



California Association of Business Brokers
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Agency Disclosure and Agreement

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Table with 2 columns and 2 rows, containing the word 'Date' in the top right cell.

BUSINESS \_\_\_\_\_ BROKER VR Business Brokers \_\_\_\_\_

Agency and Dual Agency: On the reverse of this form is printed a portion of California Civil Code section 2079.16, which requires disclosure of some concepts and definitions concerning the relationship between a principal and an agent in the sale of certain residential real estate.

When a broker lists a business for sale, the broker becomes an "agent" representing the seller. The same broker also often works with prospective buyers, and by the nature of that relationship, becomes a buyer's agent as well; this is called "dual agency."

Full Disclosure: Under California law, the buyer and the seller of a business are each required to fully and fairly disclose to the other, any and all information which is known to that party, or reasonably should be known, and which may or will be "material" to the other party's decision to enter into the transaction.

Price and Valuation: There is an exception to the rule that a dual agent must disclose all information in his or her possession. In representing both seller and buyer, the agent shall not, without the express permission of the respective party, disclose to the other party that the seller will accept a price less than the asking price or that the buyer will pay a price greater than the price offered.

Acknowledgment of Disclosure and Agreement to Dual Agency: Each party, by signing below, acknowledges and agrees that:

- 1. The party has carefully read and fully understands the matters discussed above, as well as the language of the statute quoted on the reverse of this form, and has had the opportunity to ask questions and/or to seek the advice of legal counsel prior to signing below.
2. The Seller consents and agrees that the Broker representing said party may, in his discretion, act as an agent for any buyer or prospective buyer as well as for the Seller, as explained above and on the reverse hereof, and agrees to the conditions stated above.
3. The Buyer consents and agrees that the Broker representing the Seller will continue to do so even though said Broker will also represent the Buyer as a dual agent, understands all of the information stated above and on the reverse hereof and consents to such dual agency.

THIS FORM MAY BE SIGNED IN COUNTERPARTS. NOT ALL SIGNATURES ARE REQUIRED TO APPEAR ON THE SAME COPY. FACSIMILE SIGNATURES ARE ACCEPTABLE AND BINDING.

SELLER(S):

BUYER(S):

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (print) \_\_\_\_\_

Name (print) \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (print) \_\_\_\_\_

Name (print) \_\_\_\_\_

Agent for Seller \_\_\_\_\_ Date \_\_\_\_\_

Agent for Buyer \_\_\_\_\_ Date \_\_\_\_\_

**SELLER'S AGENT:** When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

**BUYER'S AGENT:** An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

**AGENT REPRESENTING BOTH SELLER AND BUYER:** A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

BUSINESS NAME \_\_\_\_\_

\_\_\_\_\_  
Initials    initials    initials    initials