

# Whose Side Is Your 'Agent' On? Here's What You Need to Know About Agency Laws

The word "agent" is often misunderstood by buyers, sellers and even by real estate professionals. In some contexts it is used as a synonym for "real estate licensee"

## REAL ESTATE TODAY



By **JIM SMITH**, Realtor®

— a person who is licensed by the state to practice real estate brokerage.

In real estate law, however, the word has a more specific meaning. Under most state laws, including in Colorado, an "agent" is a licensee who has signed an agency agreement with a "client." Without that signed agreement, a licensee can only be a "transaction broker."

So what is the difference between an agent and a transaction broker? It's the difference between fighting for your

best interest with "utmost faith, loyalty and fidelity" and being a mere facilitator, not giving you any advice but merely completing forms and presenting offers.

**Unless you are fully conversant in real estate law and practice, you want someone on your side in a real estate transaction — you want an "agent."**

Some buyers think they can get a better deal on a house if they go straight to the listing agent instead of having a "buyer's agent." Is that really a good idea? Maybe yes, maybe no.

There are two ways a listing agent can serve you when you don't have an agent of your own. The office policy manual at Golden Real Estate says that you should be treated as a "customer" if you want to make an offer on one of our listings and don't have your own agent.

Most real estate brokerages, it seems, do not have such a policy. If you go to one of their broker associates about one of their listings, they are likely to sign you up as a client so they become your agent. But since an agent's loyalty to the seller conflicts with his loyalty to you as a buyer, that broker associate has both you and his seller sign a document indicating that he is now a "transaction broker" instead of an agent. In that role, he can't advise you what to offer, and he can't advise the seller how to respond. And he can't share confidential information about either of you to the other party which might affect the negotiation.

For example, the seller's agent might know that the seller needs to sell quickly and would take less than the asking price. A buyer's agent might know that if his client doesn't get a home soon they'll be homeless or have to live in a motel. You can see how such knowledge could compromise a party's bargaining position.

The listing agent's desire to capture an interested buyer as a client by signing an agency contract goes beyond earning twice the commission on a transaction. If you don't get that house, you just hired a buyer's agent.

Our policy of treating a buyer as a customer when there's no bona fide pre-existing agency relationship can and sometimes does result in not earning that double

commission and in not capturing that buyer as a client for another purchase if he loses the bidding on that listing.

We have this policy for two reasons. First, it's the right and legal thing to do. Second, real estate law still requires us to be fair and honest in working with a "customer," which includes full disclosure of material facts about the house and not taking unfair advantage of the buyer.

When we tell an unrepresented buyer that our loyalty remains with the seller in any negotiation, it sometimes drives the buyer to seek his own agent. We accept that decision, although we do explain that we would treat them

fairly and if they are comfortable with being "just a customer" in the transaction, we will reward them with totally free metro area moving from their current home to the home they buy with us — free truck, free labor, free gas, free boxes, etc. Most other brokers can't offer that perk.

Since we discount our listing commission when we don't have to split the commission with a buyer's agent, we also explain to the buyer that their full-price offer is worth 1% more than a full-price offer from a buyer with their own agent. This, too, can make it attractive not to seek out their own agent in the transaction.

## This Week's Featured Listings from Golden Real Estate

### Solar Powered Horse Property on North Table Mountain!

I have just listed this 3.2-acre horse property at **17804 W. 53rd Drive**, high on the northern slope of North Table Mountain, a short drive from downtown Golden. Shown here is the entrance to the southwestern-style 4-bedroom, 4,214-square-foot home. You'll want to visit [www.JeffcoHorseProperties.com](http://www.JeffcoHorseProperties.com) to get a complete "picture" of it. There you'll find not only high quality photos, but also a narrated video tour including aerial photos of the lot and its location on the mountain. Although it is a true horse property, the 5-stall barn (see inset photo) is used by the current owner as a 1,296-sq.-ft. workshop. You could easily return it to its intended use. The tack room contains the electrical equipment for the tracking solar PV system which you can glimpse beyond the right side of the barn. Look for Mark Samuelson's article about this property in Sunday's real estate section of the Denver Post, then come to our **open house on Sunday, April 17, 1-4 pm**.



### You'll Love This 3-BR Home in Quiet Sun Valley Estates

This home at **816 S. Moore Street** is on a quiet block-long street in central Lakewood, close to both Sutherland Shire Park and Addenbrooke Park. In addition to the oversized 2-car garage, it has additional off-street parking suitable for a boat or small RV, plus a storage shed with doors at each end. All appliances are included -- even the high efficiency washer and dryer! The master bath and guest bath have both been beautifully updated, and the tub in the guest bathroom has a super shower assembly with 8 body jets and temperature-sensitive lights that go from blue to red as the water warms up. Very cool! The bedroom floors are all narrow hardwood, and the bathrooms are tiled. All in all, this is a great home for the price. You can take a video tour, narrated by me, at the home's website above, so you'll know if you want to see it in person. If you like what you see, come to the **Open House, this Saturday, April 16th, 1-4 p.m.**



Video Tour at [www.LakewoodHome.info](http://www.LakewoodHome.info)



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