ADVANCED INFORMED CONSENT TO DUAL AGENCY

For residential real property, the use of this form is optional and is to be used as a supplement to the agency disclosure form found in Real Property Law section 443. Licensees who elect to use this form for residential real property must also complete an agency disclosure form.

This form was provided to me by (print name of licensee)_____

of (print name of company, firm or brokerage)_____, a licensed real estate broker.

1. What is "Dual Agency"

   By consenting to Dual Agency, the Seller or Buyer acknowledge and agree that the Broker and all associated Associate Brokers and Salespersons are potential Dual Agents. Seller or Buyer have been informed of the possibility of a dual agency arising if a buyer client becomes interested in a seller client's property. A Dual Agent may be a single licensee representing both the Seller and Buyer or the Seller and Buyer may be represented individually by two associated licensees of the broker. Seller or Buyer have consented to this Dual Agency representation in advance and hereby confirm their consent by signing below after reading the following description of the type of representation to be provided.

2. Consent to the creation of "Dual Agency"

   If "Advanced Informed Consent to Dual Agency" has been acknowledged in the NYS Agency Disclosure Form, seller or buyer agree that any licensee associated with the Principal Broker may become a "Dual Agent" in the following scenarios:

   a. Listing agent or any licensee associated with the listing broker is holding an open house and an unrepresented buyer attends. The listing agent or associated licensee may enter into a buyer's agency relationship with the unrepresented buyer followed immediately by Dual Agency or may refer the unrepresented buyer to another associated licensee with the listing broker to enter into a buyer's agency relationship with the unrepresented buyer followed immediately by Dual Agency.

   b. Any licensee associated with the listing broker is contacted by an unrepresented buyer that shows interest in a property listed by the brokerage. The associated licensee with the listing broker may enter into a buyer's agency relationship with the buyer followed immediately by Dual Agency.

   c. An associated licensee of the listing broker already represents a buyer as a buyer's agent and the buyer shows interest in a property listed by the brokerage.

3. Description of Broker's Role: Confidentiality and Disclosure of Information:

   In Dual Agency, the Broker is acting as agent for both Seller and Buyer in the transaction. Broker shall make every reasonable effort to remain impartial to Seller and Buyer. Seller or Buyer acknowledge that, prior to Dual Agency arising, Broker acted as (exclusive) agent of the Seller and acted as (exclusive) agent of the Buyer. In those separate roles, Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker. Seller or Buyer agree that Broker shall not be liable to either party for refusing or failing to disclose information which in the sole discretion of Broker would harm one party's bargaining position but would benefit the other party.

   Nothing contained herein shall prevent Broker from disclosing to Buyer any known material defects that affect the property value. Broker agrees not to disclose confidential information to the other party, such as (a) to Buyer information about what price or terms Seller will accept other than the listing price and terms or (b) to Seller information about what price or terms Buyer will agree to other than any written offering price.

4. Description of Seller's and Buyer's Role:

   Seller or Buyer acknowledge that they are aware of the implications and consequences of Broker's Dual Agency role to facilitate a transaction, rather than act as an advocate for one party over the other and agent, and that they have determined that the benefits of entering into a transaction, with the Broker acting as a Dual Agent outweigh said implications and consequences.

5. Consequences of Dual Agency:

   Seller or Buyer are giving up their right to have Broker's undivided loyalty to act at all times solely in their individual best interests to the exclusion of all other interests. Dual agency may thus adversely affect Buyer's and Seller's best interests to the exclusion of all other interests, and may deprive them of benefits they may have otherwise received in a single agency relationship. For example, as a Seller represented by an Agent, Seller has the right to expect that Seller's agent will attempt to obtain the full asking price for the property. As a Buyer, represented by an Agent, Buyer has the right to expect the Agent to work toward bringing about a transaction at the lowest possible price. A Dual Agent will not work on behalf of either party regarding price.

6. In theory, a Dual Agent owes both the Buyer and Seller the same fiduciary duties as if the Agent represented each alone. These duties include loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and the duty to account. By consenting to dual agency, the conflicting duties to Buyer and Seller are reconciled by mutual agreement to modify or forego them. The duty of undivided loyalty is forfeited in a dual agency relationship. In addition, most of the other fiduciary obligations are affected because of the contrasting motivations of Buyer and Seller, who have agreed that the consensual Dual Agent will not favor the interests of one over those of the other.

7. In the event a conflict arises between Buyer and Seller, Broker may elect to withdraw from the transaction because Broker is unable to adequately represent each interest. Where one client discloses confidential information to the Broker which is of such a nature that the Broker cannot fairly give advice to the other without disclosing it, the Broker cannot continue to act as advisor.

8. Buyer and Seller have the absolute right to refuse to consent to a Dual Agency relationship and the representation of an adverse interest by Broker.

9. Buyer and Seller have the right to consent to a Dual Agency relationship, with or without an adjustment in the amount of compensation to the Broker.

10. Buyer and Seller each have the right to retain their own Agent to represent only their interest in a single agency relationship (i.e. Designated Agent, Buyer's Agent or Seller's Agent).

11. Description of Limited Agency Services:

WHAT BROKER AND ITS SALESPERSONS CAN DO FOR SELLERS AND BUYERS WHEN ACTING AS A DUAL AGENT:

We will treat the Seller and Buyer honestly.
We will provide helpful information about the property and neighborhood to the Buyer.
We will respond accurately to questions about the property.
We will disclose all material facts about the property that are known to us.
We will disclose financial qualifications of the Buyer to the Seller.
We can explain real estate terms and procedures.
We can help the Buyer to arrange for property inspections.
We can help the Buyer compare financing alternatives.
We will provide information about comparable properties so the Seller and Buyer may make an educated decision on what price to accept and/or offer.
We will work diligently to facilitate the sale and will advise when experts should be retained (lawyer, tax accountant, architect, etc.).
We will act as a mediator and make recommendations for compromise between Seller and Buyer.

WHAT BROKER AND ITS SALESPERSONS CANNOT DISCLOSE TO SELLERS AND BUYERS:

We cannot disclose confidential information that we may know about the Seller and/or Buyer (e.g., motivation, to sell/buy; price terms; negotiating strategy), without written permission of the Seller and/or Buyer.
We cannot disclose the price the Seller will take other than the listing price without written permission of the Seller.
We cannot disclose the price the Buyer is willing to pay without written permission of the buyer.
We cannot recommend or suggest a price the Buyer should offer or pay for the property.
We cannot recommend or suggest a price the Seller should accept or counter.

12. Broker will act as an intermediary with respect to Seller and Buyer and except for the fiduciary duties to account for any monies which come into Broker's possession and the duty to exercise reasonable care; Broker will not have fiduciary duties to either Seller or Buyer to provide "undivided loyalty or obedience".

By signing the agency disclosure form and below, you approve and agree Broker and its Salespersons have provided Advanced Informed Consent to Dual Agency.

YOU SHOULD UNDERSTAND THAT THIS IS BEING PROVIDED AS A MEANS OF INFORMING THE SELLER OR BUYER AS TO DUAL AGENCY. IF YOU DO NOT UNDERSTAND THIS DOCUMENT OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT AN ATTORNEY BEFORE YOU SIGN IT.

I have received and read this disclosure notice.

Seller/Buyer:_____ Date: _____

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