



Presenting the Buyer Representation Agreement

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Today, I'm with Rodger Cinkota and his lovely wife, Courtney. Now, Roger is licensed. He's been working with me for about ten years, and he's actually in the market to buy a house as well. So I asked if Roger and Courtney would walk through the buyer representation agreement with me so that we could see what it's like when we're presenting it to a consumer and the key elements that we want to focus on so that everybody understood it.

So, Roger, Courtney, Welcome. Thanks a lot for helping today. Looking forward to walking through the agreement with you. I've worked with over two thousand buyers filling out this document. We're going to walk it through. It's one of the key elements that the class action lawsuit and settlement agreements focused on, saying that buyer representation agreement should be used before somebody goes out and looks at a house.

We've been using them for over twenty years. And although it was in the code of ethics they should be used wasn't really enforced a lot, but now it's become more important to make sure that everybody understands the role of the respective licensees or agents or transaction coordinators. There are different terms around the country. We'll refer to it all as just buyer representation. This is going to focus additionally more specific in a couple of areas on Alaska statute because we have unique relationship in Alaska. So while this is applicable in most states we're going to really hone in on Alaska as well.

So as we're going through the agreement, we put the agreement in writing so that people understand what is the role of the licensee. Different states have different requirements. Thirty years ago everybody was working under an agency relationship. And now in about ten states we've modified those somewhat with some different duties. But this will cover the basics. In terms of what's important.

The document is important to make sure that everybody understands what the role of both the real estate license and the consumer are in the transaction. So starting from the top, we put the date. Here we would put Roger and Courtney Cinkota, buyers appoint Royse and Associates. Real Estate Brokerage of and then the City of Anchorage, State of Alaska, and then the broker assigns. And in this case will say Jerry Royse as the designated licensee or agent to represent the buyer.

So this is in accordance with the duties that are outlined in Alaska state law under zero eight eighty-eight six twenty and six fourteen. And the role then is to acquire in trust in real estate or real property as indicated below and we're going to get into the details of what are the expectations...and recognizing that if I'm working with an assistant, they may also have access to some of Rogers and Courtney's private information. They have to keep that confidential to make sure that we're protecting their interests.

Starting off with subsection a, the designated licensee is hereby engaged...as the buyer's exclusive representative and the buyer will conduct all negotiation...for the property through the designated licensing and refer to them me, Jerry any inquiries received from any source because we may find we're out looking at some properties and the goal is to find the property...regardless of where the information comes from. This is a team effort. If Roger happens to talk to a for sale by owner get some information or Courtney does, then let me know So I can follow-up make sure that they're protected. And the goal is to purchase

the property. And that means the voluntary acquisition of any interest in the property or creation of a right to acquire an interest in the property like an option something like that.

We look then at the property. We'll search for multiple sources, make submissions to the buyer. We know that not only are there multiple listing services out there, but there are alternative aggregation sites of real estate as well. So we're going to identify. What's the job going to look like? What are we going to do in terms of looking duration is starting today, in six months whichever happens earlier, it's not going to take us that long to complete the task.

As a real estate person, my job is to be an expert in real estate. I don't have the duty to independent verify information that we were see it may be coming from the municipal or other governmental entity. So if it's real important we're going to make sure and take a little extra time looking at it.

The next section deals with cost of services or products basically saying I'm not going to go out and spend money on things unless I have approval. These things could be during the course of the transaction... such as when we're looking at surveys, property inspections title reports or any other test. Does that make sense, Roger, Courtney? Yeah Oh yeah. If you need me to get something you bring that forward.

This next little section addresses... that in showing Roger and Courtney properties, if they're not really interested...in one I still have the right to be able to show. I may have other clients that might be interested in it. And this is just you saying and recognizing yeah you may be showing these to other prospects as well.

And then I'm not a lawyer and so the recommendation of legal council these are pretty straightforward forms. We get into purchase and sale agreements...I am authorized as a real estate professional to draft real estate contracts, but if they get real complicated or additional terms, then it's never a bad idea to seek legal counsel to go through the paperwork and make sure that it that you're covered in it.

