

COMMON LAW OF AGENCY

**A SUPPLEMENTAL CHAPTER FOR
OKLAHOMA
*REAL ESTATE PRINCIPLES***

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CREATION OF AGENCY

An agency is the legal relationship whereby one person, an agent, is authorized by another, a principal, to act on that person's behalf, and is empowered to do what the principal could lawfully do in person. The axiom of agency is: "He who acts through other acts himself." The principal thus assumes all the responsibilities of the acts of the agent in altering legal relationships with third parties on his behalf. In so dealing, an agency is formed and brings into effect the law of agency, which prescribes certain responsibilities and liabilities to the principal and the agent. These rules of law also delineate responsibilities, obligations, and duties with regard to dealing with third parties.

In the normal course of business, real estate licensees routinely create agency relationships. Most are intentional through an expressed agreement, either written or oral, while others are implied by the action of the parties. Still others may be inadvertent or accidental.

When property owners enter into listing agreements with real estate brokers to represent them in legal or business dealings with third parties, agencies are created. The agreement defines the terms of employment and outlines the duties and responsibilities of the agents (brokers) and the principals. At the same time, obligations to third parties (customers) are legally established.

The principal-agent relationship is generally created by an employment agreement between the parties in the form of a listing contract. A contract of employment is not necessary, however, for the creation of an agency. All that is required is mutual consent, the principal expressly or by implication indicating a willingness to be represented by another person, with the agent, either expressly or impliedly, indicating a willingness to act under the direction and control of the principal.

The Creation Process

Creation of an agency is easy. Therein lies the danger of creating responsibilities and duties accidentally, inadvertently, or unintentionally. An agency may subtly come into being when the conduct of the principal implies to a third party that a relationship is in effect, although neither the principal nor the agent may be aware of its existence.

The authorizing party in an agency relationship is the principal. Some action or conduct by a principal is necessary to create the relationship.

Anyone who can be a principal can be an agent. The requirements of an agency contract are the same as for any other contract. The parties must be legally competent, that is, they must have the legal capacity or power to enter into such a contract and commit themselves to the performance of its terms.

To qualify as legally competent, individuals must be of age and must be mentally competent. If an incompetent enters into an agency agreement, technically the agreement does not exist. It is void. Therefore, because minors and mental incompetents lack the capacity to contract, they cannot be principals except through guardians. While an agency contract entered into by a minor as agent is not

enforceable by the principal against the minor, the minor as agent can bind the principal and third parties in unauthorized contracts. The capacity of the principal is at issue in this case.

A mentally incompetent person poses a special problem in agency. Some persons are actually incompetent at the time of an agency agreement but under the circumstances, it is difficult to recognize the affliction. The agency contract of one who has been adjudged incompetent is absolutely void and cannot be enforced. The only effective way to deal with a legally declared incompetent is through a guardian.

A person who has an interest adverse to a principal cannot serve as an agent without knowledge and consent of that party.

Corporations and partnerships can be agents for principals as they are legal entities which have the authority and capacity to act and contract. While unincorporated associations are not recognized as entities having legal capacity, members of the group may contract and be held legally responsible for actions of the association. Companies are licensed by the Oklahoma Real Estate Commission (OREC), but in all instances, the responsibilities of agency fall on a principal broker.

It is a basic general principle of law that one cannot do indirectly what one cannot do directly. The reasoning behind this principle is that by use of a subterfuge, undue or unfair advantage may be gained by one party in dealing with another.

Often, such attempts may be such a serious breach of acceptable conduct as to amount to fraud. In discussing capacity of minors to engage in agency relationships, note that while a minor may sometimes be the agent of an adult principal, a minor may not acquire the capacity to contract with others by engaging an adult agent to handle business transactions.

Agency Ratification

The agent is limited by the terms of the employment contract and the principal does not have to accept acts performed beyond the authority given the agent. However, an act that could have been authorized by the principal may be subsequently ratified. If an agent has secured an unauthorized offer, it may be concluded that the agency was created when the negotiations began. The subsequent adoption by the principal has authorized the act, ratifying the agency.

When real estate brokers work within the scope of their authority, they can legally bind their principals. It is important that all parties involved clearly be aware of the agent's authority and its source.

