Sales Associate Course

Chapter Four

Authorized Relationships
Duties and Disclosure
Three Categories of Law

1) Common Law
   Unwritten
   Custom and court decisions
   Compensatory and punitive

2) Statutory Law – criminal courts
   Legislature (written)
   Monetary and imprisonment

3) Administrative Law
   F.S. 455 - DBPR
   F.S. 475 – FREC
   Monetary
Agency Law

Principal – Agent relationship

1) Employer – principal
2) Relationship based on trust
3) Agent works on behalf of employer
Three Types of Agency Relationships

An agent is a person entrusted to represent another. The three types are:

- **Special Agent**: One Transaction
- **General Agent**: One Business
- **Universal Agent**: Everything
Subagent

1) Not a type of agency
2) Extension of another agency
3) Act on behalf of another agent
4) Owes same duties to principal as original agent
5) Sales/Broker Associates
   1) General agents of broker
   2) Subagent of brokers principals
Brokerage Relationship Disclosure Act

**Purpose:** Inform and educate the public.

1) Defines relationship between broker and brokers employer
   1) Residential
   2) Non-residential
   3) Disclosure forms
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<th>No Brokerage</th>
<th>Transaction Broker</th>
<th>Single Agent</th>
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<td>Honesty &amp; Fairness</td>
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<td>Account for All Funds</td>
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<td>Disclose Known Facts (Residential)</td>
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<td><strong>Skill, Care &amp; Diligence</strong></td>
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<td>Present All Offers and Counter Offers</td>
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<td>Limited Confidentiality</td>
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Brokerage Relationships (F.S. 475.278)

- Single Agent (written)
  - Fiduciary duties
  - Principal

- Transaction Broker (verbal)
  - Limited representation
  - Customer
  - Presumed

- No Brokerage (written)
  - Described & disclosed in writing
  - Three duties owed
Definitions

- Customer
- Single agent
- Principal
- Transaction broker
- Consent to transition to Transaction broker
- No brokerage relationship
Residential Transaction

- Residential sales – required disclosures
  - Improved residential property of 4 units or less
  - Vacant (unimproved) land zoned for 4 residential units or less
  - Agricultural property of 10 acres or less
  - Leases with option to purchase with 4 or less units
  - Business interests with 4 residential units or less
Disclosure Requirements

- Transaction Broker, Single Agency and No Brokerage Relationships
  - Must be made
    - Before entering into an agreement
    - Before showing property
    - Whichever occurs first
- All relationships required disclosure:
  - All known facts that materially affect the value of residential property and are not readily observable to the buyer
Disclosure Exemptions

- Nonresidential
- Rental or leasing
- Bona fide “open house”
- Casual conversation
- Answering factual questions
- Auctions
- Appraisals
- Business opportunities/enterprises
Retaining Disclosure Documents

- Residential transactions
  - Result – written contract
  - Retain for 5 years
  - Whether:
    - Transaction closes
    - Fails to close
Honesty and Fairness

- Licensees owe duty of good faith and honesty to customers
- A broker’s customers are entitled to rely on any material statement related to a real estate transaction made by a licensee
- Required in all types of relationships
Disclose Known Facts

- Licensee must disclose to buyers all known facts that materially affect the value of RESIDENTIAL property
- Required in all types of relationships
Account For All Funds

- The broker must account for all funds entrusted to him or her with regard to a real estate transaction.
- Money entrusted to a broker must be kept separate from the broker’s funds.
- Required in all types of relationships.
Skill Care and Diligence

- Broker must
  - Keep informed on changes and developments that may affect the value of the property
  - Use diligence in facilitating the transaction
- Single agency or transaction brokerage
Present All Offers

- Licensee must present all offers and counter offers in a timely manner
  - Unless directed by a party in writing
  - Including written and oral offers
- **Single agency or transaction brokerage**
Limited Confidentiality

- Transaction Brokerage
  - Unless waived in writing
  - Three areas are confidential
    - Price other than current offer
    - Terms other than current offer
    - Motivation

