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## **Lesson 8: Real Estate Agency Law**

2 ☐ **Definitions**

3 ☐ **Definitions**

- Person authorizing another to represent her: **principal**.
- Person authorized to act as principal's representative: **agent**.

4 ☐ **Definitions**

▶ Agency between seller and listing broker:

- Broker is seller's agent
- Seller is principal, and is broker's **client**
- Potential buyers are typically broker's **customers**

5 ☐ **Definitions**

▶ Agency between buyer and selling broker:

- Broker is buyer's agent
- Buyer is principal, and is broker's client
- Potential sellers are typically broker's customers

6 ☐ **Definitions**

▶ Agency relationship also exists between brokers and salespersons

- Broker is salesperson's principal
- Salesperson is broker's agent

7 ☐ **Agency Relationship**

**Real estate agency**

8 ☐ **Agency Relationship**

**Real estate agency**

Transactions may involve more than one agency:

- each party may have own agent
- salespersons are agents for their brokers

9 ☐ **Agency Law**

10 ☐ **Agency Law**

- Real estate agency law is two-part:
- general agency law (common law)
- Brokerage Relationships in Real Estate Transactions Act (BRRETA)

11  **Agency Law**

**General agency law**

12  **Creating an Agency**

13  **Creating an Agency**

Under general agency law, agency created by:

- express agreement
- ratification
- estoppel
- Implication
- ostensible

14  **Creating an Agency**

**Express agreement**

15  **Creating an Agency**

**Ratification**

16  **Creating an Agency**

**Ratification**

Principal may ratify agency by:

- expressly approving unauthorized acts, or
- accepting benefits of unauthorized acts.

17  **Creating an Agency**

**Estoppel**

18  **Creating an Agency**

**Estoppel**

- Agency is created by estoppel when it would be unfair to deny agent's authority (because principal allowed third party to believe agency existed).

19  **Creating an Agency**

**Implication**

20  **Creating an Agency**

**BRRETA**

- ▶ Under BRRETA, a written brokerage engagement is required.

**Written brokerage engagement:** A contract in which a seller, buyer, landlord, or tenant becomes a client and agrees to pay for broker's services (for example, a listing agreement or buyer brokerage agreement).

21  **Creating an Agency**

**BRRETA**

▶ A real estate licensee may provide services to someone without creating an agency relationship.

• If so, the other person is only a customer, not a client or principal.

22  **Summary**

**Creating an Agency Relationship**

23  **Legal Effects of Agency**

24  **Legal Effects of Agency**

**Agent's actions bind principal**

25  **Legal Effects of Agency**

**Agent's actions bind principal**

26  **Agent's Authority**

**Universal agent**

27  **Agent's Authority**

**General agent**

28  **Agent's Authority**

**Special agent**

29  **Summary**

**Scope and Types of Authority**

30  **Duties in Agency Relationship**

31  **Duties to the Principal**

32  **Duties to the Principal**

Under general agency law, an agency relationship is a fiduciary relationship, and the agent must put the principal's interests above everyone else's.

33  **Duties to the Client**

▶ Under BRRETA, a broker is NOT deemed to have a fiduciary relationship with any party.

▶ The broker's duties and obligations are limited to those set forth in BRRETA, unless the parties agree otherwise in writing.

34  **Duties to the Client**

▶ Under BRRETA, a broker owes five duties to a client:

- ▶ 1. performance of brokerage agreement's terms

35  **Duties to the Client**

- ▶ 2. promoting client's interests by:
  - A. seeking buyer, tenant, or property
  - B. presenting all offers in timely manner
  - C. disclosing to client any adverse material facts
  - D. advising client to obtain expert advice
  - E. accounting for all funds received

36  **Duties to the Client**

- 3. exercising ordinary skill and care
- 4. complying with statutes and regulations
- 5. keeping information confidential

37  **Duties to Client**  
**Promoting client's interests**

- ▶ The broker must make an affirmative effort to help fulfill client's fundamental goal—
  - If seller: finding a buyer who will buy for an acceptable price and terms
  - If buyer: finding a property at price and terms that are acceptable

38  **Duties to Client**  
**Presenting all offers**

- ▶ A broker must present all offers to client, regardless of how unacceptable an offer may seem.

39  **Duties to Client**  
**Presenting all offers**

- ▶ Offers should be presented even if it would mean a lower commission for the broker.

40  **Duties to Client**  
**Disclosing material facts**

- ▶ BRRETA defines a **material fact** as any fact that a party:
  - does not know,
  - could not reasonably discover, and
  - would reasonably want to know.

41  **Duties to Client**  
**Disclosing material facts**

- ▶ A broker should disclose any relationship with another party in the transaction (friend, relative,

business associate).