AGENCY AUTHORITY

There are several types of authority extended by a wide range of types of principals. For the purpose of real estate brokerage, two major types are identified: actual and apparent.

Actual

Actual authority is by far the most common type. It is the authority specifically and clearly conferred by a principal. It consists of expressed authority and implied authority.

Expressed

Expressed authority, commonly termed 'express authority,' is given to the agent in writing or orally, and sometimes by the conduct of the principal. The most obvious example of expressed authority is the written employment contract or listing agreement.

Implied

Implied authority is that which the agent reasonably needs to perform expressed authority. For example, an administrative assistant is employed to manage a real estate brokerage office. The assistant is not expressly told to hire and fire custodial employees, but implied authority allows the assistant to do so.

Apparent

Apparent authority, also known as 'ostensible authority,' is conferred on an agent by force of law to protect innocent third parties who rely on the impression created by the principal that appropriate authority has been conferred on a would-be agent. Such authority may be created by the "principal's silence" when there is a duty to speak. It results when the following conditions exist:

1. One willfully or negligently conveys the impression that another is his agent.
2. A third person, in reliance on the false impression, deals with the alleged agent and as a result of the dealing, adversely changes his legal position (some use the term "suffers damage").

TYPES OF AGENCIES

The type of agency created depends on the scope of responsibility given to the agent. Classification of agencies is based on the amount of authority given by the principal, ranging from very little to complete. There are many types of agencies and degrees of authority. Four basic categories are mentioned here, but only the first is normally applied to real estate brokerage relationships.

Special

A special agent is one employed for the performance of a specific task. Once that is accomplished, the agency is extinguished. A real estate broker ordinarily is a special agent, one with limited authority, authorized to conduct a single transaction for a principal. The broker's principal is generally the owner of the real estate. Sometimes the principal is a buyer, commonly one seeking a special type of property. As a general rule, the broker's authority as a special agent is to find a purchaser who is ready, willing, and able to buy the property, either on the terms set out by the seller or on terms acceptable to the seller.

General

A general agent is one who has wide authority to conduct a series of transactions of a continuous nature on behalf of clients. With a general agency, a principal gives the agent the power to transact the affairs of the principal in a certain trade or business.

A universal agency empowers the agent to represent the principal in all matters that can be delegated. A universal agent literally has a power of attorney and can, without permission, enter into any contract for the principal. Such authority allows the agent to transact any and all business on behalf of the principal including the writing and endorsing of checks.

An ostensible or apparent agent is one who is considered by third persons to represent a principal whose words or conduct led the third party to believe that the agent had authority to act on behalf of the principal. Whether or not the agent has such authority, third parties who relied on the apparent authority may hold the principal liable for the acts of the purported agent.

AGENCY RESPONSIBILITIES

The relationship of trust and confidence assumed by an agent is described as a fiduciary relationship in which the agent owes a duty of loyalty and trust to the client and has a duty of performance according to the terms of the employment contract. In turn, the principal has certain responsibilities toward the agent, while each has pre-established responsibility to third parties.

Court cases have established a specific set of common law duties in the usual agency situation. In addition, all states have codified the law of agency through legislation. The ***Oklahoma Real Estate License Code*** spells out the specific responsibilities of the parties in various real estate agency relationships. Federal statutes are also applicable in many cases, especially in labor law.

Responsibilities of Agents to Their Principals

Fiduciary duty requires that the agent always act in the best interest of the principal. The law implies certain responsibilities which hold in the normal real estate agency arrangement.

Performance

Agents cannot escape responsibility by assigning or delegating duties they have agreed to perform. Agency relationships are highly personal by nature, are non-delegable and, if the principal designates, cannot be performed by any other than the agent selected. In most real estate brokerage relationships, by custom, habit, and usage, sub-agents may be employed, particularly in showing properties and transmitting offers to owners. Utilization of sub-agents in any capacity, however, does not relieve the basic legal obligation of the agent. In short, an agent must perform the (contract) agency, and must do so in person.

Loyalty

By establishing an agency relationship, the agent is working for and is appointed by the principal. In this capacity, agents must be loyal, diligent, and faithful to their employers, and act in the most professional and ethical manner, putting forth their best efforts to further the interest of their principals.

