

## Understanding RECAD

You are about to explore a key element in the practice of real estate in Alabama, the **Real Estate Consumer's Agency and Disclosure Act (RECAD)**.

House Public Representation  
~~Real Estate Consumer's Agency~~  
 Informing Law  
 and ~~Disclosure Act~~

Law informing the public of the types of representation available when buying a house

## Why is this chapter so important?

**RECAD** presents the statewide agency disclosure policy and outlines the standards of treatment of clients and customers by licensees.

**RECAD** covers office disclosure policy, agency relationships, the obligations of every licensee, the minimum services required by law, misrepresentation and much more.

### REAL ESTATE BROKERAGE SERVICES DISCLOSURE

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Dear Consumer,

Alabama Law requires that you, the consumer, be informed about the types of services that real estate licensees may perform. The purpose of this disclosure is to provide a summary for you of these services.

- ☐ A **SINGLE AGENT** is a licensee who represents only one party in the sale. That is, a single agent represents his or her client. The client may be either the seller of the buyer. A single agent must be completely loyal and faithful to the client.
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- ☐ 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 both clients, except where the duties to the client 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 have the same obligations 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;
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### When did RECAD become effective?



**RECAD became effective in Alabama in 1996** to protect the interests of consumers and, in particular, buyers.

Prior to the passing of the RECAD law, buyers had no dedicated representation and had to work through the listing agent.

Once RECAD was in place, buyers became able to secure dedicated representation in real estate transactions in the state of Alabama.

### Understanding RECAD & *Caveat Emptor*

Another purpose of RECAD is to address buyers' confusion about agency representation in Alabama.

Alabama is a ***caveat emptor*** state, which means "let the buyer beware!"

***Caveat emptor*** is the principle that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made.

**In real estate transactions, this means that the burden is solely on the buyer to have the property properly inspected before purchasing it.**

Because of *caveat emptor*, the buyer cannot rely on the seller to disclose all imperfections of a property when deciding whether or not to purchase it.



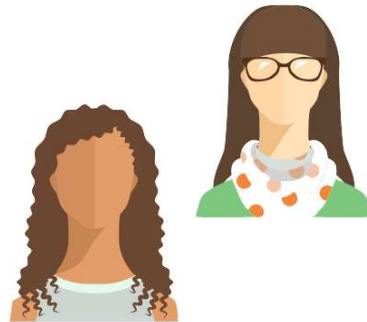
## Agency Roles

Before exploring RECAD in detail, let's review the basics of agency relationships.

When dealing with real estate, remember that **AGENCY** means the two R's:  
**Relationship & Representation.**

**Agency occurs when one individual hires another to represent their best interests.**

Agency exists in many forms in real estate.  
For example, an agency relationship exists between a **broker and a licensee**, a **licensee and a seller**, and a **property owner and a property manager** because one is representing the other's best interest.



## Agency Roles

Each party involved in a real estate transaction has specific roles and responsibilities:



### What is a fiduciary?

A **fiduciary** is one whom trust and confidence has been placed and is expected to be extremely loyal to the client, putting the interests of his client above his own interest.



**Agent**



**Client**

### Fiduciary Responsibilities & COLD AC

A fiduciary has specific responsibilities to his client that can be remembered with the acronym: **COLD AC**

#### Care

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

#### Obedience

Must obey all LEGAL instructions from the principal.

#### Loyalty

Must place his client's interests above everyone else's, including his own.

#### Disclosure

Reveal all material facts that would be adverse or detrimental to the client's interest.

#### Accountability

Return all property coming into his possession within a reasonable time period.

#### Confidentiality

Keep confidential any information given in confidence.



## Fiduciary Responsibilities &amp; COLD AC



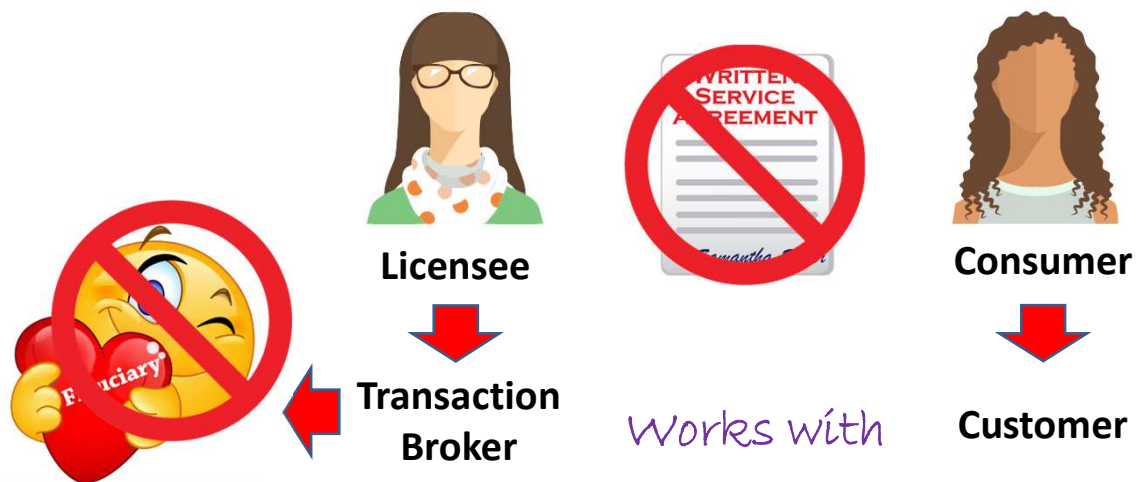
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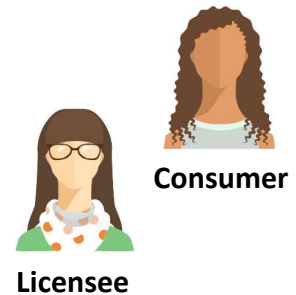
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## Agency Roles