If there's a dispute rather than lowering up and spending a lot of money on legal fees this alternative to dispute resolution clause says we're going to mediation or arbitration if there's some dispute.

If there were some attorney's fees that were necessary, then the fees are awarded to the prevailing party. Well I'm not planning on getting into a dispute. Never have but it just identifies how does everybody act.

Because our goal ultimately is really the business that we're in as a long term business. What we know is that a typical buyer knows two to three people per year looking to buy or sell real estate. That means over the next ten years you may know twenty to thirty buyers or sellers looking to buy real estate. So our business is based on referral. And the way that we have a successful real estate practice is by giving amazing service, doing everything we possibly can because you don't demand referrals you earn them. So we want to make sure that we're here to be your real estate professional for life regardless of type of questions you have. We're always here to help you because it's really about the long term relationship.

We want to be able to see you when you're child grows up I've already held them in my arms and someday we'll hope to sell them a house as well. So we'll be here for you if you have any quest If you're looking for properties down the road you need some insight or advice not only do we know a lot about real estate but we have a lot of experts as well. So It's not just about buying a house. It's about being your real estate professional for life. Being there if you need anything if you have any questions, never hesitate to ask. We're always there to help.

Now non discrimination we agree. We're not going to discriminate against any prospective seller or buyer because of race, creed, color, sex, marital status, national origin, familial status, physical or mental handicap, religion, Marital status is an added protected class in Alaska, not in all the other states or ancestry of any such person.

Next clause as Jerry Royse of Royse and Associates agrees to represent the undersigned buyer. And here's where what we want to do is we want to take the relationship seriously. We're going to hone in on your qualification to make sure that you're at the banks of that we're not wasting your time bringing forward properties that you're really not interested in. And we don't want to overlook anything that you would want brought to your attention. So we don't that's why I always want to make sure that we get this in writing specifically if it changes. You decide you know we want to open up the area or We want to increase or decrease the price. We can always modify it. But this gives us some operating instructions, if you will that tells us what are we supposed to be looking for in our search while we're out there to know if I should bring it to your attention or not.

So tell me a little bit about what you're looking for. Well I think that we're looking for a property out in MatSu area. Okay Probably four hundred and fifty thousand dollar price range. At least two acres, Three bedrooms Looks like you Okay So your single family home Is that right Okay Yep Yep. So if it had a mother-in-law house or whatever on it is that of any interest? Not specifically i read it as a bonus. Okay Yeah Just going to want to have something with a little bit of land and you know not too expensive Alright So feel free to bring anything that kind of resembles that area or that type of property I mean we're looking out just as well, but I know that you being a professional in the industry, has more insight on what's coming up. We have more inventory often to draw from. And so let me ask you is the three bedroom two bath house, garage. Yeah Right

Is the lot more important? The land around it more important or the house more important to you? I mean they're both important but if it's a smaller lot but the way the house is situated on it gives us privacy then that's... that's fine too

Okay Alright And now how about do you do any or any interest in putting in some sweat equity? Tricking out the house gaining some equity that way Yeah In a way it would be preferred that it wasn't fully guaranteed. Okay So that does need to kind of add our thing that we like to add to it Sure Well if it's a long term investment you know over time you may be adding things to it as well Yeah We're capable of you know we'll have animals stuff So the restrictions, the CCRs are going to be kind of important gotta make sure that it's not a really restrictive HOA community. Sure Yeah You're not looking to put a dog team out there and probably not crazy about being in a neighborhood where there's a hundred dogs next door Yeah Exactly. Okay Alright.