To preclude unjust enrichment, agents may profit only by agreed upon compensation and must not have or represent any interest adverse or opposed to the principal. They may not accept secret gifts or fees from other parties without permission of their principals. Agents cannot use confidential information for their own personal benefit or gain. They may not later disclose to a third party secret information acquired as a result of the agency relationship.

Agents must not act as agents for both the principal and third parties (dual agency) without express permission of all parties. If such an occasion arises, each party must know the complete nature of the relationship existing between the agent and the other party, and understand the inability of the dual agent to adhere to the fiduciary duties of sale, loyalty and confidentiality. The agent must make a full disclosure of all pertinent facts before, during and after the transaction.

Agents may not compete with their principals in matters covered by the agency. Agents have the duty to keep their principals fully informed at all times of all material facts or information obtained which could affect the subject matter of the agency. Agents must convey any information or notice from a third party intended to be transmitted to the principal. If agents neglect to communicate the information, the principals are as liable as though they had been informed or received notice directly. If agents fail to inform the principal, the principal can hold the agents liable for the resulting loss.

Although the requirement for loyalty is broad, it does not require an agent to cover dishonest acts of the principal which the agent may discover. The agent must act in a legal manner at all times or withdraw from the agency.

Obedience

An agent is obligated to perform the work assigned and to obey all reasonable, lawful, and moral instructions given by the principal in the performance of the agency. If losses to a principal are caused by acts committed by an agent acting beyond actual authority, the agent may be liable to the principal for those losses. An agent cannot justify actions by stating that they were done in good faith, or that the

agent was really looking after the best interest of the client. The legal test is: Did the agent violate instructions?

In an emergency, however, when it is clearly in the best interest of the principal, the agent has the authority to disregard instructions.

Duty to Account

The agent has the duty to make an accounting to the principal for all property, money, or other valuable consideration received in the course of the agency. Accurate records and accounts of all transactions, whether or not consummated, must be kept on file for a minimum of five years.

All checks and monies rightfully belonging to others should be deposited promptly by the agent in a separate bank account called an escrow or trust account. Earnest deposit checks must be deposited before the end of the next banking day following acceptance of an offer by an offeree, unless otherwise agreed to in writing by all interested parties.

Escrow funds must be kept in a trust account until the transactions involved are consummated or terminated and a proper accounting is made. The commingling of the money held for others with the agent's general operating or personal accounts is prohibited.

Funds received by a sub-agent or an associate must be promptly turned over to the listing broker for deposit. If the seller should fail, refuse, or be unable to close a transaction through no fault of the purchaser, the earnest deposit must be returned to the purchaser.

Brokers and associates are responsible for furnishing duplicate originals of all material documents to the parties to the transaction. A duplicate copy is a document, no matter how prepared or reproduced, with original signatures placed on the document after reproduction or entry of all other information.

Trust account funds that will ultimately belong to the agent cannot be used by the agent until the transaction is complete. Monies belonging to others cannot be converted to personal use. They are not available for other than intended use.

Care and Skill

The agent has the duty to act with reasonable care and to possess the skills exercised by persons in the community performing such skills. Reasonable judgment and care must be exercised in advertising and rendering service. Agents hold themselves out to the public as possessing certain abilities and skills have the duty to perform with competence. To the public, the licensee possesses knowledge, ability, and skill as represented. If a client suffers any loss due to the licensee's lack of care, knowledge or skill, the client can hold the licensee liable for such loss.

Because agents cannot escape responsibility for negligence or lack of ability by pleading ignorance, they should keep informed of social, economic, and legal developments in their fields of expertise.

Responsibilities of Principals to Agents

Although the realities of their normal functions do not fit neatly into this section of agency law real estate licensees should be aware of the following basic duties of principals.

Duty to Perform

The principal must abide by the terms of the agency contract and owes a duty of good faith and fair dealing to the agent. If the principal wrongfully breaks the contract, the agency is terminated, but the principal may be liable for damages to the broker.

The principal must allow the agent a fair opportunity to perform the services and must not act in any manner which will harm the agent's reputation. Neither the principal nor the agent may interfere with the performance of the contract by the other and both must cooperate in the accomplishment of the objective.

