

Which Form to Use?

AREA Forms Comparison Chart

A relationship with a buying consumer can be created through one of the following forms. Use this chart to decide what kind of relationship is best suited to the situation. The relationship form that suits both the needs of the consumer and the business practices of the REALTOR® will become clearer as you review the features of each form. For further information, review AREA's article: *Buyer Relationship Forms - Which One to Use?*

Topic	Exclusive Buyer Representation Agreement	Non-Exclusive Buyer Representation Agreement	Customer Acknowledgment
Agency	Both the Exclusive and Non-Exclusive Representation Agreements establish an agency relationship. As an agent, the REALTOR® owes the client the duties of agency, including loyalty, confidentiality, disclosure, obedience, care and skill and full accounting. (See RECA's Consumer Relationships Guide.)		The Customer Acknowledgment form establishes a customer relationship, where the customer has no agency representation.
Agency Model	Because both agreements create agency, the form used must match the type of agency practiced by the brokerage - either designated or common law agency.		Because no agency is created, the form can be used in both designated and common law agency brokerages.
Brokerage Responsibilities	Both the Exclusive and Non-Exclusive Representation Agreements detail the responsibilities of the brokerage and the brokerage representatives.		The Customer Acknowledgment form details some responsibilities, which are fewer than in the Representation Agreements. RECA's Consumer Relationships Guide details these as: act honestly, use reasonable care and skill, ensure information given is correct.

Buyer Loyalty	The Exclusive Representation Agreement establishes buyer-client loyalty. The form states to the buyer: <i>“you cannot appoint anyone else as your agent or representative with the same search criteria during this agreement.”</i>	The Non-Exclusive Representation Agreement does not establish buyer-client loyalty. Instead, the buyer is advised that: <i>“Since this is a non-exclusive relationship, you may enter into a representation agreement with another brokerage for the same search criteria during this agreement.”</i>	Neither the customer nor the REALTOR® owes loyalty to each other.
Fee: Agreement	The Exclusive Representation Agreement provides for the REALTOR® to receive a fee and details how the fee may be paid, when it is payable and when it is not payable. The fee agreement establishes the amount of fee the REALTOR® and buyer have decided is fair.	The Non-Exclusive Agreement indicates entitlement to a fee; however, the buyer-client is advised that <i>“You will not be responsible for payment of our fee in any circumstances.”</i> The REALTOR®’s fee is unknown.	There is no fee agreement. Instead the customer is informed that: <i>“You do not pay a fee to us for any of our services.”</i>
Fee: Authorization to seek fee from seller	Both the Exclusive and Non-Exclusive Representation Agreements provide for the client’s authorization to seek a fee from the seller’s brokerage or the seller, if unrepresented. This method of fee payment is common in residential real estate.		Because there are no fiduciary duties to a buyer customer, the REALTOR® needs no authorization to obtain a fee.
Fee: Disclosure of Fee	Because the details of the fee are included in the Exclusive Representation Agreement, the fee disclosure requirements are met, provided a seller-paid fee does not differ (see Different than Agreed).	If a fee is earned from the seller, the REALTOR® must disclose the amount. Because the potential fee is unknown until a property is found or negotiations are completed, the disclosure must occur as soon as possible.	There are limited responsibilities to a customer, therefore, if a fee is earned, there is no requirement to disclose.
Fee: Different than Agreed	The fee has been agreed and disclosed (see Disclosure of Fee). However, further disclosure will be	The REALTOR® and buyer have no fee agreement. Therefore, there is no overage or shortage amount.	There is no fee agreement. Therefore, there is no overage or shortage amount. There is no

	required if the fee is paid by the seller and the amount differs from the Agreement. If a seller-paid fee is more than agreed with the buyer-client, the overage will go to the buyer and if it is less, the buyer will pay the shortage.	The amount received must be disclosed to the client when it is known.	requirement to disclose the amount to the customer.
Fee: Disclosure of bonus/gift	The REALTOR® must also disclose any potential bonuses and gifts and get the client's written consent to the payment.		No disclosure of a bonus or gift is required.
Fee: Retainer	The option to negotiate a retainer is contained within the fee section of the Exclusive Representation Agreement.	As there is no fee agreement, there is no retainer option.	
Fee: Expenses	Both the Exclusive and Non-Exclusive Agreements provide a section where reasonable expenses to be reimbursed can be detailed as agreed.		No reimbursement of reasonable expenses.
Confidential Information	The client's confidential information must be protected by the agent. Both the Exclusive and Non-Exclusive Representation Agreements describe how this will occur and obtain client consent for release of certain information necessary to facilitate the transaction and for specific statistical purposes.		The REALTOR® has no duty to protect the confidential information of a customer. Best practice is to advise a customer to NOT disclose information that they do not want shared.
Begin and End	Both the Exclusive and Non-Exclusive Representation Agreements provide for when the agreement begins and when it ends.		The Customer Acknowledgment is not an agreement, therefore, has no beginning and end date.