

Agency Disclosure Form Instructions 2022 (Including Wholesaler Addendum)

Effective November 17, 2022, the Commission has adopted changes to the Agency Disclosure form related to wholesaling activity. Wholesaling is defined as marketing an equitable interest (an assignable contract) in a property for a profit. If representing an Wholesaler in marketing an equitable interest in a property an agent will have to check the new boxes on the form related to marketing an equitable interest and use the new Assignable Contract Addendum created by the Commission for agency disclosure to both unrepresented title owner(s) of the property, and unrepresented potential buyers.

Licensees must start using the new form as of November 21, 2022. Licensees should present the assignable contract addendum for existing and future transactions immediately. Title owners of existing and future Wholesaler transactions a licensee is working on should be presented with the Assignable Contract Addendum. Buyer's who a licensee comes into substantial contact with on or after November 21, 2002, should be presented with the assignable contract addendum.

For clients and customers who are in traditional agency relationships with no assignable contract, the existing forms do not have to be redone, and, of course, the Assignable Contract Addendum does not have to be used.

Filling Out the Form:

Most of the features of the form are intended to be self-explanatory, but licensees should have a good working knowledge of how the forms work and how to complete them.

There are four forms, a Buyer/Seller Agency Disclosure form, a Landlord/Tenant Form, a Common Law Agency Addendum (because common law agency is practiced less often and there simply was not room on the one page form for an explanation of it), and the Assignable Contract Addendum.

Buyer/Seller and Landlord/Tenant Form

The basic premise here is for the licensee to explain the capacity in which he or she is proposing to act for the customer or client and have them initial the appropriate box and sign the form. There are some additional details noted below (for ease of discussion the customer/client will be referred to as "consumer" where it is not necessary to make a distinction between the two):

It is a unified form, with no tear off portion to be left with the consumer like the old form had. Licensees should make a copy, keep the original for their records, and of course provide a copy to the consumer, or if no copier is available, it is acceptable to fill the form out twice.

Since the form has edited versions of agency responsibilities, the form has a link to more detailed information about agency as well as general information for consumers on the Nebraska Real Estate Commission's website. We urge licensees to point this link out and advise consumers to review the information provided. The consumer page can be found here: <http://www.nrec.ne.gov/consumer-info/index.html>

There is room for two parties to sign and initial the form. If you are presenting the form to

more than two people, please use additional forms.

Customer Only and Optional Information on the Form

If dealing with a customer, the form is straightforward, simply have the customer or customers initial at the top of the customer box, and check within that box that matches the capacity the licensee presenting the form is working as (buyer's agent, seller's agent, etc.). Please note if the proposed relationship is customer only, the duties performed for a customer information must be provided (examples below). The duties performed for a customer may be put on the back of the form or provided on a separate sheet provided by your brokerage.

The designated broker may also put what types of brokerage services they offer as well as concise, factual wording regarding additional services performed for clients in the various agency relationships on the back of the form.

Please note the unrepresented customer services list is shown as optional on our sample form because it may be included either on the form or on a separate sheet provided to the customer.

Contact information (Chain of Command Statement)

The contact information on the back of the form is mandatory, and should be filled out for all information applicable to the licensee presenting the form. The verbiage will be as follows:

Contact Information:

1. Agent(s) name(s) and phone number(s):

Only the agent(s) named in #1 (above) is offering to represent you as your agent. Other licensees of the same brokerage or members of the same team may work for another party to the transaction and should NOT be assumed to be your agent. ____Init. ____Init (this paragraph is not applicable if the proposed agency relationship is a customer only or the brokerage does not practice designated agency)

2. Team name, Team Leader name and phone number (only if applicable):

3. Managing Broker(s) name(s) and phone number(s) (only if applicable):

4. Designated Broker name, name designated broker does business under (if different), and phone number:

Please note, Items 1 and 4 must always be included. Items 2 and 3 only need to be included if applicable. If there is no team involved, item 2 goes away completely. If there are no managing brokers (sales managers, branch managers) in the firm, item 3 may be deleted, and the remaining items are renumbered accordingly. If the brokerage firm does not practice designated agency (brokerage firms where, for example, if one agent is acting as seller's agent that means all agents are acting as seller's agent) the initialed part under section 1 can go away.

The licensee filling out the form should provide the names and phone numbers as indicated. These may be pre-printed, or provided at the time the document is presented. It is suggested that at least broker and managing broker (if applicable) should be pre-printed, as it should stay relatively static across the brokerage.

The purpose of the information provided is to let consumers know how the brokerage is structured and who they can call if they have problems.

The back of the form can still provide the optional information regarding types of agency offered and services offered to unrepresented customers following the chain of command disclosure above.

If there is not adequate space to provide the information regarding agents proposing to represent the client or other information on the back of the form, additional pages may be attached with relevant information clearly identified.

Customer or Client Name on Second Page

A space is provided on the back or second page of the form to identify the consumer(s) the form is being presented to. This will help avoid confusion and keep the proper pages together if the forms are printed one sided on two pages instead of front and back on one piece of paper.

Dual Agency

Licensees no longer have to mark potential dual agent on the disclosure form as has been advised in the past, dual agent will likely only be marked in a few situations on first substantial contact, such as when the licensee has a listing and is talking to a potential buyer for that listing who the licensee would represent as a buyer's agent. Please note that the required written disclosures and written consent to dual agency would still be required when dual agency occurs, however, the agency disclosure form does not need to be redone, as the client will have been made aware of the dual agency capacity through the required written disclosures.

Common Law Agency

Because common law agency occurs less frequently, and in order to keep the main form simple, common law agency is dealt with through the use of an addendum.

