, executors, and guardians.

As a fiduciary, a real estate broker is held by law to owe specific duties to his/her principal (the person who they are representing), **in addition** to duties or obligations set forth in a listing agreement, buyer representation agreement, or other contract of employment. Subagents of the broker also owe the same fiduciary duties to the broker's principal. These specific fiduciary duties include:

- Loyalty
- Obedience
- Disclosure
- Confidentiality
- Reasonable Care and Diligence
- Accounting

Loyalty

One of the most fundamental fiduciary duties an agent owes to the principal. The duty obligates a real estate broker to act at all times, solely in the best interests of the principal, excluding all other interests, including that of the broker.

An example of breach of loyalty is when a broker purchases a property listed with his/her firm, and immediately resells it at a profit. Such conduct is usually considered appropriate and lawful by persons who act at arms length, but a fiduciary would be considered to have stolen an opportunity for profit that rightfully belongs to the principal.

Sellers Agent	Exclusive Buyer's Agent
Must do everything possible to gain an advantage for the Seller.	Must do everything possible to gain an advantage for the Buyer.

Obedience

An agent is obligated to promptly and efficiently obey all lawful instructions of his/her principal that conform to the purpose of the agency relationship. However, the duty does not include an obligation to obey unlawful instructions, such as instructions to not market a property to minorities or to misrepresent the condition of a property.

Sellers Agent	Exclusive Buyer's Agent
Must obey all lawful instruction of the	Must obey all lawful instruction of the

Seller, is not obligated to obey instructions from the Buyer.	Buyer, is not obligated to obey instructions from the Seller.
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Disclosure

An agent must disclose to the principal all known relevant and material information that pertains to the scope of the agency. The duty includes any facts affecting the value or desirability of the property, as well as any other relevant information pertaining to the transaction, such as the other party's bargaining position, the identity of all potential purchasers, information concerning the ability or willingness of the buyer to offer a higher price, any intent to subdivide or resell the property for a profit.

An agent's duty of disclosure to his/her principal must not be confused with a real estate broker's duty to disclose any know material facts about the property value to non-principals. The duty to disclose known material facts is based on a real estate broker's duty to treat all persons honestly. The duty of honesty does not depend on the existence of an agency relationship.

<i>Sellers Agent</i>	<i>Exclusive Buyer's Agent</i>
<p>Must reveal any known material defects in the property.</p> <p>Must NOT reveal information about traffic problems, poor school system, declining property values, etc. since these items might make the property less desirable to Buyers.</p>	<p>Must tell Buyer everything they can find out about the Seller including the motivation for selling and any reasons the Seller may have for wanting a quick sale.</p> <p>Must tell Buyer everything they can find out about the property, including traffic problems, poor school system, high crime rates, etc.</p>

Confidentiality

An agent is obligated to safeguard his/her principal's lawful confidences and secrets. Therefore, a real estate broker must keep confidential any information that may weaken a principal's bargaining position. The duty of confidentiality precludes a broker who represents a seller from disclosing to a buyer that the seller can, or must, sell a property below the listed price. Conversely, a broker who represents a buyer is prohibited from disclosing to a seller that the buyer cannot will, pay more than what has been offered for a property.

The duty of confidentiality does not include an obligation by a broker who represents a seller to withhold know material facts about the condition of the seller's property from the buyer, or to misrepresent the property's condition. To do so; constitutes misrepresentation and impose liability on both the broker and the seller.

<i>Sellers Agent</i>	<i>Exclusive Buyer's Agent</i>
<p>Must tell the Seller everything they can find out about the Buyer, including all financial details they can obtain.</p> <p>Must conceal anything about the Seller that would help the Buyer gain an advantage, such as impending foreclosure, need to move in a hurry, need to sell to settle divorce, etc.</p>	<p>Must keep all information about the Buyer confidential, including the Buyer's ability or willingness to pay more for the property than they are offering as well as the Buyers motivation for buying.</p>

Reasonable Care and Diligence

An agent is obligated to use reasonable care and diligence when pursuing the principal's affairs. The standard of care expected of a buyer's or seller's real estate broker is that of a competent real estate professional. By reason of his/her license, a broker is

considered to have skill and expertise in real estate matters superior to that of the average person.

As an agent who represents others in their real estate dealings, a broker or salesperson is under a duty to use superior skill and knowledge while pursuing the principal's affairs. However, no broker is expected to perform tasks or know information outside the scope of his/her real estate license. Real estate licensees are not expected to perform services normally provided by engineers, lawyers, accountants, or other professionals. If concerns arise outside the scope of a broker's responsibility, the broker should acknowledge that and suggest that the principal seek assistance from a reliable outside source.

<i>Sellers Agent</i>	<i>Exclusive Buyer's Agent</i>
Must prepare themselves through education and study to competently represent the Seller in all matters.	Must prepare themselves through education and study to competently represent the Buyer in all matters.

Accounting

An agent is obligated to account for all money or property that belongs to his/her principal entrusted to that agent. The duty compels a real estate broker to safeguard any money, deeds, or other documents entrusted to them relative to their client's transactions of affairs.

<i>Sellers Agent</i>	<i>Exclusive Buyer's Agent</i>
Must account to Seller for any money or documents entrusted to them.	Must account to Buyer for any money or documents entrusted to them.

**** Continuing with other types of representation within the Alabama Real Estate Consumer's Agency & Disclosure Act

A SUBAGENT is another agent/licensee who also represents only one party in a sale. A subagent helps the agent represent the same client. The client may be either the seller or the buyer. A subagent must also be completely loyal and faithful to the client.

A LIMITED CONSENSUAL DUAL AGENT is a licensee for both the buyer and the seller. This may only be done with the written, informed consent of all parties. This type of agent must also be loyal and faithful to the client, except where the duties owed to the clients conflict with one another.

A TRANSACTION BROKER assists one or more parties, **who are customers**, in a sale. **A transaction broker is not an agent and does not perform the same services as an agent.**

***Alabama law imposes the following obligations on all real estate licensees to all parties, no matter their relationship:**

1. To provide services honestly and in good faith;

2. To exercise reasonable care and skill;
3. To keep confidential any information gained in confidence, unless disclosure is required by law or duty to a client, the information becomes public knowledge, or disclosure is authorized in writing;
4. Present all written offers promptly to the seller;
5. Answer your questions completely and accurately.

Further, even if you are working with a licensee who is not your agent, there are many things the licensee may do to assist you.

Some examples are:

1. Provide information about properties;
2. Show properties;
3. Assist in making a written offer;
4. Provide information on financing.

You “The Customer” should choose which type of the services you want from a licensee, and sign a brokerage service agreement. If you do not sign an agreement, by law the licensee working with you is a transaction broker. Please read again what a “Transaction Broker” is and what you will receive from this type of representation!

The licensee's broker is required by law to have on file an office policy describing the company's brokerage services. You should feel free to ask any questions you have.

EDDINS Properties LLC and Ron adheres to the strict laws and rules of our profession and will take the necessary time to explain and give each customer thorough details and information needed to satisfy the customer's questions, before asking to become their Agent of representation in the business of real estate! We desire having each customer and eventually client knowledgeable of the workings and procedure either it being selling or purchasing real estate.

EDDINS Properties and Ron are the names you can trust and depend on for purchasing or selling real estate! Our Client's needs, **truly comes first!**

This message is being given to you from Ron Hidalgo and Liston Eddins, and we appreciate your consideration becoming our life long Client. And your Client needs always comes first!

Ron Hidalgo, Realtor®/Broker associate / **Liston Eddins**, Realtor®/Broker/Owner