

## BROKER RELATIONSHIPS & RESPONSIBILITIES – POST 301 STUDY GUIDE

### Agency Law and Real Estate License Law Duties

- What are the basic duties that an agent owes a principal under Agency Law? **OLDCAR or LOADS – loyalty/confidentiality, obedience, accounting, disclosure, skill, care and diligence.**
- What is the definition of a fiduciary relationship? **A person who acts for another in a relationship of trust and who is obligated to act in the other's best interests, placing the other's interests before any self-interest.**
- Does violating Agency Law also violate Real Estate License Law? **Yes**
- What are some possible consequences of violating Agency Law? **revocation or suspension of real estate license, civil liability, loss of commission**
- Can the Real Estate Commission fine a broker for violating Real Estate License Law? **No**

### Material Facts

- What are the four categories of material facts? Give an example of each category.
  - **Facts about the property itself (HVAC system does not work)**
  - **Facts that relate directly to the property (state approved plans for a four-lane bypass near the property)**
  - **Facts directly affecting the principal's ability to compete the transaction (seller is unable to convey clear title)**
  - **Facts that are known to be of special importance to a party (current zoning will not permit a buyer's intended use)**
- Material fact? Yes or No
  - **Death or murder of a previous tenant on the property? No**
  - **A convicted sex offender lives in a neighboring property? No**
  - **A gravesite is located on a property? Yes**
  - **Property is believed to be haunted? No**
  - **Property is located in an airport approach flight path? Yes**
  - **Seller is behind on their mortgage payments? No**
- If a material fact is detrimental to the seller, can the listing broker withhold it from the buyer? **No**
- Can a broker refuse to obey a seller client's instruction to withhold a material fact about the property? **Yes**
- Can a broker advise a buyer on how to take title to the property? **No**
- Can a listing broker disclose to a buyer how much the seller is willing to accept for the property? **No**
- Can a buyer agent withhold information from the seller about the buyer's inability to obtain the funds necessary to purchase the property? **No**
- If the broker is acting as a buyer agent, does that relieve the broker from disclosing material facts to the seller? **No**
- If a material fact is a matter of public record, is the listing broker still required to tell the buyer or seller of that fact? **Yes**
- Does using a limited-service agreement remove the requirement of the broker to discover and disclose material facts? **No**

### Doctrine of Caveat Emptor

- What does Caveat Emptor mean? **"Let the Buyer Beware". The SELLER has no affirmative duty to disclose known facts about the property to prospective buyers.**
- Does North Carolina honor the *Doctrine of Caveat Emptor*? **Yes**
- In North Carolina, do sellers have to disclose material facts to buyers? **No**
- What do sellers have to disclose on the RPOADS? **Nothing**
- In North Carolina, is it possible that buyers may not be able to determine the property's condition from the mandatory property disclosure form? **Yes**
- What damages might a seller be liable for if they don't disclose all property condition information on the disclosure forms? **None as long as they don't lie.**

- If a broker markets a property “as is”, does that relieve the broker from discovering and disclosing material facts about the property? **No**

### Agency Disclosure

- At what point is a broker required to present the *Working with Real Estate Agents Disclosure* to a prospective client or customer? **At first substantial contact (not initial contact)**
- What type of information determines when that point has been reached? Confidential information what would harm the individual in a negotiation. **financial information (ability to purchase), family information, job information, motivation for buying or selling, requirements to buy or sell, specific needs, etc.**
- Is review of the WWREA Disclosure required in all real estate transactions? **No**
- In what types of transactions is the WWREA Disclosure required? **All sales transactions (residential and commercial). Not required in lease transactions.**
- What is the broker required to do when presenting the disclosure? **Review, request signature from buyer or seller, provide a copy of the signed disclosure**
- What decision must be made after presenting the disclosure? **Under what type of agency relationship will the broker and buyer or seller work together.**
- Can a broker work with a prospect if they refuse to sign the disclosure? **Yes**
- When showing property at an open house, what information can be given to a prospective buyer before disclosure is required? **price or age of the property, detailed information about the features of the property, published information**
- Does the WWREA Disclosure have to be reviewed with every prospective buyer that views a property at an open house? **No**
- A broker should review the WWREA Disclosure with a prospective buyer before doing what? **Prior to providing any brokerage services to the buyer such as showing the buyer a house for sale.**
- What option does the broker have when the buyer does not want to be represented by a broker? **Work with the unrepresented buyer as a subagent of the seller (seller subagent) if allowed by company policy.**
- What should a seller subagent broker with Firm A do if the broker wants to be compensated if the buyer becomes interested in a listing offered by Firm B and Firm B is not offering compensation to seller subagents? **Refer the buyer to a broker affiliated with the listing firm and request a referral fee.**