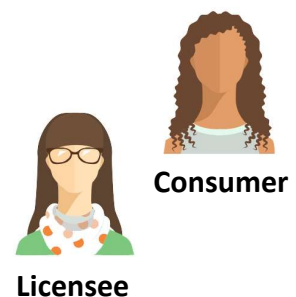
Each party involved in a real estate transaction has specific roles and responsibilities:

- **Licensee:** An individual with a real estate license, either a **salesperson** or a **broker**.
- **Consumer:** A member of the general public that does not have a real estate license.
- **Agent:** A licensee that has been hired via a written service agreement to act on another's behalf and represent him in a real estate transaction. *An agent works **FOR** his client.*
- **Client/Principal:** An individual that hires a licensee to represent him for a specific task via a written service agreement.



## Agency Roles

- **Transaction Broker:** A licensee that is working with a customer that did not wish to sign a written service agreement but still wanted guidance from the licensee. *A transaction broker works **WITH** a customer.*
- **Customer/Third Party:** An individual that needs the services of a licensee but does not wish to sign a written service agreement.



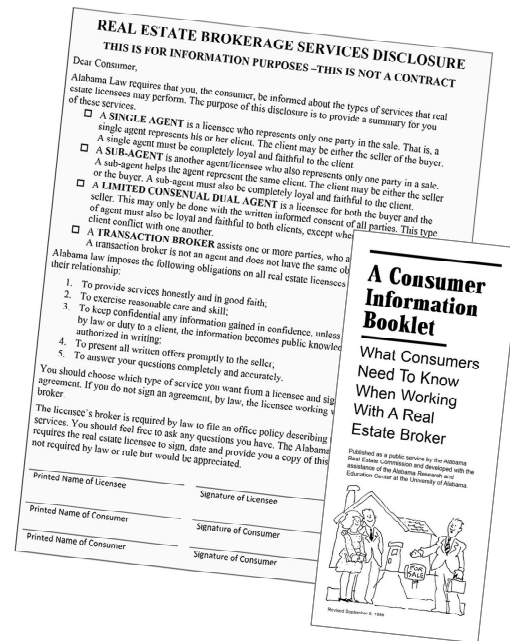


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Please proceed to the next unit.**

## Presentation of RECAD to Consumers

The **RECAD form** is a one-page form written by the Commission that must be used by every licensee in a **single-family residential transaction**.

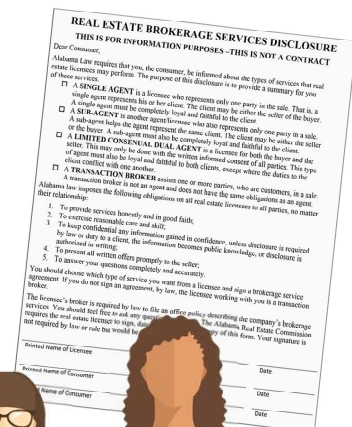
Licensees typically introduce and explain the RECAD requirement to consumers by presenting the actual **RECAD form** and an optional **"Consumer Information Booklet"** made available by the AREC.



## What types of transactions require the RECAD disclosure?

All licensees are required to provide the RECAD form to all individual consumers, buyers and sellers involved in a **single-family residential transactions**.

Properties that would qualify as single-family residential transactions include single-family homes, 1-to-4 units complexes (like a duplex), condos, co-ops and vacant residential lots.



Licensee



Consumer



## What happens when the licensee presents the RECAD disclosure?

The licensee describes each type of agency representation available (**single agency**, **sub-agency**, **limited consensual dual agency** and **transaction broker**), explaining how each type of representation affects the consumer as a buyer or a seller.

The licensee is responsible for explaining to all prospective buyers how **caveat emptor** affects the buying decision.

**Caveat emptor** means “let the buyer beware!”

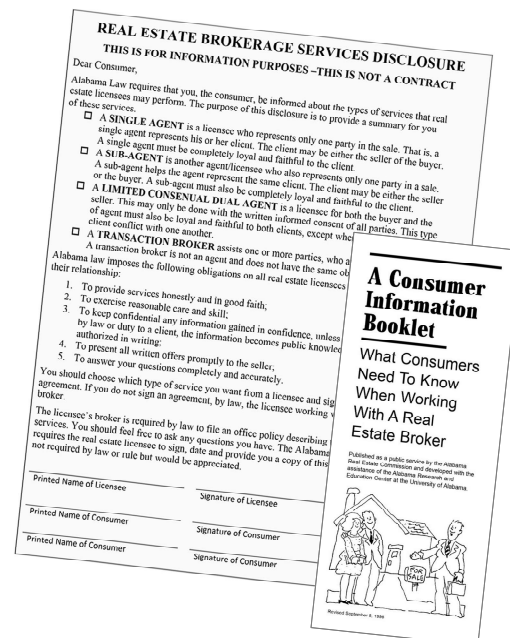


## Must a licensee use the Consumer Information Booklet?

To help licensees explain RECAD to consumers, the Commission provides an informational pamphlet called the *"Consumer Information Booklet: What Consumers Need To Know When Working With A Real Estate Broker."*

**Licensees are not required by law to use the RECAD booklet.**

However, as office policy, your broker may require you to use the booklet when discussing RECAD with consumers.



## What types of agency representation are available in Alabama?

Alabama brokerages may offer **single agency**, **sub-agency**, **limited consensual dual agency** or **act as a transaction broker**. We'll cover these in detail in the next units.

## When should the RECAD form be presented to the consumer?

According to Alabama real estate license law, the RECAD form should be presented to the consumer for his or her signature **as soon as reasonably possible BEFORE any confidential information is disclosed**.