42  **Duties to Client**

**Disclosing material facts**

- ▶ Any compensation a broker receives in connection with a transaction should be disclosed (no **secret profits**).

- ▶ However, a broker doesn't have to seek out information on a client's behalf.

43  **Duties to Client**

**Recommending expert advice**

- ▶ A broker must recommend expert advice on matters outside the broker's expertise.

- Questions about structural soundness should be referred to a home inspector, for instance.

44  **Duties to Client**

**Accounting**

- ▶ If a broker receives money or property that a client has an interest in, the broker must account for it.
- ▶ Money received from clients or customers must be placed in special trust or escrow accounts.

45  **Duties to Client**

**Skill and care**

- ▶ A broker must use level of skill expected of a competent real estate broker.

- ▶ A broker who doesn't use this degree of care and who harms a client would be liable to that client.

46  **Duties to Client**

**Confidentiality**

- ▶ A broker must not disclose information to third parties that a client has requested be kept confidential.

- Exception: information that the broker is required by law to disclose (such as latent defects).

47  **Client Duties To Agent**

- ▶ Performance

- Make property easily accessible for showing
- Keep property well-staged and clean
- Compensate agent according to terms of contract

- ▶ Indemnify agent

- ▶ Reimburse agent per agreement; does not apply to typical marketing expenses

48 ☐ **Summary**

**Duties to Client**

49 ☐ **Duties to Customer**

- ▶ Under BRRETA, a broker's duties to customers are more limited.

- ▶ A customer is any person not being represented by the broker in an agency capacity.

50 ☐ **Duties to Customers**  
**Ministerial acts**

- ▶ Brokers may perform "ministerial acts" to customers, such as:
  - identifying property for sale
  - providing information on properties
  - providing pre-printed real estate forms
  - acting as scribe in preparation of forms
  - locating lenders or attorneys

51 ☐ **Duties to Customers**

- ▶ Under BRRETA, a broker has two main duties to customers:
  - disclosing adverse material facts
  - avoiding misrepresentations

52 ☐ **Duties to Customers**  
**Disclosure of material facts**

- ▶ Both the seller and seller's agent must disclose latent defects to prospective buyers.

- ▶ **Latent defects** are hidden defects that are not discoverable by ordinary inspection.

53 ☐ **Duties to Customers**  
**Disclosure of material facts**

- ▶ Broker must disclose:
  - adverse facts concerning physical condition of property, like latent defects and environmental contamination
  - adverse conditions in immediate neighborhood (i.e., within one mile of property)

54 ☐ **Duties to Customers**  
**Disclosure of material facts**

- ▶ Adverse facts must be disclosed only if the information:

- is actually known to the broker, and
- could not be discovered by buyer through reasonably diligent inspection of property

55  **Duties to Customer**  
**Disclosure of material facts**

- ▶ Under BRRETA, a broker does not have a duty to look for and discover material facts concerning property or neighborhood.

56  **Duties to Customer**  
**Disclosure of material facts**

- ▶ The buyer is obligated to protect his interests by inspecting the property and neighborhood.

57  **Duties to Customer**  
**Disclosure of material facts**

- ▶ Under the Georgia Stigmatized Property Act, broker is not required to disclose:
  - The property was occupied by person infected with a disease unlikely to be transmitted through occupancy of the property.
  - The property was the site of a homicide, other felony, suicide, or other death.

58  **Duties to Customer**  
**Disclosure of material facts**

- ▶ A buyer's agent must disclose:
  - any adverse material facts known to broker concerning buyer's financial ability to complete the sale
  - in a residential transaction, whether buyer intends to occupy the property as a principal residence

59  **Duties to Customer**  
**Avoiding misrepresentation**

- ▶ Misrepresentation is a false or misleading statement, whether intentional or unintentional.

60  **Duties to Customer**  
**Avoiding misrepresentation**

- ▶ Under BRRETA, a broker isn't liable for giving false information if the broker:
  - didn't actually know it was false, and
  - disclosed the source of information to customer

61  **Duties to Customer**  
**Avoiding misrepresentation**

- ▶ Opinions, predictions, and “puffing” (nonfactual, exaggerated statements) cannot be the basis of a lawsuit.
- ▶ Agents should still avoid sales talk that might be taken as statement of fact by an unsophisticated customer.

62  **Duties to Customer**  
**Avoiding misrepresentation**

- ▶ Agents should never guarantee future profits that will result from property’s resale.
  - This is a specific violation of state license law.

63  **Breach of Duty**  
**License suspension or revocation**

64  **Summary**  
**Duties to Customers**

65  **Terminating an Agency**

66  **Terminating an Agency**

Under general agency law, agency terminates in two ways:

- 1.by actions of parties; or
- 2.by operation of law.

