

# AGENCY RELATIONSHIPS IN REAL ESTATE TRANSACTIONS

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2. **MINNESOTA LAW REQUIRES** that early in any relationship, real estate brokers or salespersons discuss with  
3. consumers what type of agency representation or relationship they desire.<sup>(1)</sup> The available options are listed below. This  
4. is **not** a contract. **This is an agency disclosure form only. If you desire representation you must enter into a**  
5. **written contract, according to state law** (a listing contract or a buyer/tenant representation contract). Until such time  
6. as you choose to enter into a written contract for representation, you will be treated as a customer and will not receive  
7. any representation from the broker or salesperson. The broker or salesperson will be acting as a Facilitator (see  
8. paragraph IV on page two (2)), unless the broker or salesperson is representing another party, as described below.

9. **ACKNOWLEDGMENT: I/We acknowledge that I/we have been presented with the below-described options.**  
10. **I/We understand that until I/we have signed a representation contract, I/we am/are not represented by the**  
11. **broker/salesperson. I/We understand that written consent is required for a dual agency relationship.**

12. **THIS IS A DISCLOSURE ONLY, NOT A CONTRACT FOR REPRESENTATION.**

13. \_\_\_\_\_  
(Signature) (Date) (Signature) (Date)

14. I. **Seller's/Landlord's Broker:** A broker who lists a property, or a salesperson who is licensed to the listing broker,  
15. represents the Seller/Landlord and acts on behalf of the Seller/Landlord. A Seller's/Landlord's broker owes to  
16. the Seller/Landlord the fiduciary duties described on page two (2).<sup>(2)</sup> The broker must also disclose to the Buyer  
17. material facts as defined in MN Statute 82.68, Subd. 3, of which the broker is aware that could adversely and  
18. significantly affect the Buyer's use or enjoyment of the property. (MN Statute 82.68, Subd. 3 does not apply to  
19. rental/lease transactions.) If a broker or salesperson working with a Buyer/Tenant as a customer is representing the  
20. Seller/Landlord, he or she must act in the Seller's/Landlord's best interest and must tell the Seller/Landlord any  
21. information disclosed to him or her, except confidential information acquired in a facilitator relationship (see paragraph  
22. IV on page two (2)). In that case, the Buyer/Tenant will not be represented and will not receive advice and counsel  
23. from the broker or salesperson.

24. II. **Buyer's/Tenant's Broker:** A Buyer/Tenant may enter into an agreement for the broker or salesperson to represent  
25. and act on behalf of the Buyer/Tenant. The broker may represent the Buyer/Tenant only, and not the Seller/Landlord,  
26. even if he or she is being paid in whole or in part by the Seller/Landlord. A Buyer's/Tenant's broker owes to the  
27. Buyer/Tenant the fiduciary duties described on page two (2).<sup>(2)</sup> The broker must disclose to the Buyer material facts  
28. as defined in MN Statute 82.68, Subd. 3, of which the broker is aware that could adversely and significantly affect  
29. the Buyer's use or enjoyment of the property. (MN Statute 82.68, Subd. 3 does not apply to rental/lease transactions.)  
30. If a broker or salesperson working with a Seller/Landlord as a customer is representing the Buyer/Tenant, he or  
31. she must act in the Buyer's/Tenant's best interest and must tell the Buyer/Tenant any information disclosed to him  
32. or her, except confidential information acquired in a facilitator relationship (see paragraph IV on page two (2)). In  
33. that case, the Seller/Landlord will not be represented and will not receive advice and counsel from the broker or  
34. salesperson.

35. III. **Dual Agency - Broker Representing both Seller/Landlord and Buyer/Tenant:** Dual agency occurs when one  
36. broker or salesperson **represents both parties to a transaction**, or when two salespersons licensed to the same  
37. broker each represent a party to the transaction. Dual agency requires the informed consent of all parties, and  
38. means that the broker and salesperson owe the same duties to the Seller/Landlord and the Buyer/Tenant. This  
39. role limits the level of representation the broker and salesperson can provide, and prohibits them from acting  
40. exclusively for either party. In a dual agency, confidential information about price, terms and motivation for pursuing  
41. a transaction will be kept confidential unless one party instructs the broker or salesperson in writing to disclose  
42. specific information about him or her. Other information will be shared. Dual agents may not advocate for one party  
43. to the detriment of the other.<sup>(3)</sup>

44. Within the limitations described above, dual agents owe to both Seller/Landlord and Buyer/Tenant the fiduciary  
45. duties described below.<sup>(2)</sup> Dual agents must disclose to Buyers material facts as defined in MN Statute 82.68, Subd.  
46. 3, of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the  
47. property. (MN Statute 82.68, Subd. 3 does not apply to rental/lease transactions.)