Licensee



Consumer

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## Must the consumer sign the RECAD form?

**No, consumers are not required by law to sign the form.**

However, it is good practice for the licensee to encourage the consumer to sign it.

**Should the consumer decline to sign, the licensee should make a note of the refusal to sign on the form and keep a copy of it in the brokerage records.**

**Remember! The RECAD form is not a contractual agreement between a consumer and a licensee.**

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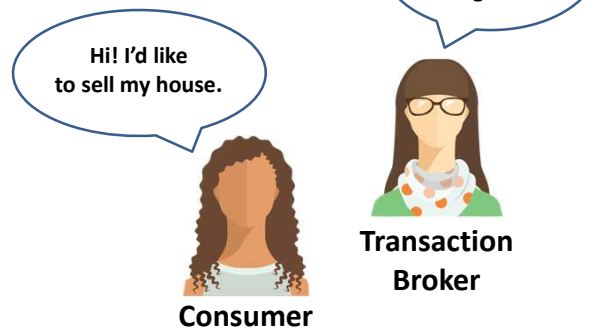
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**Does signing a RECAD form create an agency relationship?**

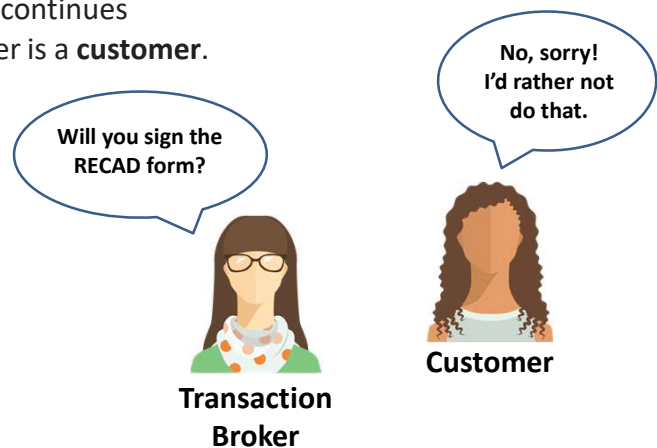
**No!** Alabama real estate license law is very careful to stipulate that at the initial contact between a licensee and a consumer, **the licensee is NOT considered to be an agent of that consumer.**

**So, at initial contact, the licensee is a transaction broker and the member of the public is a consumer.**

Alabama law explicitly states that an agency relationship can only be created in writing, meaning with a **written service agreement.**

**What if the consumer declines representation?**

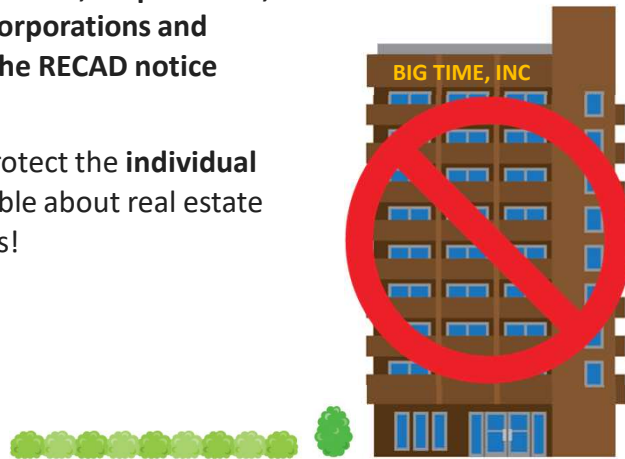
After RECAD is presented and the consumer has been given an opportunity to accept a brokerage arrangement and **DECLINES representation**, the licensee continues to be a **transaction broker** and the consumer is a **customer**.



### Is anyone exempt from RECAD?

**Yes, rental or property management services, corporations, non-profit corporations, professional corporations and similar type entities are exempt from the RECAD notice requirement.**

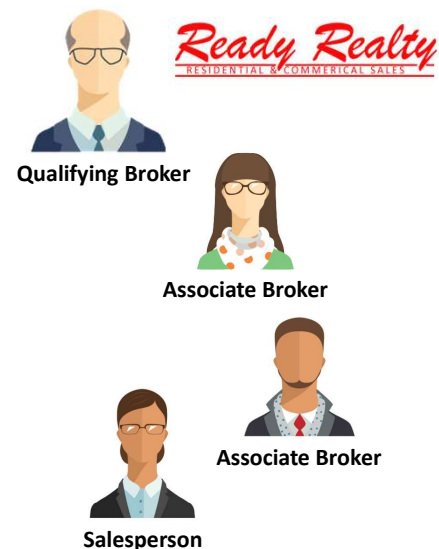
The spirit behind the RECAD law is to protect the **individual consumer** that may not be knowledgeable about real estate transactions, not business-savvy entities!



### How does RECAD affect Brokers and Brokerages?

Any broker practicing real estate must adopt a written agency disclosure office policy which specifically describes the types of brokerage service arrangements one of his licensees may offer or accept.

Basically, it outlines what services that particular brokerage provides based on RECAD.



**How often must Brokers review RECAD with their agents?**

**The qualifying broker must provide a copy of the written agency disclosure office policy and review it with his licensees at least once a year.**

After reviewing the policy, the licensees must sign a form acknowledging the receipt of the office policy statement and that he clearly understands its meaning.

**The broker must keep a copy of this acknowledgement form for 3 years.**

This is one of the items that the Commission's auditors checks during office examinations.



