

Amendments have been made to various sections of Administrative Rules Rea 404.04 and 701.01 effective January 1, 2009.

Rea 404.04 Brokerage Contracts.

(a) No broker or salesperson shall act on behalf of a seller or lessor with regard to negotiating the sale, purchase, exchange or lease of any real estate or of the improvements thereon, collect rents, or attempt to collect rents without a written contract signed by all parties.

(b) The listing contract in (a) above shall contain the following provisions:

- (1) The date of execution;
- (2) The address, location, description and asking price of the real estate to sell, exchange, purchase or lease;
- (3) The names and addresses of all parties to the contract;
- (4) The professional fee stated as a dollar amount, percentage or other specific consideration; and
- (5) The date the contract expires.

(c) Consent to designated agency shall be obtained within the listing agreement, pursuant to RSA 331-A:25-e, II.

~~(e)~~(d) Consent to dual agency showings may be obtained within the listing agreement by a separate dated signature of the seller/landlord.

~~(d)~~(e) Any provisions to extend the contract in (a) above for a specific period of time shall be agreed upon in writing by all parties to the contract.

~~(e)~~(f) Net listings shall be prohibited. "Net listing" means a listing wherein the commission to be received is the difference between the selling price and a minimum selling price acceptable to the seller.

~~(f)~~(g) No broker or salesperson shall act on behalf of a buyer or lessee with regard to the purchase, exchange or lease of any real estate or of the improvements thereon without a written contract signed by all parties.

~~(g)~~(h) The buyer agency/tenant representation contract in ~~(f)~~(g) above shall contain the following provisions:

- (1) The date of execution;
- (2) General description, location and price range of real estate sought;
- (3) The names and addresses of all parties to the contract;
- (4) The professional fee stated as a dollar amount, percentage, or other specific consideration; and
- (5) The date the contract expires.

(i) Consent to designated agency shall be obtained within the buyer agency/tenant representation contract, pursuant to RSA 331-A:25-e, II.

~~(h)~~(j) Consent to dual agency showings may be obtained within the buyer agency/tenant representation contract by a separate dated signature of the buyer/tenant.

~~(i)~~(k) Any provisions to extend the contract in ~~(f)~~(g) above for a specific period of time shall be agreed upon in writing by all parties to the contract.

~~(j)~~(l) A licensee may act as a disclosed dual agent only with the written informed consent of all parties.

~~(k)~~(m) The disclosed dual agency informed consent agreement signed by all parties shall contain the following provisions:

- (1) The date of execution;
- (2) The date of the listing contract and date of the buyer agency/tenant representation contract;
- (3) The names and addresses of all parties to the agreement and the real estate agency;
- (4) A clear statement of the disclosed dual agent's duties pursuant to RSA 331-A:25-~~(d)~~;
- (5) A statement that the disclosed dual agency informed consent agreement shall not be extended beyond the dated listing contract and the dated buyer agency/tenant representation contract without the necessary extensions, pursuant to Rea 404.04-~~(d)~~(e) and ~~(i)~~(k); and
- (6) The date the disclosed dual agency informed consent agreement expires.

~~(l)~~(n) If consent to dual agency showings is not obtained on the listing contract or buyer agency/tenant representation contract, then consent to dual agency may be obtained at a later date but only in accordance with Rea 404.04-~~(j)~~(l).

Source. #2130, eff 8-30-82; ss by #2847, eff 9-19-84; ss by #4304, eff 8-21-87; ss by #4631, eff 6-20-89; ss and moved by #5574, eff 2-11-93 (from Rea 404.05), EXPIRED: 2-11-99

New. #7163, INTERIM, eff 12-18-99, EXPIRED: 4-16-00

New. #7265, eff 5-6-00; ss by #8833, eff 5-1-07; **ss by #9270, eff 1-1-09**

PART Rea 701 DISCLOSURE

Rea 701.01 ~~Agency and Non Agency~~ **Brokerage Relationship Disclosure.**

(a) A licensee shall provide a written ~~agency~~ **brokerage** relationship disclosure to the consumer at the time of first business meeting.

(b) A licensee showing a property listed with another agency shall disclose their ~~agency or non-agency~~ **brokerage** relationship verbally or in writing to the other party's agent prior to showing the property and in writing on the offer.

(c) Licensees shall use the ~~agency/non-agency~~ **brokerage relationship** disclosure form adopted by the New Hampshire real estate commission.

(d) The above referenced disclosure form shall not be required to be given to buyer/tenant and seller/landlord or other licensees who attend an open house if the broker or salesperson, by sign, poster, pamphlet or other conspicuous means, discloses the licensee's ~~agency or non-agency~~ **brokerage relationship** with the seller.

~~(d)~~(e) The above referenced disclosure form in (c) above shall include notice that a licensee acting in the capacity of a facilitator may only perform ministerial acts as defined in RSA 331-A:2, VI-a and is not obligated as an agent to the buyer/tenant and/or seller/landlord, and the fact that this relationship at some future time, but prior to the preparation of an offer, could change to an agency relationship.

~~(e)~~(f) If a buyer or seller chooses not to enter into a relationship with the licensee and the consumer will not sign an ~~agency and non-agency~~ **brokerage relationship** disclosure form, the licensee shall note that fact on a copy of the disclosure form and shall retain such copy for 3 years.

~~(f)~~(g) A license intending to act in the capacity of a dual agent shall:

(1) At the time of first business meeting with a consumer to discuss a specific property, provide a written ~~agency~~ **brokerage relationship** disclosure pursuant to Rea 701.01(a);

(2) On the listing contract and buyer agency/tenant representation contract, give the client the option to accept or deny a dual agency statement of consent to showings, pursuant to Rea 404.04;

(3) Have the informed consent to dual agency agreement signed and reviewed by the buyer/tenant and seller/landlord at the time in which the dual agency occurs, but no later than the preparation of a written offer for sale or lease, pursuant to Rea 404.04; and

(4) Indicate in writing on the offer that the broker is acting in the capacity of a dual agent.

(h) A licensee intending to act in the capacity of a designated agent shall:

(1) At the time of the first business meeting with a consumer provide a written brokerage relationship disclosure, pursuant to Rea 701.01(a);

(2) On the listing contract and buyer agency/tenant representation contract, disclose to the client the firm's designated agency policy;

(3) On the above contracts there shall be disclosure and consent to all designated agents appointed to the client. Substitutions of designated agents shall not be made without the informed written consent of the client;

(4) When consent to designated agency has been given by the seller/landlord and the buyer/tenant, written notice shall also be provided to the seller/landlord and the buyer/tenant that designated agency has occurred with both the seller/landlord and buyer/tenant in the transaction. This notice shall be provided prior to the execution of the purchase and sale or lease agreement;

(5) If the designated seller's agent and the designated buyer's agent in a transaction are affiliated with the same broker and the seller/landlord and the buyer/tenant each have consented to designated agency, a separate consent to dual agency of the appointing agent shall not be required; and

(6) If the designated seller or landlord agent is also the designated buyer or tenant agent in the same transaction, the designated agent is a dual agent and a separate informed consent to dual agency shall be required in accordance with RSA 331-A:25-d.

Source. #5077, eff 6-1-91; ss by #5168, eff 6-21-91; ss by #5576, eff 2-11-93; ss by #6738, eff 4-25-98; ss by #7267, eff 5-6-00; ss by #7522, eff 6-28-01; ss by #8835, eff 5-1-07; **ss by #9270, eff 1-1-09**