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49. IV. **Facilitator:** A broker or salesperson who performs services for a Buyer/Tenant, a Seller/Landlord or both but  
50. does not represent either in a fiduciary capacity as a Buyer's/Tenant's Broker, Seller's/Landlord's Broker or Dual  
51. Agent. **THE FACILITATOR BROKER OR SALESPERSON DOES NOT OWE ANY PARTY ANY OF THE FIDUCIARY**  
52. **DUTIES LISTED BELOW, EXCEPT CONFIDENTIALITY, UNLESS THOSE DUTIES ARE INCLUDED IN A**  
53. **WRITTEN FACILITATOR SERVICES AGREEMENT.** The facilitator broker or salesperson owes the duty of  
54. confidentiality to the party but owes no other duty to the party except those duties required by law or contained in  
55. a written facilitator services agreement, if any. In the event a facilitator broker or salesperson working with a Buyer/  
56. Tenant shows a property listed by the facilitator broker or salesperson, then the facilitator broker or salesperson  
57. must act as a Seller's/Landlord's Broker (see paragraph I on page one (1)). In the event a facilitator broker or  
58. salesperson, working with a Seller/Landlord, accepts a showing of the property by a Buyer/Tenant being represented  
59. by the facilitator broker or salesperson, then the facilitator broker or salesperson must act as a Buyer's/Tenant's  
60. Broker (see paragraph II on page one (1)).

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61. (1) This disclosure is required by law in any transaction involving property occupied or intended to be occupied by  
62. one to four families as their residence.

63. (2) The fiduciary duties mentioned above are listed below and have the following meanings:

64. **Loyalty** - broker/salesperson will act only in client(s)' best interest.

65. **Obedience** - broker/salesperson will carry out all client(s)' lawful instructions.

66. **Disclosure** - broker/salesperson will disclose to client(s) all material facts of which broker/salesperson has knowledge  
67. which might reasonably affect the client(s)' use and enjoyment of the property.

68. **Confidentiality** - broker/salesperson will keep client(s)' confidences unless required by law to disclose specific  
69. information (such as disclosure of material facts to Buyers).

70. **Reasonable Care** - broker/salesperson will use reasonable care in performing duties as an agent.

71. **Accounting** - broker/salesperson will account to client(s) for all client(s)' money and property received as agent.

72. (3) If Seller(s)/Landlord(s) elect(s) not to agree to a dual agency relationship, Seller(s)/Landlord(s) may give up the  
73. opportunity to sell/lease the property to Buyer(s)/Tenant(s) represented by the broker/salesperson. If Buyer(s)/  
74. Tenant(s) elect(s) not to agree to a dual agency relationship, Buyer(s)/Tenant(s) may give up the opportunity to  
75. purchase/lease properties listed by the broker.

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76. **NOTICE REGARDING PREDATORY OFFENDER INFORMATION:** Information regarding the predatory offender  
77. registry and persons registered with the predatory offender registry under MN Statute 243.166 may be  
78. obtained by contacting the local law enforcement offices in the community where the property is located,  
79. or the Minnesota Department of Corrections at (651) 361-7200, or from the Department of Corrections Web site at  
80. [www.corr.state.mn.us](http://www.corr.state.mn.us).

MN:AGCYDISC-2 (8/19)

**BUYER REPRESENTATION  
CONTRACT: EXCLUSIVE**

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- 1. Date \_\_\_\_\_
- 2. Page 1 of \_\_\_\_\_ pages

3. **DEFINITIONS:** Buyer is \_\_\_\_\_ (“Buyer”).  
(e.g., individual(s), estate, trust, corporation, etc.)

4. Broker is The Home Buyers, Inc. (“Broker”).  
(Real Estate Company Name)

5. Buyer gives Broker the exclusive right to locate and/or to assist in negotiations for the purchase, exchange of or option to purchase (“Purchase”) property at a price and with terms acceptable to Buyer. This Contract starts on \_\_\_\_\_, and ends at 11:59 P.M. on \_\_\_\_\_.

6. This Contract terminates upon successful closing of a property or expiration or cancellation of this Contract, whichever occurs first.