Qualifying Broker

*Ready, Realty*  
RESIDENTIAL & COMMERCIAL SALES



Associate Broker



Associate Broker



Salesperson



**This is the end of the current unit.  
Please proceed to the next unit.**

## Types of Agency Representation Available in Alabama

According to the RECAD form, there are four types of agency representation that are available in Alabama to consumers:

- **Single Agent**
- **Limited Consensual Dual Agent**
- **Transaction Broker**
- **Subagent**

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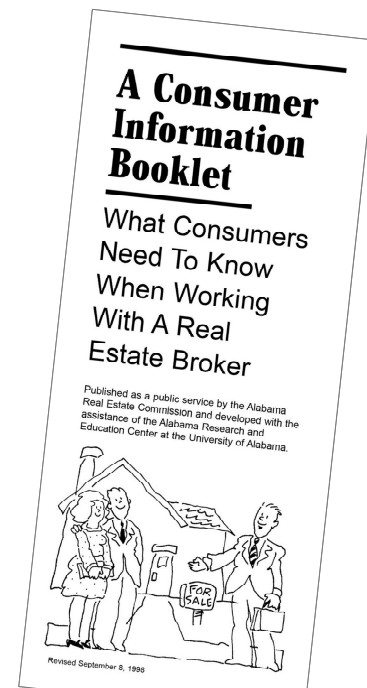
## Consumer Information Booklet

To help licensee effectively explain each type of representation to members of the public, the AREC has provided an informational booklet titled *"A Consumer Information Booklet: What Consumers need to know when working with a Real Estate Broker."*

The booklet is available on the Alabama Real Estate Commission's website, [www.arec.alabama.gov](http://www.arec.alabama.gov).

According to Alabama license law, use of the booklet by licensees is optional.

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### Listing Broker Vs Selling Broker

There are two sides of a real estate sales transaction: the seller's side and the buyer's side.

- A broker that has been hired to represent the needs of the seller and listed the property on the MLS is referred to as the **listing broker** or **listing agent**. Any salesperson involved in the transaction is referred to as a **listing agent**.
- A broker that has been hired to represent the needs of the buyer and to find a suitable property is referred to as the **selling broker** or **selling agent**. Any salesperson involved in the transaction is referred to as a **selling agent**.



**Seller = Listing Side**



**Buyer = Selling Side**

### What role is the "listing licensee" actually fulfilling?

Buyers should take care to determine in advance what role the licensee that is showing the property to them is filling.

**Is the licensee an agent for the seller, a sub-agent of the seller or working as a transaction broker?**

Buyers should be careful not to accidentally reveal confidential information to the licensee that would harm their bargaining position.



**Seller**



**Licensee**



**Potential Buyer**



## Why is it especially important for the buyer to understand the different types of representation and roles of each party involved?

Though it is very important that both the seller and the buyer understand the different roles and types of representation in a real estate deal, the buyer must be especially cautious.

While the relationship between the seller and his real estate agent is easy to understand, how the buyer fits in to the situation may not be as transparent.



Seller



Licensee



Potential Buyer

## Types of Agency Representation Available in Alabama

Before learning more about RECAD, let's explore the specific types of agency representation that are available in Alabama to consumers as outlined in the RECAD form:

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## Single Agency for Sellers

If a seller chooses **single agency** representation with a real estate broker, the broker is referred to as a **listing agent** or the **seller's agent** and must **represent only the seller** in the negotiations with buyers.



This relationship is created by a written contract called a **listing agreement** which includes the listing commission in the event of a sale.

As the listing agent, the broker should seek the **highest possible price and best possible sale terms** for his seller-client.



### Single Agency for Buyers

If a **buyer** chooses **single agency representation** with a real estate broker, the broker is referred to as the **selling agent** or **buyer's agent** and must represent only the buyer in the negotiations with sellers.

This relationship is also created by a written contract called a **buyer's agency agreement**, which outlines the buyer's budget and housing requirements, plus the details of the agent's compensation in the event of a sale.

As the selling agent, the broker should seek **the lowest possible price and best possible sale terms** for his buyer-client.



### Limited Consensual Dual Agency

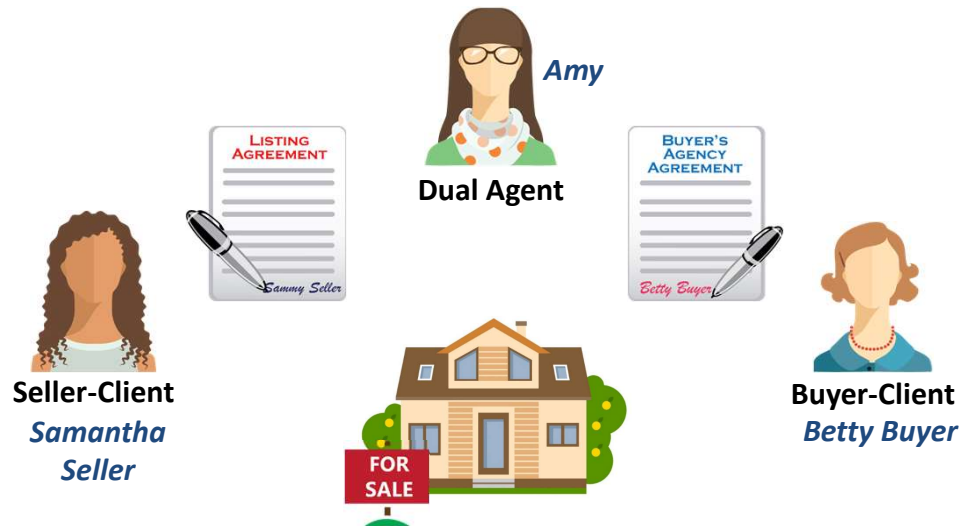
When **one brokerage** represents **BOTH the buyer and the seller** in the same real estate transaction, the situation is referred to as a **dual agency**. This arrangement requires the written consent signed by both the buyer and the seller for the brokerage to act as their agent.

In Alabama, this type of representation is referred to specifically as **limited consensual dual agency**.