### Do Not Call Registry

- When prospecting for new buyers and sellers, who can a broker call? **Persons NOT on the Do Not Call Registry and businesses. Persons with a prior established business relationship (for up to 18 months). Consumers that make an inquiry (for up to 3 months). Persons that give express permission to be called. Persons with whom the broker has a personal relationship.**
- When prospecting for new buyers and sellers, who can't a broker call? **Persons listed on the Do Not Call Registry or on the company's do not call list.**
- When can a broker call a FSBO seller? **When acting as a buyer's agent to obtain property information for a buyer even if the seller is on the Do Not Call Registry.**
- Bulk emails and other advertising emails are permitted as long as what is clearly offered? **Prominent opt-out option.**
- How long can you call someone that you have previous relationship with to solicit new business even if the previous client is listed on the Do Not Call Registry? **18 months**

### Prelisting meeting

- What documents should the seller make available to the broker at the prelisting meeting? Why are these documents important to review? **Deed (to verify ownership and type of ownership interest and review legal description), survey (to check boundaries, verify acreage and identify encroachments), restrictive covenants and other HOA information (to be able to answer buyers' questions about HOA, dues, assessments, etc.), balance due on seller's mortgage(s) and other liens (to verify mortgage (lien) status and balances to determine if short sale condition exists or potential foreclosure situation).**

- Why is it necessary for the seller to make available the balances on existing mortgages? **To determine if potential short sale situation exists or imminent foreclosure.**
- Does the broker need a copy of the seller's homeowners' insurance policy? **No**
- When preparing for a prelisting meeting with a seller, the broker should provide the seller with what documentation? **Listing agreement to review, WWREA Disclosure, RPOADS (if applicable), MOG Disclosure (if applicable), Lead Based Paint Disclosure (if applicable), property listing data sheet, sample contract**
- Who should complete the RPOADS and MOG Disclosures if required? **The seller(s)**

### Misrepresentation and Omission

- What constitutes misrepresentation of a material fact? **Communicating false or incorrect information either in writing or verbally.**
- What constitutes omission of a material fact? **Not disclosing information that should have been disclosed.**
- When is misrepresentation or omission willful? **When it is intentional / on purpose.**
- What is misrepresentation or omission negligent? **When it is unintentional / lack of discovery.**
- Communicating to the buyer unverified information that was provided by the seller, may cause the listing agent to be guilty of what? **Negligent Misrepresentation**

### Property Disclosures

- When reviewing the RPOADS with the seller, what is the listing agent required to do? **Advise of disclosure requirement, assist with understanding the disclosure, assist in keeping the disclosure accurate throughout the transaction, assist with delivery of the disclosure.**
- What should they not do? **Fill out or complete the disclosure for the seller.**
- Does the buyer have to receive the RPOADS and/or MOG Disclosures prior to being shown property? **No**
- When should the buyer receive the RPOADS and/or MOG Disclosures? **Prior to presentation of first offer.**
- What are the consequences if the buyer does not receive the disclosures by the time an offer is made? **The buyer may have 3 days to rescind a contract.**
- Does the information the seller puts on the RPOADS and/or MOG Disclosures eliminate the requirement of the listing and buyer agents to discover and disclose? **No**
- If the seller has disclosed to the listing agent a property defect or previous sale of MOG rights, but indicated otherwise on the disclosure forms, is the agent required to not disclose this information if the seller asks the agent not to do so? **No. The broker must disclose all material facts regardless of what the seller puts on the disclosure forms or whether the seller requests the agent to withhold the information from prospective buyers.**
- On a previous MOG lease, does the fact that minerals, oil, or gas were not discovered or recovered impact the validity of the lease? **No**
- Must the broker disclose the transfer of MOG rights by a previous owner, even if the seller chooses not to do so? **Yes**

### Residential Square Footage

- On a one-story home, what measurements do you use to obtain the square footage? **Exterior**
- How do you obtain the measurements for a two-story home? **Measure inside the home by measuring wall to wall and adding 6" for each interior and exterior wall.**
- Which floor or floors is the area occupied by the stairs to be included? **Include the area occupied by the stairs as part of the area for both the first floor and second floor.**
- What is the minimum wall height in a room with sloped ceilings? **5 feet**
- What are the requirements for a room to be included in the "Heated Square Footage" of a property? **Heated, finished and accessible from other heated living area.**

### Lead Based Paint

- What is "target housing" for possible lead-based paint disclosure? **The sale or lease of most residential housing built prior to 1978.**

- What are the basic disclosure requirements of the seller? **Provide the EPA booklet, complete the Lead-Based Paint Addendum signed by the seller and buyer or landlord and tenant, permit the buyer to do a lead-based paint risk assessment (the buyer can waive the requirement)**
- Must the seller certify to the buyer that the house is lead base paint free? **No**