7. This Contract may only be canceled by written mutual agreement of the parties.

8. **BROKER’S OBLIGATION:** Broker shall make a reasonable effort to locate property acceptable to Buyer. Broker shall use professional knowledge and skills to assist in negotiations for the Purchase of property. Broker shall assist Buyer throughout the transaction. Broker shall act in Buyer’s best interest at all times, subject to any limitations imposed by law or dual agency. Broker shall comply with all applicable fair housing and nondiscrimination regulations.

9. **BUYER’S OBLIGATION:** Buyer shall work exclusively with Broker for the Purchase of property. Buyer shall promptly furnish to Broker accurate and relevant personal financial information to ascertain Buyer’s ability to Purchase property, if requested. Buyer shall cooperate with Broker in finding a property to Purchase. After a purchase agreement has been accepted by seller, Buyer is legally obligated to Purchase the property. If Buyer refuses to close the Purchase for any reason other than the failure of seller to perform, subject to relevant contingencies, Buyer shall pay Broker all compensation due under this Contract.

10. **NOTICE: THE COMPENSATION FOR THE PURCHASE, LEASE, RENTAL OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER’S CLIENT.**

11. **BROKER’S COMPENSATION:** (Fill in all blanks.)

12. If Buyer, or any other person acting on Buyer’s behalf, agrees to Purchase any property during the term of this Contract, the following compensation will apply.

13. 1. Buyer agrees to pay Broker a retainer fee of \$ \_\_\_\_\_ at the commencement of this Contract, which fee shall be kept by Broker whether or not Buyer Purchases property. The retainer fee shall apply toward satisfaction of any obligation to compensate Broker.

14. 2. Buyer shall pay Broker, as Broker’s compensation, \* See page 4 \_\_\_\_\_ percent (%) of the selling price or \$ \_\_\_\_\_, whichever is greater, when Buyer closes the Purchase, if:

15. A: Buyer Purchases or agrees to Purchase a property before the expiration of this Contract, even if Buyer does not use Broker’s services; or

16. B: within \_\_\_\_\_ days (not to exceed six (6) months) after the expiration of this Contract, Buyer Purchases property which either Broker or licensee representing Buyer has physically shown Buyer or in which Buyer has made an affirmative showing of interest to Broker or licensee representing Buyer before the expiration of this Contract, as long as Broker has identified this property on a written list Broker gives to Buyer within 72 hours after the expiration of this Contract.

17. Broker is authorized to negotiate and receive compensation paid by seller, or broker representing or assisting seller, if Broker informs Buyer in writing before Buyer signs an offer to Purchase the property. Any compensation accepted by Broker from seller, or broker representing or assisting seller,  **SHALL**  **SHALL NOT** reduce any obligation of \_\_\_\_\_ (Check one.)

18. Buyer to pay the compensation by the amount received by seller or broker.

**BUYER REPRESENTATION  
CONTRACT: EXCLUSIVE**

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44. Buyer understands that Buyer does not have to pay Broker's compensation if Buyer signs another valid buyer  
45. representation contract or facilitator services agreement after the expiration or cancellation of this Contract, under  
46. which Buyer is obligated to compensate another licensed real estate broker.

47. **CAUTION: BUYER'S ACTIONS IN LOCATING A PROPERTY MAY AFFECT PAYMENT OF COMPENSATION BY**  
48. **SELLER(S) AND MAY THEREFORE OBLIGATE BUYER TO PAY ALL OR PART OF THE COMPENSATION**  
49. **IN CASH AT CLOSING. FOR EXAMPLE: THE ACT OF GOING THROUGH AN OPEN HOUSE**  
50. **UNACCOMPANIED BY BUYER'S BROKER OR LICENSEE REPRESENTING BUYER; OR SIGNING**  
51. **A PURCHASE AGREEMENT THROUGH ANOTHER BROKER OR WITH OWNER (FOR SALE BY**  
52. **OWNER) MAY REQUIRE BUYER'S PAYMENT OF THE FULL COMPENSATION TO BUYER'S BROKER.**

53. **GENERAL NATURE OF PROPERTY:** (Including the following property types: existing, new construction or to-be-  
54. built.)

55. *(Check all that apply.)*

56.  **COMMERCIAL/INDUSTRIAL**

**FARM**

**RECREATION**

57.  **RESIDENTIAL/INVESTMENT**

**RESIDENTIAL/PERSONAL**

**VACANT LAND**

58. **CLOSING SERVICES:**

59. **NOTICE:** THE REAL ESTATE BROKER, LICENSEE REPRESENTING BUYER, OR REAL ESTATE CLOSING AGENT  
60. HAS NOT EXPRESSED AND, UNDER APPLICABLE STATE LAW, MAY NOT EXPRESS OPINIONS  
61. REGARDING THE LEGAL EFFECT OF THE CLOSING DOCUMENTS OR OF THE CLOSING ITSELF.