The two circumstances where dual agency occurs is:

- When one licensee represents both the buyer and seller in the same sales transaction; OR
- When two or more salespersons licensed under the same broker each represent a different side to the transaction.



**Limited Consensual Dual Agency:  
One Licensee Representing Both Sides****Ready Realty**  
RESIDENTIAL SALES**Limited Consensual Dual Agency:  
Two Licensees from the Same Brokerage  
Representing Each Side****Ready Realty**  
RESIDENTIAL SALES

### Limited Consensual Dual Agency

When it appears that a limited consensual dual agency situation may occur, the licensee (or licensees) must:

1. **Halt** the transaction;
2. **Disclose** the possibility of limited consensual dual agency to each side;
3. **Explain** the implications to each side; and
4. **Gain approval in writing** from all parties involved before the transaction can resume.

*Ready Realty*  
RESIDENTIAL SALES



**Dual Agent**

### Limited Consensual Dual Agency

In a limited consensual dual agency arrangement, **the main responsibility** of the licensee is to help both the buyer and the seller agree upon a mutually satisfying contract price and terms without showing favoritism to either party or revealing confidential information about one side.

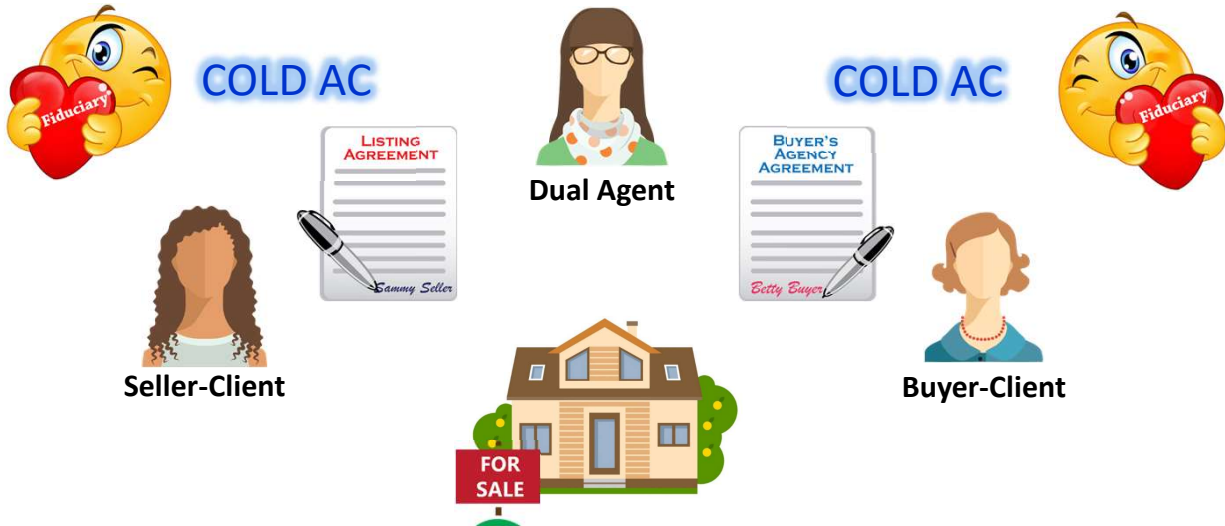
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RESIDENTIAL SALES



**Dual Agent**

How are the agent's fiduciary obligations affected by dual agency?

*Ready Realty*  
RESIDENTIAL SALES



Fiduciary Responsibilities as a Dual Agent

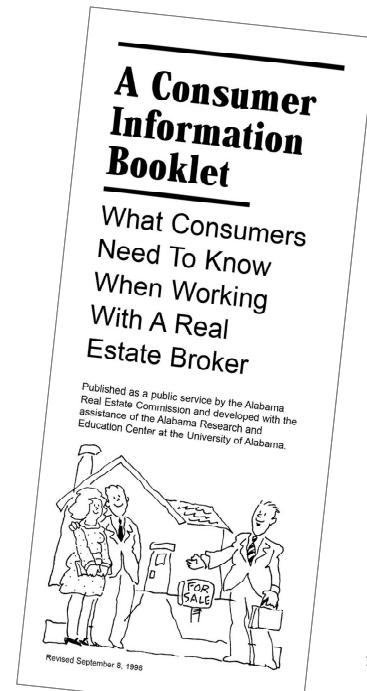


### Limited Consensual Dual Agency

According to the *Consumer Information Booklet*,

“One major advantage of limited consensual dual agency is that it allows broader marketing opportunities than single agency arrangements.”

Salespersons can show their own listings to buyer-clients when this type of arrangement is in place.



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4. To present all written offers promptly to the seller;
5. To answer your questions completely and accurately.

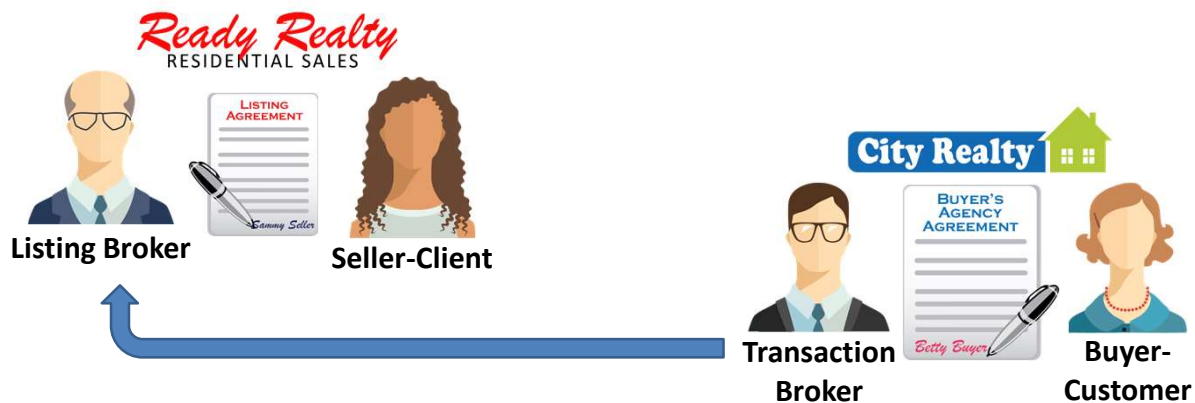
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Printed Name of Consumer	Signature of Consumer	Date
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## Sub-Agency

Sub-agency representation usually arises when a cooperating sales associate from another brokerage, who is not the buyer's agent, shows property that is listed on the MLS to a buyer.