Reimburse Expenses

If the agent incurs expenses in performing authorized acts for the principal, the principal has the duty to reimburse for all reasonable expenses so incurred.

Indemnity for Loss

The principal is responsible for making restitution to the agent who, without fault, sustains damages, losses, or injury as a result of the agency relationship.

Compensate for Services

When the agent has performed as agreed, the principal has the duty to pay the amount of commission agreed. If no amount of compensation is agreed upon or stated, the principal must pay the agent the current market rate of such services in that locality.

In some instances, the broker is not entitled to be paid for services rendered. No compensation is due if the:

1. Objective of the agency is not legal.
2. Broker performs in a negligent manner resulting in loss or injury to the principal.
3. Broker makes misrepresentations or is guilty of fraudulent activity.
4. Broker represents others with interest adverse to the principal without knowledge and consent of the principal (undisclosed dual agency).

Responsibilities of Principals to Third Parties

The principal owes the duty to the third person to perform contracts negotiated by the authorized agent. If the contract is not performed, the third party may hold the principal liable for breach of contract. Likewise, the third party is responsible to the principal for performing contracts made through the agent.

The principal is personally liable for any tort (a civil wrong, such as fraud) of an agent if the principal authorized the agent to do the wrongful act, or if the act was within the scope of the agent's employment.

A seller of real estate is liable to the buyer for the representation as to a material defect in the property made by the broker or associate which induced the purchase to buy, if such representation was made with either the knowledge of the seller or with express or implied consent.

Responsibilities of Agents and Third Parties

While agents must be primarily loyal to principals, they must also be fair and honest with third parties. Agents owe customers a duty of fairness and good faith.

If the agent has authority to negotiate a contract with a third party on behalf of the principal, the agent has no personal responsibility for performing the contract. If the principal whose identity is known (disclosed principal) fails or refuses to perform, the agent cannot be held liable for the non-performance of the principal.

If, however, the agent negotiates a contract for the principal without, in some way, revealing the existence of or the identity of the principal (undisclosed principal), the agent can be held personally liable for the performance of the contract by the third party. In this latter situation, the agent may also hold the third party responsible for performance.

An agent is personally responsible to the third party for any tort committed, with or without the permission of the principal.

If a person claims to be an agent for another, that person impliedly warrants or guarantees possession of such authority. One can be held liable to the third party for any loss caused by breach of such warranty even if there is no real authority to act as agent.

If a real estate broker or associate knowingly misrepresents a material fact concerning the property for the purpose of inducing the prospect to purchase, and the prospect buys relying on the misrepresentation, the agent is responsible for the tort of fraud or deceit. If the agent acted with the consent of the principal, or within the scope of authority given, the third party has a choice of recovering the loss from the agent or the principal. In turn, a third party is liable to the agent for any tort committed against the agent.

In the usual real estate situation, the buyer and seller personally sign the contract. The question of liability on a contract made by a duly authorized agent does not normally arise.

Brokers or associates might be held liable for negligence if they fail to inform themselves of the facts which is a reasonable inquiry might disclose. Prudent business practice requires the broker to make a

careful investigation of the property before offering it for sale. In so doing, the broker can avoid the publicity of a lawsuit or the bad public relations of being suspected of fraud. The broker should never rely only on the word of the seller.

A real estate broker cannot sign a contract for the sale of real estate for a principal unless specifically authorized. The authority for a real estate agent is usually interpreted as being only to find a ready, willing, and able purchaser to buy on the terms set forth by the seller and obtain an offer to purchase. If the owner fails or refuses to perform the contract of sale, the broker is not liable to the buyer.

Although agents could be held responsible for statements misrepresenting the property, they cannot be held liable for exaggerations that a prudent person would not normally construe as factual.

Undisclosed Dual Agency

It is both unethical and illegal for an agent to represent both parties without the consent of both. With the knowledge and consent of the parties, however, the agent may act for any or all and may receive compensation from each.

Deliberate creation of a dual agency, although legal, is considered a dangerous practice. The principal wants the broker to negotiate for the highest possible price; the third party wants the agent to arrange for the lowest price. In attempting to serve two masters, brokers may be sacrificing the interest of one to that of the other, or that of both to their own interest.