62. After a purchase agreement for the property is signed, arrangements must be made to close the transaction. Buyer  
63. understands that no one can require Buyer to use a particular person in connection with a real estate closing and  
64. that Buyer may arrange for a qualified closing agent or Buyer's attorney to conduct the closing.

65. Buyer's choice for closing services: *(Check one.)*

66.  Buyer directs Broker to arrange for a qualified closing agent to conduct the closing.

67.  Buyer shall arrange for a qualified closing agent or Buyer's attorney to conduct the closing.

68. \_\_\_\_\_  
(Buyer's Initials)                      (Buyer's Initials)

69. **ADDITIONAL COSTS:** Buyer acknowledges that Buyer may be required to pay certain closing costs, which may  
70. effectively increase the cash outlay at closing.

71. **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Section 1445 of the Internal Revenue Code  
72. provides that a transferee ("Buyer") of a United States real property interest must withhold tax from the transferor  
73. ("Seller") if the Seller is a foreign person and no exceptions from FIRPTA withholding apply. A Buyer is personally  
74. liable for the full amount of FIRPTA withholding tax required to be withheld unless the Seller furnishes Buyer with  
75. specific documentation ensuring Buyer is exempt from the withholding requirements as prescribed under 26 USC  
76. §1445. Due to the complexity and potential risks of failing to comply with FIRPTA, including the Buyer's responsibility  
77. for withholding the applicable tax, Buyer should **seek appropriate legal and tax advice regarding FIRPTA compliance,**  
78. **as Broker will be unable to assure Buyer that the transaction is exempt from the withholding requirements.**

79. **PRIVATE INSPECTION/WARRANTY:** Broker recommends that Buyer obtain a private home inspection to satisfy  
80. himself/herself with the physical condition of the property. Furthermore, there are warranty programs available for  
81. some properties which warrant the performance of certain components of a property, which warranty programs Buyer  
82. may wish to investigate prior to the Purchase of any specific property.

**BUYER REPRESENTATION  
CONTRACT: EXCLUSIVE**

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84. **AGENCY REPRESENTATION:** If the Buyer chooses to Purchase a property listed by Broker, a dual agency will be created. This means that Broker will represent both the Buyer and the seller, and owe the same duties to the seller that Broker owes to the Buyer. This conflict of interest will prohibit Broker from advocating exclusively on the Buyer's behalf. Dual agency will limit the level of representation Broker can provide. If a dual agency should arise, the Buyer will need to agree that confidential information about price, terms and motivation will still be kept confidential unless the Buyer instructs Broker in writing to disclose specific information about the Buyer. All other information will be shared. Broker cannot act as a dual agent unless both the Buyer and the seller agree to it. By agreeing to a possible dual agency, the Buyer will be giving up the right to exclusive representation in an in-house transaction. However, if the Buyer should decide not to agree to a possible dual agency, and the Buyer wants Broker to represent the Buyer, the Buyer may give up the opportunity to Purchase the properties listed by Broker.
94. Buyer's Instructions to Broker:  
95. Having read and understood this information about dual agency, Buyer now instructs Broker as follows:
96.  Buyer will agree to a dual agency representation and will consider properties listed by Broker.
97.  Buyer will not agree to a dual agency representation and will not consider properties listed by Broker.
98. Real Estate Company Name: \_\_\_\_\_
99. Buyer: \_\_\_\_\_
100. By: \_\_\_\_\_ Buyer: \_\_\_\_\_  
(Licensee)
101. Date: \_\_\_\_\_

102. **OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers may consider and/or make offers to purchase through Broker the same or similar properties as Buyer is seeking to Purchase. Buyer consents to Broker representing such other potential buyers before, during and after the expiration of this Contract.

105. **PREVIOUS AGENCY RELATIONSHIPS:** Broker, or licensee representing Buyer, may have had a previous agency relationship with a seller of a property Buyer is interested in Purchasing. Buyer acknowledges that Buyer's Broker, or licensee representing Buyer, is legally required to keep information regarding the ultimate price and terms the seller would accept and the motivation for selling confidential, if known.

