

Atlantic East and Designated Agency

Atlantic East is the only office on Nantucket that practices Designated Agency where our agents represent one party to the transaction at a time. Prior to July of 2005 the majority of real estate agents in Massachusetts represented the Seller and not the Buyer in real estate transactions. Research determined that many buyers were not aware that their agent was actually working for the seller and, as a result, new agency laws were adopted permitting real estate offices to offer both Seller and Buyer agency. A critical piece of the new law is that consumers must be informed about how agency works and then sign an Agency Disclosure Form, acknowledging that they understand who works for them and who does not. The law requires that the Agency Disclosure Form must be presented, discussed, and signed at the first personal meeting to discuss a particular piece of property with a Buyer or Seller client. The change in the law has, from a practical standpoint, made it much easier to meet fiduciary responsibilities to a client, whether it be a Buyer or a Seller. The full fiduciary duties under single agency are: obedience to lawful instruction, loyalty, disclosure of material facts, confidentiality, accounting of funds and property and reasonable care and due diligence.

On Nantucket over 85% of all sales involve two offices: the listing office, representing the Seller, and the selling office, representing the Buyer. Agency is very clear in this scenario. However, it becomes more complicated if there is an in-house sale. If an office has the property listing and represents the Seller, they may elect to also represent the Buyer but ONLY WITH INFORMED WRITTEN CONSENT from both parties. This is called Disclosed Dual Agency and the agents in this case operate with a reduced level of fiduciary responsibility to each client. The agent may not advise either the Seller or the Buyer client.

An alternative to Disclosed Dual Agency is to practice Designated Agency under Dual Agency which is what we do here at Atlantic East Nantucket Real Estate. In Designated Agency, only one agent represents the Seller (the listing agent). An appointing agent (the principal broker) appoints another agent to represent the Buyer, each as Designated Agents. We feel that we can do a better job for our clients under Designated Agency as opposed to Dual Agency. There are fewer potential conflicts and we can better protect the interest of our clients.

<https://www.mass.gov/doc/real-estate-board-agency-disclosure-form-english/download>