Dual agency, intended or not, can become the basis for lawsuits being brought against licensees by members of the public. These suits can result from confusion among buyers and sellers concerning the agency status of a broker and the broker not understanding the difference in the terms "clients" and customers." Some prospective buyers (customers) are not aware that the agent who undertakes to show them properties or assists them in submitting offers to purchase traditionally does so as an agent of the owner (client). It is not clear to the buyers that the broker does not represent them and that they are without representation during the negotiations and consummation of the sale.

The ease with which an agency relationship can be created and the absence of any need for formalities or a writing make possible the so-called "inadvertent," "accidental" or "unintended agency." Implied or inadvertent agencies have been determined to exist between agents and customers where the conduct of the agent was found to constitute the agent's consent to act on the customer's behalf in a particular transaction.

Licensees often accidentally create dual agencies, being unaware that, by their action, an illegal undisclosed dual agency has come into being. Implied or inadvertent agencies can be created when agents lead customers to believe that they are acting in the customer's behalf or "doing the dealings" of the customers. Under the law of agency, such an inadvertent agency is a clear break of an agent's fiduciary obligation to the principal and generally is viewed to be an act of fraud. An undisclosed dual agent can be liable for damages and forfeiture of compensation as well as loss of a real estate license. Furthermore, any transaction procured by the dual agent can be rescinded without any showing of injury to the principal or bad faith by the agent.

In cases where the purchasers specifically enlist the aid of the licensee in identifying properties for inspection that meet their financial, locational, and spatial criteria, disclosure should take place at an early meeting between the broker or associate and the prospective purchaser. It should be explained to the “customers” that the broker is an agent of the seller, and they should be advised as to the kind of treatment, services, and loyalty they may expect from the agent.

The law is clear that an agent who shows a prospective purchaser certain properties offered for sale and transmits offers from the prospective purchaser to the owner does not become the agent of the prospective purchaser. An agency relationship with such a customer ordinarily does not result when the agent only shows available property, describing the amenities and attributes of the subject property. These activities are deemed to be ancillary to the broker’s obligation to procure a ready, willing and able buyer.

BUYER BROKERAGE

It is also possible for an agent to be a “buyer representative,” an agent who represents prospective purchasers rather than sellers. There are cases where customers specifically enlist the aid of an agent in identifying properties for inspection that met their financial, locational, and spatial criteria. Traditionally, such an agent is paid by the buyer to find an appropriate property.

In this arrangement the buyer representative actually represents the buyer while expecting the owner to pay the commission. Who pays the commission is not the determining factor in agency, although it is normal for agency to follow the money. The problem comes in determining who the agent actually represents and whether there is a conflict of interest.

In order to avoid creating dual agencies with their legal and economic consequences, disclosure should take place at an early meeting between the agent and the prospective purchasers. It should be explained to the customers (prospective buyers) that the agent represents the principal, and they should be advised as to what kind of treatment, services, and loyalty may be expected from the agent.

Brokers may avoid dual agency by acting for one, and only one, principal in any particular transaction. Where an agent is a party to an employment agreement with an owner, the identity of the principal is clear; it is the owner. When not acting as an agent or sub-agent for the seller, the broker may act as an agent for the buyer, making the buyer the client. In so doing, commissions to be paid should be determined before property is shown, or certainly before negotiations begin.

TEST YOUR UNDERSTANDING

- 1. Which of the following best defines “Law of Agency?”**
 - A. The selling of another’s property by an authorized agency.
 - B. The rules of law that apply to the responsibilities and obligations of a person who acts for another.
 - C. The principles that govern conduct of business.
 - D. The rules and regulations of OREC.

- 2. Persons who authorize others to act for them are**
 - A. employees.
 - B. principals.
 - C. authorities.
 - D. third party.

- 3. A person empowered to act on behalf of another is a(n)**
 - A. middleman.
 - B. agent.
 - C. principal.
 - D. third party.

- 4. Under the Law of Agency, licensees can be held liable if they fail to**
 - A. follow the legal instructions of their principals.
 - B. possess and exercise the ability and skill of competent brokers or associates.
 - C. use care in the performance of the agency.
 - D. all of the above.