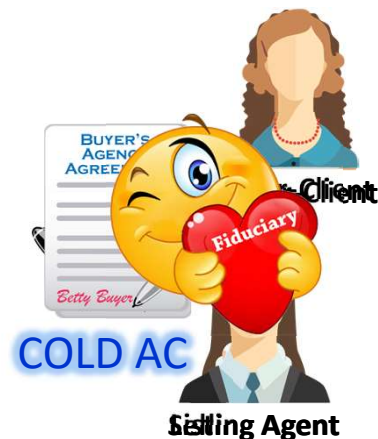
## Sub-Agency

Today in real estate everyone is familiar with “buyer’s agency” and “seller’s agency.”

**Buyer agency:** When a buyer hires a licensee via a **buyer agency agreement** to help them find a house to buy in exchange for a commission.

**Seller agency:** When a seller hires a licensee via a **listing agreement** to list their house in hope of attracting a buyer in exchange for a commission.

When a licensee is hired in either situation, they become an agent of the client and owes the client the fiduciary responsibilities known as **COLD AC** (care, obedience, loyalty, disclosure, accountability and confidentiality).



## Sub-Agency

However, before the mid 1990's there was only “seller’s agency.”

What is known today as “buyer’s agency” did not exist yet. Only the seller could hire a licensee to be his agent and protect his interests.

This put the pressure on the listing agent to not only present the property in its best light, but also attract a ready, willing and able buyer.

This is where **sub-agency** comes into the picture.



## Sub-Agency

While subagency is rarely used in transactions today, real estate students still need to understand the concept because it still a legal form of representation in Alabama.

When students become licensees, they will need to be able to fully explain subagency when presenting the require RECAD disclosure to consumers (whether their brokerage offers it or not).



**Ready Realty**  
RESIDENTIAL SALES



Listing Broker



Seller-Client

## Sub-Agency

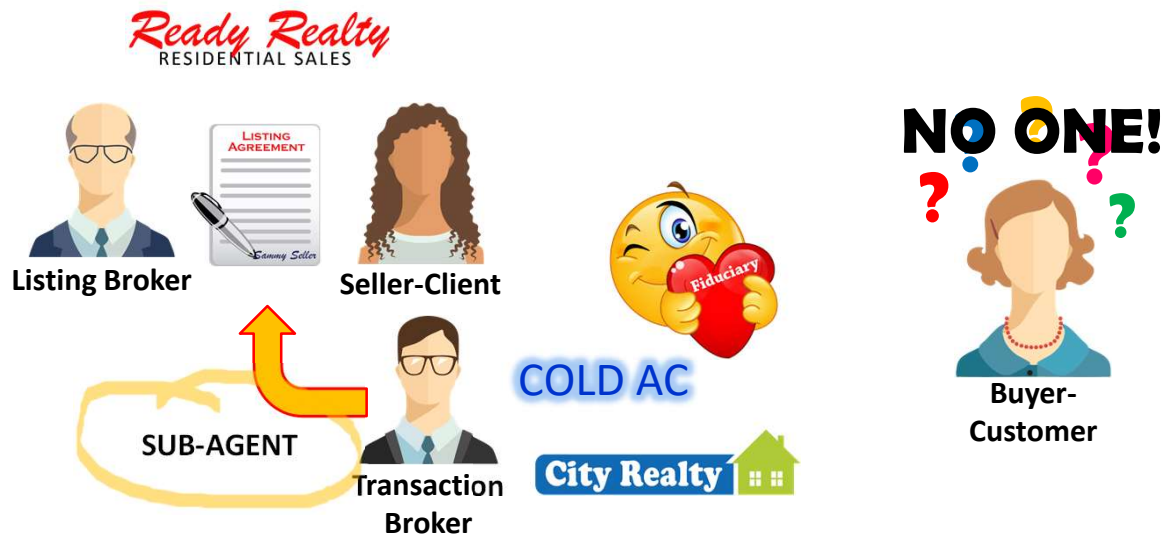
If a buyer wanted to make an offer on a house that was not listed by the licensee that was helping him *and the licensee wanted to earn a commission*, the licensee would have to agree to be a sub-agent of the listing agent... *because the listing broker would pay a commission to a licensee that brought a buyer!*



SUB-AGENT

**City Realty**

Transaction  
BrokerBuyer-  
Customer



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### Sub-Agency

It's easy to say, "Well, why can't the buyer just pay the commission in order to get buyer representation?"

For starters, mortgage interest rates in the 1980s averaged between 12% to 14% and buyers were expected to produce a sizeable down payment of 20% on average.

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### Sub-Agency

Eventually consumer advocates and regulators questioned the fairness of subagency, which was historically based on local custom and MLS and REALTOR® association rules.

This led to states introducing legislation to create true buyer agency.



This is the end of the current unit.  
Please proceed to the next unit.

