

Real Estate Agency Outline

THE AGENCY RELATIONSHIP

- Basic roles
 - principal (client) hires agent (broker) to find a ready, willing, and able customer (buyer, seller, tenant);
 - client-agent fiduciary foundations: trust, confidence, good faith

- Types of agency
 - universal: represent in business and personal matters;
 - can contract for principal
 - general: represent in business matters;
 - agent can contract for principal
 - special: represent in single business transaction;
 - normally agent cannot contract for principal;
 - the brokerage relationship is usually special agency

- Creating an agency relationship
 - created by express written or oral agreement or as an implied agreement by actions of either party

- Terminating an agency relationship
 - causes:
 - fulfillment;
 - expiration;
 - mutual agreement;
 - incapacity;
 - abandonment; or destruction of property;
 - renunciation;
 - breach;
 - bankruptcy;
 - revocation of license

FIDUCIARY DUTIES

- Agent's duties to the client
 - skill, care, diligence;
 - loyalty;
 - obedience;
 - confidentiality;
 - disclosure;
 - accounting

- Agent's duties to the customer
 - honesty and fair dealing;
 - exercise of reasonable care and skill;
 - proper disclosures;
 - danger areas: misrepresentation; advising beyond expertise
- Principal's duties
 - availability;
 - provide information;
 - compensation
- Breach of duty
 - liabilities: loss of listing, compensation, license; suit for damages

FORMS OF REAL ESTATE AGENCY

- Single agency
 - seller agency;
 - buyer agency;
 - tenant representation
- Subagency
 - outside brokers and agents who help listing agent;
 - listing broker's own agents
- Dual agency
 - representing both sides;
 - potential conflict of interest;
 - must disclose, obtain written consent;
 - types: voluntary by consent;
 - involuntary by actions of parties (implied agency);
 - duties: all but full disclosure and loyalty
- No agency
 - "facilitator" or "transaction broker";
 - representing neither party in the transaction;
 - duties to both parties: accounting; skill, care and diligence; honesty and fair dealing;
 - disclosures affecting property value

AGENCY DISCLOSURE

- Objectives of disclosure
 - declare;
 - explain;
 - offer choice;
 - obtain documented consent
- Seller agent disclosures
 - to client: in writing on or before listing is executed;
 - to customer: prior to substantive contact, in writing; oral permitted but

must have written follow-up

- Buyer agent disclosures
 - in writing;
 - upon first contact with listing agent or seller
- Dual agent disclosures
 - "informed, written consent";
 - may not disclose: price or financing positions or motivations unless authorized
- Facilitator disclosures
 - on becoming transaction broker or on substantive contact whichever is first