- 5. Real estate brokers authorized to conduct a single transaction for their principals are usually classified as**
 - A. general agents.
 - B. universal agents.
 - C. special agents.
 - D. ostensible agents.

- 6. Agents having a wide authority to conduct a series of transactions of a continuous nature on behalf of their clients are**
 - A. special agents.
 - B. general agents.
 - C. sub-agents.
 - D. ostensible agents.

- 7. Associates owe all of the following duties except to:**
- A. obey all legitimate instructions from the broker concerning the transaction.
 - B. be loyal to the interests of the principal.
 - C. prepare the deed for the conveyance of title.
 - D. disclose material defects of the property to the broker and principal.
- 8. In an agency relationship with a principal, the broker must**
- A. be loyal.
 - B. obey reasonable instructions and not be negligent.
 - C. account for all monies and property involved.
 - D. all of these.
- 9. The broker must be loyal to the principal in which of the following ways?**
- A. Profit only by agreed-upon commission and have no interests adverse or opposed to the principal.
 - B. Submit all offers to the principal until the principal accepts an offer.
 - C. Both A and B.
 - D. Neither A nor B.
- 10. The broker should obey all instructions given by the principal. In the event The principal instructs the broker to violate laws, the broker**
- A. must do as instructed.
 - B. should do as instructed.
 - C. should withdraw from the transaction.
 - D. can ignore the instructions.
- 11. A real estate broker acting as an agent of the seller**
- A. should render faithful service to the seller.
 - B. should make a profit in addition to a commission.
 - C. must agree to a change in price without the seller's approval.
 - D. can accept a commission from the buyer without the seller's approval.
- 12. A broker who acts as agent owes a fiduciary obligation to the seller. To the buyer of the property, the broker owes**
- A. a duty of fairness and honesty.
 - B. no duty because the seller pays the commission.
 - C. only the duty of honestly answering buyer questions.
 - D. a duty to disclose only those items which the broker feels relate directly to the sale price of the property.

13. Since employed by the principal, the broker

- A. may misrepresent the facts to the purchaser because the broker is not representing the purchaser.
- B. may misrepresent the facts to the purchaser if the principal so instructs.
- C. may not misrepresent the facts to a purchaser.
- D. none of the above.

14. A real estate broker, as agent for the owner, should

- A. submit only the most advantageous offers to the principal.
- B. make an honest profit on the sale in addition to the agreed upon compensation.
- C. be an agent for both the buyer and seller.
- D. render faithful service to the principal, handling the sale of the property as if the broker owned it.

15. The fiduciary responsibility requires that the agent must always act in the best interest of the principal. As an example of this, a broker would have to disclose which, if any, of the following to the principal?

- A. The prospective buyer is a member of a minority group.
- B. The prospective buyer expressed an intent to violate the restrictive covenants.
- C. The area that the seller is planning to move to has a very large minority population.
- D. The prospective buyer has indicated a willingness to pay more than now offering.

16. A broker owes certain fiduciary duties to the principal. Which of the following is not included in these duties?

- A. Loyalty to the principal.
- B. Obedience to principal's instructions.
- C. Maintenance of the principal's property.
- D. Accountability for money and property entrusted to the agent.

17. A real estate professional expresses all of the following in a fiduciary relationship with the principal except

- A. loyalty.
- B. patriotism.
- C. honesty.
- D. professionalism.

18. When an agent has no authority but warrants to a third party that he does have authority as an agent, in the event of loss caused by breach of contract, the third party may

- A. hold the agent liable.
- B. has no recourse.
- C. hold the actual agent responsible.
- D. none of the above.

19. In the usual situation, a broker should

- A. represent everyone.
- B. make personal interest secondary to those of the buyer.
- C. make personal interest secondary to those of the seller.
- D. place personal interest first.

20. The creation of an agency relationship is usually the result of which of the following?

- A. Agency by estoppel.
- B. Agency by necessity.
- C. Implied agency agreements.
- D. Expressed agency agreements.

21. The broker's actual authority to sell a parcel of land is given in the

- A. contract of sale.
- B. listing contract.
- C. broker-associate agreement.
- D. *Oklahoma Real Estate License Code*.