## Types of Agency Representation Available in Alabama

Before learning more about RECAD, let's explore the specific types of agency representation that are available in Alabama to consumers as outlined in the RECAD form:

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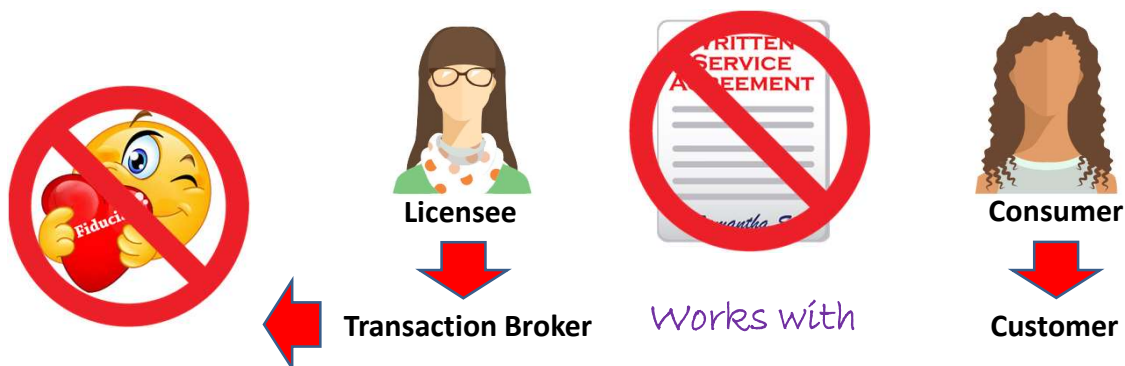
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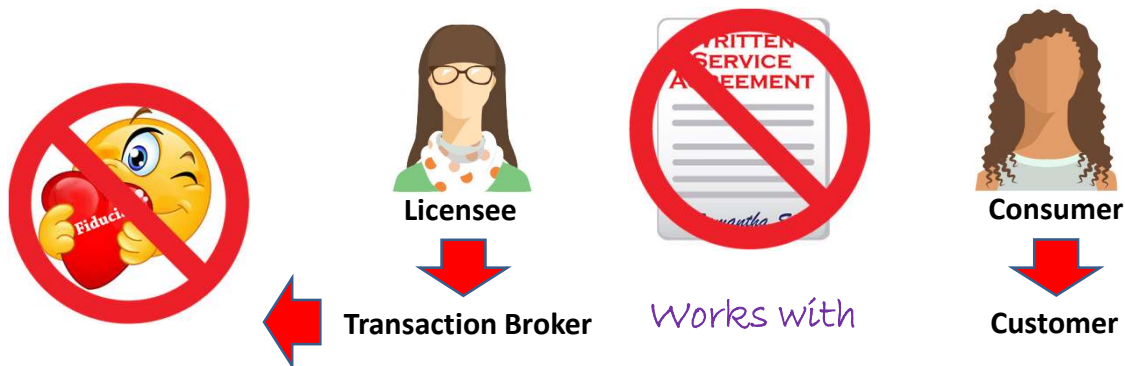
## Transaction Brokerage

A **transaction broker** is when a licensee does not provide dedicated representation as an agent, fiduciary, or advocate to a consumer (buyer or seller) but is retained to be intermediary between the buyer and seller.



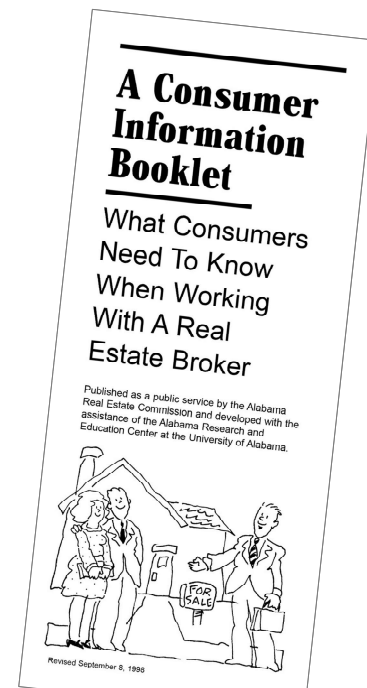
### Transaction Brokerage

So by definition a licensee is automatically playing the role of transaction broker when he first encounters a consumer. Examples of this situation would include open houses, networking events or just talking in line at the grocery store.



### Transaction Brokerage

According to the *Consumer Information Booklet*, transaction brokerage arrangements are usually preferred by consumers that require marketing services and expertise of real estate professionals, but do not desire an agent to represent them in the negotiations for the sale or purchase of real estate.

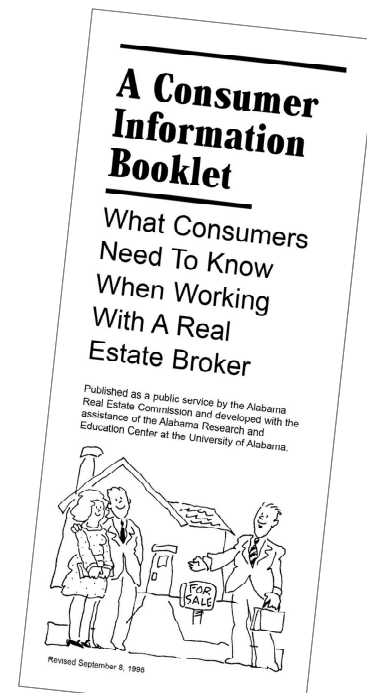


## Transaction Brokerage

While the consumer is not a client, Alabama real estate license law requires the licensee:

- Treat all parties honestly and in good faith without showing favoritism to either side;
- Exercise reasonable care and skill;
- Answer all questions completely and accurately; and
- Present all written purchase offers to sellers promptly and in a truthful manner.

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## What are the duties of a transaction broker?

