

## Agency Disclosure

View the Agency Disclosure Guide from NYSAR about agency disclosure. Also, view the NYSAR ARCHIVED webinar on Agency. No guarantees that the link will not change. You can also go to the NYSAR website to view their archived webinars.

There are two new Agency Disclosure forms for 2008. One for Buyers & Sellers and one for Landlords & Tenants. These new forms replace the old ones and are available under Free Forms and on Instanet.

**Note: the use of the "Designated Agent form" is no longer necessary.**

### Agency Disclosure Q & A's

#### **Q: When does the Agency Disclosure form need to be completed?**

A: Before a seller/buyer enters into a discussion with a real estate agent regarding a "residential real estate" transaction, he/she should understand what type of agency relationship he/she wishes to have with that agent. New York State law requires real estate licensees who are acting as agents of buyers or sellers of property to advise the potential buyers or sellers with whom they work of the nature of their agency relationship and the rights and obligations it creates.

#### **Q: How do we complete the "Acknowledgement to the Contract" now that it is not part of the new form?**

A: The "Acknowledgement to the Contract" is no longer necessary.

#### **Q: For what type of "Residential Real Estate" do I need a Agency Disclosure form?**

A: "Residential real estate" is defined as real property improved by a one-to-four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to (i) unimproved real property upon which such dwellings are to be constructed or (ii) condominium or cooperative apartments in a building containing more than four units.

#### **Q: How long should the Agency Disclosure forms be kept?**

A: The forms must be kept for Three (3) years.

#### **Q: How do I record when a client/customer changes their agency relationship?**

A: According to NYSAR Counsel, Anthony Gatto, "Each time a different property is shown and the licensee "changes" his/her cooperating broker status from a seller's agent to a broker's agent, a new agency disclosure form should be provided. The reasoning behind this position is that disclosure to potential purchasers should be made indicating who will be liable for the conduct of an agent, and as such, a new form is needed to acknowledge such disclosure in each instance. We realize that this method may seem repetitious, but it is the best method available to a licensee in order to minimize potential liability."

#### **Q: Can I have my buyer consent to dual agency ahead of time?**

A: NYSAR has been advised by DOS that consent to dual agency is still transactional in nature and cannot be consented to in advance by any party. Moreover, the new definition of "dual agent" and "designated sales associate" clearly state that the dual agent and designated sales associate are acting "in the same transaction." Licensees should still discuss dual agency with clients and have the disclosure form signed when a dual agency situation arises.