



Agency Relations in Real Estate Transactions

§ 3891. DEFINITIONS

TRANSACTIONS

- (1) "Agency" means a relationship in which a real estate broker or licensee represents a client by the client's consent, whether express or implied, in an immovable property transaction.
- (2) "Broker" means any person licensed by the Louisiana Real Estate Commission as a real estate broker.
- (3) "Brokerage agreement" means an agreement for brokerage services to be provided to a person in return for compensation or the right to receive compensation from another.
- (4) "Client" means one who engages the professional advice and services of a licensee as his agent.
- (5) "Commission" means the Louisiana Real Estate Commission.
- (6) (a) "Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:
 - (i) The client permits the disclosure by word or conduct.
 - (ii) The disclosure is required by law or would reveal serious defect.
 - (iii) The information becomes public from a source other than the licensee.
- (b) Confidential information shall not be considered to include material information about the physical condition of the property.
- (c) Confidential information can be disclosed by a designated agent to his broker for the purpose of seeking advice or assistance for the benefit of the client.
- (7) "Customer" means a person who is not being represented by a licensee but for whom the licensee is performing ministerial acts.
- (8) "Designated agency" means the agency relationship that shall be presumed to exist when a licensee engaged in any real estate transaction, except as otherwise provided in this Chapter, is working with a client, unless there is a written agreement providing for a different relationship.
- (9) "Designated agent" means a licensee who is the agent of a client.

(10) "Dual agency" means an agency relationship in which a licensee is working with both buyer and seller or both landlord and tenant in the same transaction. However, such a relationship shall not constitute dual agency if the licensee is the seller of property that he owns or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent. A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord.

(11) "Licensee" means any person who has been issued a license by the commission as a real estate salesperson or a real estate broker.

(12) "Ministerial acts" means those acts that a licensee may perform for a person that are informative in nature. Examples of these acts include but are not limited to:

(a) Responding to phone inquiries by persons as to the availability and pricing of brokerage services.

(b) Responding to phone inquiries from a person concerning the price or location of property.

(c) Conducting an open house and responding to questions about the property from a person.

(d) Setting an appointment to view property.

(e) Responding to questions from persons walking into a licensee's office concerning brokerage services offered or particular properties.

(f) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property.

(g) Describing a property or the property's condition in response to a person's inquiry.

(h) Completing business or factual information for a person represented by another licensee on an offer or contract to purchase.

(i) Showing a person through a property being sold by an owner on his or her own behalf.

(j) Referral to another broker or service provider.

(13) "Person" means and includes individuals and any and all business entities, including but not limited to corporations, partnerships, trusts and limited liability companies, foreign or domestic.

(14) "Substantive contact" means that point in any conversation where confidential information is solicited or received. This includes any specific financial qualifications of the consumer or the motives or objectives in which the consumer may divulge any confidential, personal, or financial information, which, if disclosed to the other party to the transaction, could harm the party's bargaining position. This includes any electronic contact, electronic mail, or any other form of electronic transmission.

§ 3892. RELATIONSHIPS BETWEEN LICENSEES AND PERSONS

Notwithstanding the provisions of Civil Code Articles 2985 through 3032 or any other provisions of law, a licensee engaged in any real estate transaction shall be considered to be representing the

person with whom he is working as a designated agent unless there is a written agreement between the broker and the person providing that there is a different relationship or the licensee is performing only ministerial acts on behalf of the person.

§ 3893. DUTIES OF LICENSEES REPRESENTING CLIENTS

A. A licensee representing a client shall:

(1) Perform the terms of the brokerage agreement between a broker and the client.

(2) Promote the best interests of the client by:

(a) Seeking a transaction at the price and terms stated in the brokerage agreement or at a price and upon terms otherwise acceptable to the client.

(b) Timely presenting all offers to and from the client.

(c) Timely accounting for all money and property received in which the client has, may have, or should have had an interest.

(3) Exercise reasonable skill and care in the performance of brokerage services.

B. A licensee representing a client does not breach a duty or obligation to the client by showing alternative properties to prospective buyers or tenants or by showing properties in which the client is interested to other prospective buyers or tenants.