67  **Terminating an Agency**  
**Action of the parties**

68  **Termination by the Parties**  
**Mutual agreement**

69  **Termination by the Parties**  
**Principal revokes**

70  **Termination by the Parties**  
**Principal revokes**

Exception: agency coupled with interest can’t be revoked.

- Agency coupled with interest: agent has financial stake or other interest in agency subject matter.

71  **Termination by the Parties**  
**Agent renounces**

72  **Termination by Operation of Law**  
**Terminating events**

73  **Terminating an Agency**  
**Under BRRETA**



- ▶ In Georgia, an agency terminates upon completed performance of the brokerage engagement, or, failing that, upon the:
  - agreed-upon expiration date
  - authorized termination of the relationship, or
  - one year after beginning of the relationship

74  **Summary**

**Terminating an Agency**

75  **Real Estate Agency Relationships**

**Typical residential transaction**

76  **Real Estate Agency Relationships**

**Terminology**

77  **Real Estate Agency Relationships**

**Historical background**

78  **Real Estate Agency Relationships**

**Historical background**

- But many buyers thought the agent they were working with was representing them, not the seller.

79  **Real Estate Agency Relationships**

**Historical background**

80  **Real Estate Agency Relationships**

**Historical background**

In 1990s: unilateral offer of subagency replaced with “cooperation and compensation” provision—other MLS members act as cooperating agents, not seller’s subagents.

81  **Historical Background**

**Disclosure laws**

82  **Disclosure Laws**

**BRRETA**

- ▶ Under BRRETA, a real estate licensee must give a written agency disclosure to both buyer and seller in every transaction.

83  **Disclosure Laws**

**BRRETA**

- ▶ The disclosure must state which:

- party or parties the licensee's firm is representing, and
- from which party or parties the licensee will receive compensation.

84  **Disclosure Laws**  
**BRRETA**

- ▶ A licensee buying, selling, or leasing property must disclose her status to the other parties.

85  **Disclosure Laws**  
**BRRETA**

- ▶ In a brokerage engagement contract, the broker must disclose:
  - the types of agency relationships available
  - relationships with other parties that may be conflicts of interest
  - broker's compensation
  - broker's obligation to keep information confidential if requested

86  **Disclosure Laws**  
**BRRETA**

- ▶ Payment (or promise of payment) does not necessarily create a brokerage relationship between a broker and another party.

- For instance, a commission split doesn't create an agency between a seller and a buyer's broker.

87  **Summary**  
**Real Estate Agency Relationships**

88  **Types of Agency Relationships**

89  **Seller Agency**

90  **Seller Agency**  
**Role of seller's agent**

91  **Seller Agency**  
**Role of seller's agent**

May perform ministerial acts for buyers: filling out offer, helping buyer apply for financing.

- Helps sell property without violating agent's duties to seller.
- Should never give professional advice, such as suggesting how much to offer.

92  **Types of Agency Relationships**  
**Subagency**  
**(Not a part of BRRETA)**

Created by express consent of seller and seller's agent.

- Agents from other brokerage companies show seller's property as subagent of seller and listing broker (seller's agent)
- Subagent must promote best interests of seller, not buyer.

93  **Types of Agency Relationships**

**Buyer agency**

94  **Buyer Agency**

**Compensation**

95  **Types of Agency Relationships**

**Dual agency**

96  **Dual Agency**

**Disclosure**

97  **Dual Agency**

**Disclosure**

3. broker will disclose nature of any material relationship to other parties to transaction
4. client does not have to consent to dual agency
5. client's consent has been voluntary

98  **Dual Agency**

**Office policy**

- ▶ BRRETA requires all brokers to establish office policy regarding dual agency.
  - The policy must either permit or reject practice of disclosed dual agency.
  - The office's policy must be disclosed to prospective clients in every brokerage engagement contract.

99  **Designated Agency**

100  **Designated Agency**

In Georgia, designated agency is only permitted if:

- listing agent represents seller only, and
- selling agent represents buyer only.

101  **Designated Agency**

**Office policy**

As with dual agency, a brokerage must have an office policy as to whether designated agency is permitted.

102  **Designated Agency  
Confidentiality**

▶ Designated agents generally may not disclose information that a client asked to keep confidential.

▶ Such information may be disclosed to the agent's broker, but the broker may not tell the other designated agent or anyone else.

103  **Transaction Brokerage**

104  **Transaction Brokerage**

105  **Transaction Brokerage**

A transaction broker does not have to:

- promote the customer's interests as he would promote a client's interests

106  **Transaction Brokerage**

▶ A transaction broker may receive compensation from any party without creating a broker-client relationship or assuming agency duties.

107  **Summary**

**Types of agency**