- Transaction brokerage only
Full Confidentiality

- Single Agency
  - A broker may not reveal to a third party, without the principal’s permission, information that may lessen the principal’s bargaining position

- Single agency only
Obedience

- A broker is obligated to follow all legal instructions of the principal
  - Advise the principal and then obey or withdraw from the relationship
- A broker may not follow an illegal instruction
- Single agency only
Loyalty

- A broker may not adopt an attitude adverse to the principal’s interest
- A broker must work for the best price and terms for the principal
- Single agency only
Full Disclosure

- A broker must keep the principal informed of any information that might affect the transaction or the value of the property

- Single agency only
Presenting Offers

Duty to transmit **all** offers

- Verbal
- Written
- No binder deposit
- Exception: employer instructs not to
- Brokers do not accept/reject offers
- Exception: power of attorney
Fiduciary Relationship

- Mutual Trust and Confidence
  - Between a broker (agent) and sellers or buyers (principals or clients)
  - When accepted as a part of single agency
- The opposite of dealing at Arm’s Length (Caveat Emptor).
Written Disclosure Requirements

- Do not apply - must disclose verbally
  - Nonresidential transaction
  - Renting or leasing
    - unless including option to purchase residential property
  - Auctions
  - Appraisals
  - Business brokerage
    - unless residential property is included
Dual Agency

- Single Agency (Full) representation
  - Represent one party as single agent
  - Cannot represent the other party as a single agent or transaction broker
  - Could represent the other party in a no brokerage relationship

- Dual Agency is illegal in Florida
Consent to Transition to Transaction Broker

- Change from single agent to transaction broker
  - Requires written consent
  - Prior to transition
  - Signed by the principal(s)

- Signatures
  - Recommended for all disclosures
  - Required for Transition to Transaction Broker
Designated Sales Associate
ABC Real Estate Company

Key: Broker Advises Licensees (Not: Buyers & Sellers)

Represents

Buyer Broker assigned Sales Assoc. (Single Agent)

Same Transaction

Seller Broker assigned Sales Assoc. (Single Agent)

1) Non-residential
2) Requested by both parties
3) $1 million or more in assets
Arm’s Length Relationship

- Adversaries
- Opposite of fiduciary relationship
- “Caveat emptor” (buyer beware)
- Buyer and seller
- Not licensees
  - Fairness and honesty
Terminating Agency Relationship

- Terminated by:
  - Fulfillment of agency purpose
  - Mutual agreement
  - Expiration of term
  - Agent renunciation by giving notice to principal
  - Revocation by principal
  - Death
  - Destruction of the property
  - Bankruptcy
Listing Contract

- 2 types of employment agreement
  - Find a Purchaser (Florida)
    - Buyer
      - Ready (Now)
      - Willing (agreeable to price and terms)
      - Able (capable of fulfilling contract)
      - Whether it closes or not

- Effect a Sale
  - transaction must actually close
Payment of Commission

- Licensees can only be paid by broker
- Licensees can only work for one broker at a time
- Licensee not paid – can only sue broker
- Broker can place a lis pendens or a lien to collect a commission only with a prior contractual agreement (F.S. 475.42)
Uniform Commission Rates

- Sherman-Clayton Antitrust Act
  - No uniform price or fee
  - Competing brokers cannot discuss
  - Commissions are Negotiable
  - No “price fixing”
Illegal commissions

- Overage/Secret Profit
Kickbacks

- Real Estate Settlement Procedures Act (RESPA)
  - Must perform a service
  - Have appropriate license
  - Disclose to all parties
Referral Fees

- Real Estate Settlement and Procedures Act (RESPA)
- Referral received from a licensee in another State or country
  - Referring licensee cannot participate
  - If real estate services are provided by referral licensee, cannot pay referral fee
  - Disclosure of referral fee is not required
- Compensation includes:
  - Gifts, expenses
Referral Fees

- Licensee may share compensation
  - Parties to the transaction
  - Full disclosure to all interested parties
Policy and Procedures Manual

- Provides guidance
- Not required
- Release broker from liability
- Creates harmony
- Brokerage relationships
- Document retention
- Do not Call laws, etc.