

Commission Position 17 - Single Agent vs. Transaction-Broker

(Recodification adoption June 7, 2022: CP-32 Commission Position on Brokerage Disclosures recodified to CP 17 – Single Agent vs. Transaction-Broker)

A Broker must be either a Single Agent or a Transaction-Broker for at least one Consumer in the transaction. While a Transaction-Broker facilitates a real estate transaction without advocacy, the duties of a Single Agent go beyond facilitation of the transaction as a neutral party and require representing the interests of the Broker's principal over the interests of the other party. A Broker who enters into an agency relationship must fulfill the duties of advocacy, fidelity, loyalty, and other fiduciary duties of a Single Agent. In circumstances where the Broker may not be able to fulfill the duties imposed on a Single Agent, the Broker should consider whether that agency relationship is appropriate, consult with the Broker's Employing Broker or Supervisory Broker, and act accordingly.

Buyer/Tenant vs. Seller/Landlord Listing Contracts:

If a Broker is a Single Agent, there must be a Listing Contract between the Broker and the Consumer. The Commission believes that a Broker who intends to act as a Consumer's Single Agent in a transaction should attempt to secure a written Listing Contract as early in the Brokerage Relationship as possible.

However, the Commission recognizes that in some instances, a buyer or tenant may not immediately execute a written Listing Contract. In those situations, the Broker will function as a Transaction-Broker pursuant to section 12-10-403(2), C.R.S., and should present the Consumer with the Commission-Approved Brokerage Disclosure to Buyer or Brokerage Disclosure to Tenant. The Broker may then engage as a Transaction-Broker and perform the seventeen (17) uniform duties as enumerated in section 12-10-407, C.R.S. Before the Broker begins to work as the buyer's or tenant's Single Agent and providing the three (3) additional duties (i.e., fiduciary duties), the parties must execute a Listing Contract with the "Agency" box checked. The Broker may then perform the uniform duties and the additional duties of a Single Agent enumerated in sections 12-10-405 and -406, C.R.S.

In situations where the seller or landlord, regardless of the intended Brokerage Relationship, refuses to execute a Listing Contract, the Broker may not perform any Real Estate Brokerage Services until a Listing Contract is executed and a Brokerage Relationship is established as either a Single Agent or a Transaction-Broker. (*see* Rule 6.14.C.).

Treating Consumers on the Other Side of the Transaction:

A Broker who has an existing Brokerage Relationship as a Transaction-Broker with a buyer or tenant may either treat the seller or landlord as a Customer or act as a Transaction-Broker by obtaining consent and giving the seller or landlord the Commission-Approved Brokerage Disclosure to Seller or Brokerage Disclosure to Landlord. (*see* Rule 6.7.). Conversely, a Broker who has an existing Brokerage Relationship with a Listing Contract as a Transaction-Broker with a seller or landlord may either treat the buyer or tenant as a Customer or act as a Transaction-Broker by obtaining consent and giving the buyer or tenant the Commission-Approved Brokerage Disclosure to Buyer or Brokerage Disclosure to Tenant. (*see* Rule 6.7.)

When a Broker has an existing Brokerage Relationship as a Single Agent with a Consumer, the Broker may either treat the Consumer on the other side of the transaction as a Customer or change the Brokerage

All defined terms referenced in the Commission Position statements are codified in 4 CCR 725-1, Chapter 1 of the Rules regarding Real Estate Brokers.

Relationship to act as a Transaction-Broker for both sides of the same transaction with informed consent from the Broker's client as set forth in Rule 6.9.

Change in Brokerage Relationship:

When a Broker changes from Single Agent to Transaction-Broker for a specific transaction, the Broker must send the Commission-Approved Change of Status form to the Consumer as set forth in Rule 6.9. However, if that transaction terminates, the Broker's relationship status automatically reverts to the relationship as designated by the Listing Contract.

When a Brokerage Relationship changes with a Consumer, either from a Single Agent to a Transaction-Broker or vice versa, a Broker must be aware of how they are representing their client and what duties to perform or not to perform. A Single Agent relationship comes with fiduciary duties and not performing them increases legal liability for the Broker and is a violation of the license law and Commission Rules. On the other hand, a Transaction-Broker has no fiduciary duties and performing such fiduciary duties increases legal liability and is also a violation of the license law and Commission Rules.