When a transaction brokerage relationship is in place between a licensee and a customer:

- The transaction broker does not represent the customer and therefore is not an agent of the customer.
- A transaction broker is not allowed to negotiate on behalf of a customer but may assist by providing information.
- However, a licensee acting as a transaction broker does owe the customer certain obligations as covered in the following section.

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### Two Sides of a Transaction Broker

It's important to understand that there really are two sides of being a transaction broker: the "unofficial" and the "official" transaction broker. Since the concept of transaction broker can be little confusing at first, let's take a closer look.



### Two Sides of a Transaction Broker

According to Alabama real estate license law, a licensee is automatically playing the role of transaction broker when he first encounters a consumer.

Examples of this situation would include open houses, networking events or just talking in line at the grocery store.

At this point, the RECAD disclosure has not been presented and no confidential information has been disclosed by the consumer. For now, the licensee is an "unofficial" transaction broker. It's the "getting to know you" stage of the relationship.





### Two Sides of a Transaction Broker

As the relationship develops, but before any confidential information is disclosed, the licensee must present the RECAD disclosure.

At this point the consumer can make an informed decision about the type of representation he desires.

If a consumer formally chooses to work with the licensee as a customer (not as a client), then the licensee becomes an “official” transaction broker.

In the real world most licensees charge a flat fee for this type of representation.



### Two Sides of a Transaction Broker

So, when answering a question about being a transaction broker, remember that it is always in place **BEFORE** the RECAD disclosure is presented and may continue **AFTER** the RECAD disclosure is presented if the consumer chooses to do so.



**This is the end of the current unit.  
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## Types of Agency Representation Available in Alabama

According to the RECAD form, there are four types of agency representation that are available in Alabama to consumers:

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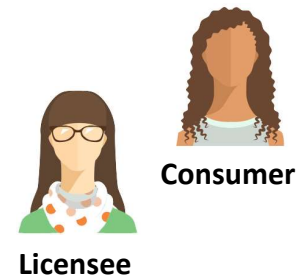
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1

## Obligations to All Consumers from Licensees

According to Alabama license law whether a licensee is representing a consumer as an **agent** or merely working together as a **transaction broker**, the licensee owes the following **obligations to all parties** involved in a real estate transaction (including parties on the opposite side of the deal).



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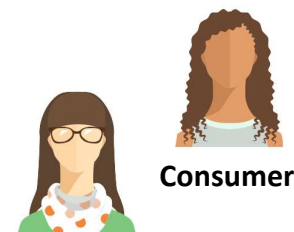
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**Obligations to All Consumers from Licensees**

- (1) To provide brokerage services to all parties to the transaction honestly and in good faith.
- (2) To exercise reasonable skill and care in providing brokerage services to all parties.
- (3) To keep confidential any information given to the licensee in confidence, or any information obtained by the licensee that the licensee knows a reasonable individual would want to be kept confidential, unless disclosure of this information is required by law (such as the presence of hazardous mold), becomes public knowledge (such as upcoming zones changes), or is authorized by the party in writing (such as reasons for selling).

**Obligations to All Consumers from Licensees**

- (4) To account for all property coming into the possession of the licensee that belongs to any party to the real estate transaction.
- (5) When assisting a party in the negotiation of a real estate transaction, to present all written offers in a timely and truthful manner.
- (6) To act on behalf of the licensee or his or her immediate family, or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest only with prior timely written disclosure of this interest to all parties to the transaction.



### Required Client-Level Services from Licensees

So, let's assume that a licensee has presented the RECAD form and the consumer has decided to hire the licensee to represent them in real estate transaction.

We know that each will sign a written service agreement to create the agency relationship, but what else is involved?

Let's explore the **client-level services** that the licensee is required to provide per Alabama real estate license law.



Agent



Client

### Required Client-Level Services from Licensees

- (1) Loyally **represent the best interests** of the client by placing the interests of the client ahead of the interests of any other party, unless loyalty to a client violates the duties of the licensee to other parties or is otherwise prohibited by law.

Properties in your neighborhood are selling for \$300,000.



Agent



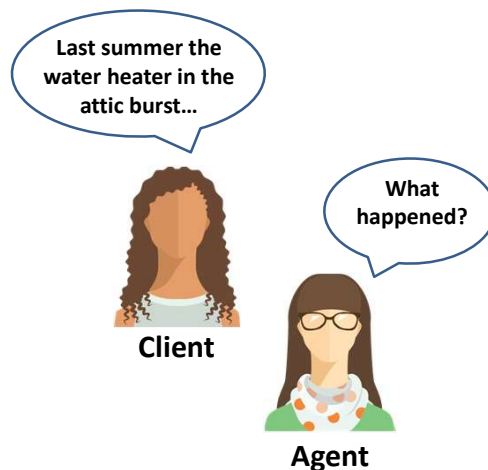
Client

I'm pricing it low because I want to sell it fast!

### Required Client-Level Services from Licensees

- (2) Disclose to the client all information known by the licensee that is pertinent to the transaction (called **material facts**) and not discoverable by the client through reasonable investigation and observation.

*The licensee is not liable for discovering facts and defects that have been deceptively and purposefully hidden by the client.*



### What is a material fact?

A **material fact** is pertinent information that, if known, would be significant enough to influence an individual's decision.

Think of it as the "if I had only known that" fact.

So, if disclosure of particular information about a real estate transaction would make someone think twice about the situation, it is considered to be "material to the transaction."

This information would be considered a **material fact and must to be disclosed... even if that disclosure may "kill the deal"!**



**Required Client-Level Services from Licensees**

- (3) Fulfill any obligation required by the agency agreement, and any lawful instructions of the client that are within the scope of the agency agreement and that are not inconsistent with other duties listed here.

I want you to hold  
an open house every  
third Sunday.



**Client**



**Agent**

Sure!  
No problem!



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