109. **TERMINATION OF FIDUCIARY DUTIES:** Broker's fiduciary duties, except the duty of confidentiality, terminate upon Buyer's successful closing of a property or expiration or cancellation of this Contract, whichever occurs first.

111. **NOTICE REGARDING PREDATORY OFFENDER INFORMATION:** Information regarding the predatory offender registry and persons registered with the predatory offender registry under MN Statute 243.166 may be obtained by contacting the local law enforcement offices in the community where the property is located or the Minnesota Department of Corrections at (651) 361-7200, or from the Department of Corrections web site at [www.corr.state.mn.us](http://www.corr.state.mn.us).

116. **ENTIRE AGREEMENT:** This Contract and all addenda and amendments signed by the parties shall constitute the entire agreement between Buyer and Broker. Any other written or oral communication between Buyer and Broker, including, but not limited to, e-mails, text messages, or other electronic communications are not part of this Contract. This Contract can be modified or canceled only in writing signed by Buyer and Broker or by operation of law. All monetary sums are deemed to be United States currency for purposes of this Contract.

121. **ELECTRONIC SIGNATURES:** The parties agree the electronic signature of any party on any document related to this transaction constitute valid, binding signatures.

123. **CONSENT FOR COMMUNICATION:** Buyer authorizes Broker and its representatives to contact Buyer by mail, phone, fax, e-mail, text message or other means of communication during the term of this Contract and any time thereafter.



**BUYER REPRESENTATION  
CONTRACT: EXCLUSIVE**

126. **OTHER:** \* The Home Buyers, Inc. will accept the co-op fee paid by the listing brokerage.

127. **Other Buyer Clients:** If more than one client of The Home Buyers, Inc. wants to submit an offer; Broker will only negotiate the transaction on behalf of the client who first indicates they want to submit an offer.

128. \_\_\_\_\_

129. \$199.00 Admin Fee will be paid at closing to The Home Buyers, Inc. only upon a successful closing.

130. **PARTIES SATISFACTION:** At any time, either party may terminate this contract for ANY reason with written notice to other parties.

131. **BROKER**

132. **ACCEPTED BY:** The Home Buyers, Inc.  
(Real Estate Company Name)

133. **By:** \_\_\_\_\_  
(Licensee's Signature)

134. \_\_\_\_\_  
(Licensee's Printed Name)

135. \_\_\_\_\_  
(Date)

136. 8053 E. Bloomington Freeway, Suite 150  
(Address)

137. Bloomington, MN 55420  
(City/State/Zip)

138. \_\_\_\_\_  
(Phone)

139. \_\_\_\_\_  
(E-Mail Address)

**BUYER**

**ACCEPTED BY:** \_\_\_\_\_  
(Buyer's Signature)

\_\_\_\_\_  
(Buyer's Printed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/State/Zip)

\_\_\_\_\_  
(Phone)

\_\_\_\_\_  
(E-Mail Address)

**BUYER**

**ACCEPTED BY:** \_\_\_\_\_  
(Buyer's Signature)

\_\_\_\_\_  
(Buyer's Printed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/State/Zip)

\_\_\_\_\_  
(Phone)

\_\_\_\_\_  
(E-Mail Address)

148. **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYER AND BROKER.**  
149. **IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**



# WIRE FRAUD ALERT



Internet fraud — the use of Internet services or software with Internet access to defraud victims — is on the rise in real estate transactions.

## THESE SOPHISTICATED CRIMINALS COULD:

- **HACK INTO YOUR E-MAIL ACCOUNT** or the e-mail of others involved in your real estate transaction and may direct you to wire money to the hacker's account.
- **SEND FRAUDULENT E-MAILS** that appear to be from your real estate licensee, lender, or closing agent.
- **CALL YOU** claiming they have revised wiring instructions.

## Buyers/Tenants and Sellers/Owners are advised to:

- (1) Never wire funds without confirming the wiring instructions directly with the intended recipient.
- (2) Verify that the contact information for the wire transfer recipient is legitimate by calling a known phone number for the broker or closing agent. Do not rely on the information given to you in an e-mail communication.
- (3) Never send personal information through unsecured/unencrypted e-mail.

## If you suspect wire fraud in your transaction:

- (1) Immediately notify your bank, closing agent, and real estate licensee.
- (2) File a complaint online at the Internet Crime Complaint Center (IC3) at <http://www.ic3.gov>.

The undersigned acknowledge receipt of this wire fraud alert and understand the importance of taking proactive measures to avoid being a victim of wire fraud in a real estate transaction.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

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