

## **Exclusive Seller Agency in Practice**

**Sally as the listing associate.** Sally successfully acquires for Bay Realty an exclusive listing of a three-bedroom town house from her friend, George. At the first open house conducted by Sally, prospective buyer Betty discusses the property with Sally. Sally initially discloses to Betty that she is an agent of the seller and furnishes Betty with a written TREC statement regarding information about brokerage services. Later that night, Sally prepares an offer from Betty on George's property, which is later accepted by George.

1. Because Sally represents the seller through Bay Realty, must she suggest that Betty use another brokerage firm that would represent Betty's interest?
2. Would Bay Realty's agency role change if Betty were referred to a different licensee within the firm?

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**Sally as the selling associate with no prior relationship with the buyer.** Bay Realty has a policy of exclusive seller representation. Sally is the licensee on duty when Bob Brown walks in and asks about available properties. Sally checks Bay Realty's listings and finds a property on Main Street listed by Carol from a branch office of Bay Realty, and one on King Street listed by Tom, from Southside Realty on the other side of town. Sally makes appointments to show Bob both properties.

1. Because Sally is not the listing agent on the Main Street property, will she be free to represent Bob on this property?
2. When Sally shows the properties, how will her duties to Bob and to the sellers differ when she shows the Main Street property from when she shows the King Street Property?

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**Sally as the selling associate with prior relationship with buyer.** Sally as listing agent, has just negotiated a completed sales contract on George's town house. She has opened escrow by placing the contract and earnest money with the escrow agent named in the contract. George is extremely pleased with Sally's professional attitude and skills and asks her to find a suitable replacement property. Sally is well aware of George's needs and wants, as well as his financial resources and favorite bargaining techniques. Sally knows a perfect property for George, and it happens to be listed with Bay Realty through Tom, another Bay Realty salesperson.

Sally knows from experience that when satisfied clients like George sell their homes and buy replacement properties in the same locality, the client typically works with the same listing agent (Sally, in this case). It is natural for George to think that Sally is still his agent. Sally recognizes that the seller of the new home might find it useful, in negotiations, to know how much cash George will receive from his recent sale and when George is planning to move. This seller, like most sellers, wants to learn as much information as possible from the agent about the buyer, especially if the offer is contingent on financing.

1. If Sally is to represent the new seller on behalf of Bay Realty, should Sally disclose these useful facts to the seller?
2. Would such disclosure surprise George or violate any fiduciary duty to him?