22. The term "double or dual agency" applies to which of the following situations?

- A. The broker has a double escrow or a double transaction on one property.
- B. The listing broker is cooperating with a selling broker.
- C. Two brokers have the same property listed.
- D. A broker is acting for both buyer and seller in the same transaction.

23. Real estate agents may not legally represent all principals in the same transaction if

- A. they have failed to inform all principals that they are the agent for each principal.
- B. they have not obtained consent of all to this agency relationship.
- C. they are collecting a commission from both principals without the knowledge of the other.
- D. any of the above conditions exist.

24. Non-disclosure of dual agency can result in

- A. loss of license.
- B. contract rescission.
- C. both A and B.
- D. neither A nor B.

ANSWERS AND EXPLANATIONS

1. **B.** A vast body of law, both common and statutory, controls the rights and duties of principal and agent. In addition to this general law of agency, which is applicable to all business transactions, state licensing laws also directly affect the agency relationship between real estate licensees, clients and the public.
2. **B.** In a fiduciary relationship, principals are the persons who hire real estate brokers to represent them in the sale of property.
3. **B.** Unlike an employee who merely works for a principal, an agent works in the places of the principal.
4. **D.** Under common law principles, agents owe their principal personal performance, loyalty, obedience, disclosure of material facts (such as a proposed new school, highway relocation, or a new zoning ordinance that would tend to increase the property value over the agreed on listing price), to take reasonable care not to exceed the authority granted to them or to misrepresent material facts to principals or to third parties, to keep proper accounts of all monies, and to place the interest of the principals above those of other persons (customers) involved in the transaction.
5. **C.** In a standard listing contract, the broker is employed only to find a buyer who is ready, willing and able to make an offer acceptable to the principal. The broker is not authorized to sell the property nor to bind the principal to any contract for the sale of the property.
6. **B.** A general agent is authorized to perform any and all acts associated with the continued operation of a particular job or a certain business. The essential feature of a general agency is the continuity of service.
7. **C.** Preparation of a deed could be considered practicing law.
8. **D.** The primary responsibilities of an agent to the principal.
9. **C.** The agent must have the interest of the principal foremost and must keep the principal fully informed.
10. **C.** Withdrawal from agency is better than license revocation.
11. **A.** A broker usually represents the seller and must perform the agency contract. As the fiduciary of the principal, the broker has certain duties, obligations, and high standards of good faith and loyalty. The other choices are unacceptable.
12. **A.** In dealing with a third person, an agent must be fair, honest, and exercise care and diligence because the agent is liable for any material misrepresentations or negligent acts.
13. **C.** If a real estate broker or associate knowingly misrepresents a material fact concerning the property for the purpose of inducing the prospect to purchase and the prospect purchases, relying on the misrepresentation, the agent is responsible for the tort of fraud or deceit.

14. **D.** Faithful service is the fiduciary duty of an agent to the principal. All offers must be submitted to the principal, and only the agreed upon commission should be collected. The broker is normally the agent of the seller and cannot serve both buyer and seller without full knowledge and consent of both.
15. **D.** Loyalty to the principal would require disclosure of such information.
16. **C.** Maintaining the principal's property is not one of the fiduciary responsibilities. The others are fiduciary duties.
17. **B.** A broker's fiduciary relationship with the principal requires the highest level of professional integrity in acting in the highest and best interest of the principal.
18. **A.** A real estate broker is liable to a buyer if the agent acts in excess of the authority given by the seller.
19. **C.** As fiduciaries, real estate brokers must handle the sale of properties of principals as though they were selling their own property.
20. **D.** A listing is an expressed agency agreement.
21. **B.** A listing contract is the means by which authority to act as an agent in a real estate transaction is usually given to the real estate broker.
22. **D.** Dual agency can be defined as a situation where one broker or associate represents both parties to a transaction.
23. **D.** All of these conditions must exist for an agent to legally represent all principals in the same transaction.
24. **C.** The Commission can discipline an agent illegally involved in a dual agency by any disciplinary measure it has the power to effect. A conflict of interest exists when the agent represents both the seller and the buyer. This could lead to contract cancellation.