C. A licensee representing a buyer or tenant client does not breach a duty or obligation to that client by working on the basis that the licensee shall receive a higher fee or compensation based on a higher selling price.

D. A licensee shall not be liable to a client for providing false information to the client if the false information was provided to the licensee by a customer unless the licensee knew or should have known the information was false.

E. Nothing in this Section shall be construed as changing a licensee's legal duty as to negligent or fraudulent misrepresentation of material information.

F. Nothing in this Chapter or in Chapter 17 of Title 37 shall be construed as to require agency disclosure with regard to a lease that does not exceed a term of three years and under which no sale of the subject property to the lessee is contemplated.

§ 3894. LICENSEES RELATIONSHIP WITH CUSTOMERS

A. Licensees shall treat all customers honestly and fairly and when representing a client in a real estate transaction may provide assistance to a customer by performing ministerial acts. Performing those ministerial acts shall not be construed in a manner that would violate the brokerage agreement with the client and performing those ministerial acts for the customer shall not be construed in a manner as to form a brokerage agreement with the customer.

B. A licensee shall not be liable to a customer for providing false information to the customer if the false information was provided to the licensee by the licensee's client or client's agent and the licensee did not have actual knowledge that the information was false.

§ 3895. TERMINATION OF AGENCY RELATIONSHIP

Except as may be provided in a written agreement between the broker and the client, neither a broker nor any licensee affiliated with the broker owes any further duties to the client after termination, expiration, or completion of performance of the brokerage agreement, except to account for all monies and property relating to the transaction and to keep confidential all confidential information received during the course of the brokerage agreement.

§ 3896. COMPENSATION; AGENCY RELATIONSHIP

The payment or promise of payment of compensation to a broker is not determinative of whether an agency relationship has been created.

§ 3897. DUAL AGENCY

A. A licensee may act as a dual agent only with the informed written consent of all clients. Informed consent shall be presumed to have been given by any client who signs a dual agency disclosure form prepared by the commission pursuant to its rules and regulations. The form prepared by the commission shall include the following language: "What a licensee shall do for clients when acting as a dual agent:

- (1) Treat all clients honestly.
- (2) Provide information about the property to the buyer or tenant.
- (3) Disclose all latent material defects in the property that are known to the licensee.
- (4) Disclose financial qualification of the buyer or tenant to the seller or landlord.
- (5) Explain real estate terms.
- (6) Help the buyer or tenant to arrange for property inspections.
- (7) Explain closing costs and procedures.
- (8) Help the buyer compare financing alternatives.
- (9) Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer."

B. A licensee shall not disclose to clients when acting as a dual agent:

- (1) Confidential information that the licensee may know about either of the clients, without that client's permission.
- (2) The price the seller or landlord will take other than the listing price without the permission of the seller or landlord.

(3) The price the buyer or tenant is willing to pay without the permission of the buyer or tenant.

C. The written consent required in Subsection A of this Section shall be obtained by a licensee from the client at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent.

D. No cause of action shall arise on behalf of any person against a dual agent for making disclosures allowed or required by this Section, and the dual agent does not terminate any agency relationship by making the allowed or required disclosures.

E. In the case of dual agency, each client and licensee possess only actual knowledge and information. There shall be no imputation of knowledge or information among or between the clients, brokers, or their affiliated licensees.

F. In any transaction, a licensee may without liability withdraw from representing a client who has not consented to a disclosed dual agency. The withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions. When a withdrawal occurs, the licensee shall not receive a referral fee for referring a client to another licensee unless written disclosure is made to both the withdrawing client and the client that continues to be represented by the licensee.

G. A licensee shall not be considered as acting as a dual agent if the licensee is working with both buyer and seller, if the licensee is the seller of property he owns, or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent. A dual agency shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease which does not exceed a term of three years and the licensee is the landlord.

§ 3898. SUBAGENCY

Subagency can only be created by a written agreement. A licensee is not considered to be a subagent of a client or another broker solely by reason of membership or other affiliation by the broker in a multiple listing service or other similar information source.

§ 3899. VICARIOUS LIABILITY

A client shall not be liable for the acts or omissions of a licensee in providing brokerage services for or on behalf of the client.