So some of the properties that we may come up with might be here within the company itself. So this disclosure issue just basically addresses the nature of the relationship that consumers have with real estate professionals called designated licensee. And what that means is that I'll be looking out for your best interests, and I'll be the one of the company charged with looking out for your best interest I represent you and you alone There are other real estate professionals in our company that would be representing some sellers and they may have some inventory that is going to kind of fit your criteria. And if that's the case I would continue to be looking out for just your interest. They'd be looking out for the interests of the seller. So that's the listings within this company

And then once I've shown you a piece of property under this release of property if you're not interested this just basically says that I could show it to somebody else Going to check with you first before we do that certainly. To make sure you got the first shot at it. Then as I mentioned before my job is to be that of the real estate profession find your houses get you to the bank make sure that you're working with the right people... all along the way the right professionals but I'm not the account, not the attorney. I'm not the home inspector. So I'm going to certainly recommend that we bring somebody in that knows what they're looking for. And what they're doing. And keeping in mind that sometimes even home inspectors are comfortable beyond their scope of expertise of a home inspector...sees an electrical box that looks a little bit hokey, they may say you need to bring an electrician out here to take a closer look at it We want to make sure that we've got all the experts we need to make sure there's no surprises in the property, and we want somebody who's independent that's going to be doing And then the brokerage fee commission go ahead Will we do that is that going to be done

Would I be under contract at that time or could I you know have somebody look at it before I'm under on agreement? Well typically what we do when we're drafting an agreement is we write the agreement I just want to make sure it's going to be accepted and so but we write the agreement up with the contingency... that says that, yes we want to buy this house but it's subject to or contingent upon... a home inspection and your review of the home inspection and your acceptance of the home inspection and if you don't accept the home inspection then you can walk away from the property You're not bound to the property. And and tell you've agreed to that the home inspection showed that the property was in adequate shape Yeah I mean

So with the recent NAR lawsuit one of the complaints was is that the seller didn't have enough voice in terms of the brokerage commission for the buyer broker. So what we do and what we've been doing for twenty years is that we have been paid by the listing company. The listing company takes the listing. They then agree to give up some of the money to the person that is working with the buyers. It's a different specialty. We specialize in working with buyers and sometimes it takes a long time. We may have to make multiple offers in a hot market. And so there's a lot of effort that's involved, and we've never had a problem getting paid by the listing company.

So the success fee allows us to say okay. We're going to get paid to do all this work. And then when you close on the property we're going to get paid. Now typically what we do is to open it up to for sale by owners as well because that's another way that we get paid. There are times when we're working with listed properties where we're paid directly by the for sale by owner. So the success fee basically says that if you buy a house, we're going to get paid. Later on what it does is it drills into the detail... of how the fee gets paid.

We get paid by the listing company. We can get paid by the seller. And this gives different options of how that fee can be paid. The fee is typically what we accept. Is whatever the listing company offers is typically enough for us. The average has been three percent but it varies.

It sort of depends, but there may be a time when we find a really great for sale by owner that isn't listed at all. When that's the case I can go to the for sale by owner and say okay listen. We've agreed to a three percent fee for working with the buyer. If you can work with us, you can save a lot of the compensation, but we can be paid directly by the seller. We can be paid by the listing company. But if let's say we found one that was really great and they didn't want to pay a fee then I'd ask it, so do you are you still interested in that property or not. You know there's different ways that we can be compensated through a note or whatever. Never done it in twelve hundred transactions but we just want to cover all the bases. To make sure that everybody understands where the money is coming from.

If it's listed with the MLS they're going to historically tell us through the MLS what they're offering to pay us That in the recent class action settlement is no longer available So they haven't figured out how they're going to communicate... the compensation that the seller's willing to pay. In fact we're working on a tool that allows us to be able to document and identify that as well.

This also identifies that the property is listed with the MLS. We take that percentage. If it's not, typically we work at three percent Commissions are negotiable and they always are. And then this is a various option could it come from the listing broker. Could it come from the seller. Maybe you got a relative that's got a place or says hey you know what. We'll pay it This is a perfect place is unlisted. That works as well If next week It sounds like typically the downside is actually paying the commission.

Well, using situation where the selling side like you were saying as an individual, and then perhaps we would have to negotiate and use it before. Right. So that gives you the most inventory. You always got the choice. You know they don't want to pay anything. We can look at that house if they don't want to pay any compensation. That's a choice. What we found is very often by having this tool, we're able to go to those sellers and negotiate. We've never had a problem getting paid by a for sale by owner We cover it anyways but in reality we haven't had a problem in achieving that.