Two thirds of the way down on the Buyer/Seller, and Landlord/Tenant main form is a place to check that the licensee will be acting as a common law agent, and in what capacity he or she is acting as a common law agent. Those spaces need to be checked on the main form, and the addendum, should be presented and explained to the consumer, filled out, signed, and attached to the main form. The licensee retains the original, copy to the consumer, or execute in duplicate.

Please note, that pursuant to Commission policy it is not required that a common law agent provide the agency disclosure form to an unrepresented customer, but that the licensee may do so, and if they do, the form provides information for the customer regarding who the common law agent is representing.

The new forms can be found on the Commission's website at:
<http://www.nrec.ne.gov/legal/brokeragerelationshipinfo.html>

Assignable Contract Addendum

Pursuant to Neb. Rev. Stat. §81-885.02, a Nebraska real estate license is required to market an equitable interest in real property. A licensee acting as a seller's agent for the wholesaler in such a transaction is required to provide the Assignable Contract Addendum to the title owner of the property at the first practicable opportunity after entering into a listing agreement to sell such property (for more information on the procedures and agency requirements when acting in this capacity please see Commission Policy and Interpretation #41.)

The assignable Contract Addendum should repeat the brokerage name and agent name as provided on the main form, and be attached to the main agency disclosure form when presenting and retaining agency disclosure records. Agent should check the box as to whether they are a Wholesaler principle acting on their own behalf, or a listing agent for the property. Title owner should be presented with the addendum and the specific acknowledgment in the name line, and name line should be filled in by the title owner. Similarly, any buyers should be presented and acknowledge the second box with the buyer's information by printing their name in the box.

Lastly the addendum should be signed by the Customer or Customers to whom the form is presented on the bottom, all title owners with an interest in the property should complete the form, you may use and attach additional pages if needed.

Examples of Services a Brokerage May Provide to an Unrepresented Customer:

In the development of the disclosure forms required under Nebraska Agency Relationships statutes, the Commission left space so that additional information may be provided on the back of the form. This space has been provided so that designated brokers may use it to include information and disclosures the statute also requires. Examples have been set out in A and B below.

When inserting this information, designated brokers are required to use a different type of print, such as italics, boldface, capital, etc., in order for their information to be distinguishable from that part of the brochures which were prepared and approved by the Commission.

A. To indicate types of brokerage relationships offered (this is optional and may also be provided on a separate form provided to the consumer):

Language similar to the following could be inserted after the appropriate brokerage relationship description:

(Name under which broker is doing business and type of brokerage service) offers this type of brokerage relationship.

OR

(Name under which broker is doing business and type of brokerage service) does not offer this type of brokerage relationship.

B. A licensee working as an agent or subagent of a client with a customer who is not represented by a licensee must provide a written disclosure to the customer of the tasks the client's agent or subagent may perform with the unrepresented customer (if any). These tasks may be disclosed by listing them on the back of the form with appropriate identification as services performed for an unrepresented customer or provided on a separate sheet.

1. Examples of tasks a seller's or landlord's agent or subagent may perform with an unrepresented buyer or tenant may include, but not be limited to, the following:

a) Tasks for unrepresented buyer by seller's agent:

1. Explain the home buying process. Assess your wants and needs in a property.
2. Conduct previews and showings of multiple properties.
3. Assist in determining financial ability to purchase.
4. Assist in selection of properties best fitting your needs.
5. Provide information on available financing.
6. Provide estimate of total investment and monthly investment required, based on the offer.
7. Provide estimate of closing costs at the time of completing the offer to purchase.
8. Review and explain clauses in the sales contract.
9. Provide background information you wish given to the seller regarding the terms of the offer.
10. Present offers to the seller and counter-offers from the seller.
11. Provide follow-up services, including arranging inspections, appraisal, and delivering documents and copies.
12. Keep in contact with lenders, inspectors, and sellers while awaiting closing and report progress.

b) Tasks for unrepresented tenant by landlord's agent:

1. Explain the leasing process. Assess your wants and needs in a leased space.
2. If requested, conduct previews and showings of locations available in the market place.
3. Assist in determining financial ability to lease.
4. If requested, provide market data for comparable leased space that substantiates the landlord/owner's terms.

5. Provide background information or details you wish given to the landlord/owner regarding the terms of your proposal.

6. Present proposals or letter of intent to the landlord/owner and convey landlord/owner's acceptance or counter-offer back to you.

7. Prepare letter of intent or review proposed lease and explain lease provisions.

8. Coordinate signing of lease and delivering copies to all parties.

2. Examples of tasks a buyer's or tenant's agent or subagent may perform with an unrepresented seller or landlord may include, but not be limited to, the following:

a) Tasks for unrepresented seller by buyer's agent:

1. Explain the home selling process.

2. Provide background information, except that required to be confidential, relating to the buyer's ability to perform under the proposed terms of an offer.

3. Review and explain clauses in the offer.

4. Provide estimate of closing costs based on the proposed terms of an offer.

5. Provide market data that justifies the buyer's offer.

6. Present seller's counter-offers to the buyer.

7. Provide follow-up services, including coordinating inspections, appraisals, surveys, etc.

8. Assist with utilities changes.

9. Assist with preparation and filing of documents.

10. Provide referral services, if relocating.

b) Tasks for unrepresented landlord by tenant's agent:

1. Explain the leasing process.

2. Provide background information, except that required to be confidential, regarding the tenant's ability to perform under the proposed terms.

3. Review and explain clauses in the proposal.

4. Provide market data that justifies the tenant's proposal.

5. Present landlord/owner=s counter proposals to tenant.

6. Coordinate lease preparation, signing, and delivering copies to all parties.