Sellers want to sell often they'll try to list the house themselves to save some money. Certainly can appreciate that. And they have in the past negotiated or trying to negotiate a lower fee. We've counter offered and they've accepted it. It's just a different way to get paid. Now what we do is if the seller fails to close and they just back out than you're not obligated to pay anything.

A different way that we can also be paid in some cases where there's going to be a lot of extensive research and something out of the ordinary. We have been paid on an hourly basis. That's an option if we needed to do. You wanted us to go door to door and bang on every door in a subdivision for all the unlisted properties. Yeah We can do that. It's going to cost you I hate it. But we can.

And then we'll pick up a retainer fee. We do a minimal amount. It'll vary. Just something that says hey you're serious and we're serious.

It gets applied towards the down payment. I hate to give a specific number out because it's negotiable so it's just a little something We'll show you in a little bit more detail. A little bit later And then you can cancel this contract if you want to terminate it. You just feel like you want to step out for a while and maybe quit looking. That's perfectly fine if there's ever anything that we do that upsets you or you want us to fix. Let us know. We'll fix it immediately because we're looking for a long term relationship.

And sometimes it's just miscommunication. Sometimes the goofiness of the email communication anymore, you think you're communicating with somebody not realizing that your last three communications went into their spam folder. They didn't see it They're angry at you and it's like what didn't you read what I've been sending it. Yeah It's sending me anything. It's like yes I am. So we'll make sure that you're receiving our emails because we don't want to miss anything that's really important for sure. And then these are the retainer agreement Like I said, we're being appointed as the exclusive representative and we get your signature there. We keep it a very nominal fee. Just to say. Hey we're serious about this If you walk away after we've been working with you for a while and we never hear from you again we're going to keep it. But it's going to be applied towards your down payment when the closing comes...

the earnest money fear is with the seller to show that you're serious to show that you're earnest This is a kind of the earnest money with the buyer broker that says hey we're serious about this. Because it's one way for us to measure that somebody is serious If somebody says no I don't want to pay a retainer fee. You don't want to pay or spend a hundred and fifty dollars when you're about to buy a four hundred thousand dollar piece of property. Well often what we found is because they want to work with five or six different people. And that's not the way we operate. We work one hundred and twenty percent. We give our all to somebody and then the money comes back when you buy the house.

So what kind of retainer fee do you collect? Between a hundred and a hundred and fifty dollars. And it comes back Yeah. Because if somebody says well I want to buy a half million dollar house but I don't want to put a hundred and fifty bucks up. It's like you're not serious you know.

It's one way for us to make sure that we're working with serious buyers because otherwise we get diluted. We work with too many buyers that aren't serious. We've got less time to give to the people that really are serious.

And this is one small measure to make sure that we're dealing with people that are serious.

And then legal advice earnest money agreements these other documents Yeah Not a bad idea. To have a legal representative look at them doesn't happen often but you're certainly welcome to do it.

And then that's the entire agreement is what we've gone over so far.

Designed to specifically outline what is it that we're doing. What are we supposed to do to let you understand that this is an exclusive relationship. You're looking to buy something; it may take us anywhere from a week to four months or longer to find the property. And there'll be a lot of effort. There'll be a lot of probing. There'll be a lot of counseling to figure out what it is you're actually looking for to make sure you're happy and you don't want to go stumbling into some open house with somebody whose job it is to get as much money out of your pocket, who's not looking out for your interest that sort of overlooks some of the elements that are important for you to have in your contract.

We're going to look out for your interest to make sure that you're protected. And we just ask you to give us a shot. Stick with us if there's anything we need to do to improve. If there's anything you can think of, that you would like us to do Let us know. I mean you are our research and development Always we close twelve hundred transactions as an elusive by a broker. And you know we've been at it a long time. We've refined the process but if there's anything we can do that you wish that we would have done please let us. Did either of you have any questions...

Sure Yeah And you'll be you'll be able to download this and have any questions happy to talk to you About it as well Good Yeah Sounds good Alright Well terrific. We'll get copied to you so we can get all the John Hancocks on it and get to work on finding a house for you. Awesome. Thank you.