### CMA/BPO

- Can any broker be paid for a CMA/BPO? **No. Must be a full broker. Provisional Brokers cannot be paid to do a CMA/BPO.**
- When performing a CMA/BPO for a fee, is the broker required to personally inspect the property? **Yes, unless the requirement is waived by the client.**
- Can a CMA/BPO be used as a basis for making a mortgage loan? **No**
- Can a CMA/BPO determine market value? **No. Can only determine probable selling or leasing price.**
- Does the seller have a right to expect their broker to advise them on the probable selling price? **Yes**
- Can a broker do an appraisal? **No**
- Is the owner required to do research on the probable selling price of the property? **No**
- Should the probable selling price be reported as a single figure or as a range? **Can be provided as either a single figure or a range (as long as the high side of the range is not more than 10% higher than the low side)**
- Should the property be listed for the probable selling price indicated by the CMA? **No. It should be listed slightly higher.**
- How much higher should a home be listed above the probable selling price to allow for negotiation? **The listing price should be slightly higher than the probable sales price to ensure the property is not underpriced and to allow room for some negotiation.**
- What form does the Real Estate Commission require a broker to use when providing a CMA/BPO? **None specified but recommend that brokers follow license law and commission rules related to performing a CMA/BPO for a fee.**
- Can a broker use the terms value or worth in describing the results of a BPO/CMA? **No**
- What factors should be considered when selecting comparables for a property using the sales comparison approach to valuation? **Date of sale, type of property, location, construction/design features, square footage, age, neighborhood, acreage.**
- Should a property sold as a short sale be used as a comparable if other properties are available to use? **No. As long as the other comparables are recently sold similar properties near the subject property.**
- When choosing comparables, should a property that was sold quickly because the seller had to sell due to a job transfer be used if better comps are available to use? **No**
- Comparable properties should have sold within what time frame to use them as comps? **Preferably within the last 6 months.**
- Can the seller's agent show a buyer the data used to prepare the CMA/BPO to list the property? **Yes, if the buyer is a client, the broker can share the data used to prepare the CMA/BPO with the buyer but should prepare a separate CMA/BPO for the buyer-client. If the buyer is an unrepresented customer, the broker can give the buyer unadjusted data on recent sales of comparable properties and tell the buyer that the broker represents the seller and cannot provide an opinion on the property's market value or suggest an amount the buyer should offer.**
- What methodology is used in performing a CMA/BPO on a residential property or vacant lot? **Sales Comparison Approach**
- What methodologies are used when performing a CMA/BPO on income producing properties? **Income Capitalization Approach or Gross Rent Multiplier Approach**
- How do you determine the probable sales price of a property using the income capitalization method? **Projected annual gross income minus vacancy and collection losses equals effective gross income minus operating expenses equals net operating income (NOI). NOI divided by the capitalization rate equals the probable sales price of the property.**
- How do you determine the probable sales price of a property using the gross rent multiplier method? **Multiply the properties gross income by the gross rent multiplier.**

A 10-unit apartment building has 7 units that rent for \$800 per month and 3 units that rent for \$650 per month. Vacancy and collection losses for the past year have totaled 5% of gross potential income. Annual operating expenses are \$51,000. An appraiser finds through market research that an appropriate capitalization rate is 10%. Using this information, the appraiser should find the estimate of value for the property to be:

Projected Gross Annual Income: $[(7 \times 800) + (3 \times 650)] \times 12 =$	90,600
Vacancy and Collection Losses: $90,600 \times .05 =$	- 4,530
Effective Gross Income:	86,070
Annual Operating Expenses:	- 51,000
Net Operating Income:	35,070
Estimate of Value: $35,070 / .10 =$	350,700

A 6-unit apartment building has 3 units that rent for \$1200 per month and 3 units that rent for \$1050 per month. Vacancy and collection losses for the past year have totaled 8% of gross potential income. Annual operating expenses are \$68,000. An appraiser finds through market research that an appropriate capitalization rate is 10%. Using this information, the appraiser should find the estimate of value for the property to be:

Projected Gross Annual Income: $[(3 \times 1200) + (3 \times 1050)] \times 12 =$	81,000
Vacancy and Collection Losses: $81,000 \times .08 =$	- 6,480
Effective Gross Income:	74,520
Annual Operating Expenses:	- 68,000
Net Operating Income:	6,520
Estimate of Value: $6,520 / .10 =$	65,200

### Listing Agreements

- Can listing agreements be open-ended with no termination date? **No**
- Do listing contracts have to be exclusive? **No. Open listing agreements are nonexclusive.**
- Is a Broker-in Charge required to sign the listing contract for a provisional broker? **No**
- Should listed property owned by a married person also be signed by the spouse? **Yes**
- Who provides the pre-printed listing agreements for brokers use? **NC Realtors (not the NC Real Estate Commission)**
- Who's license number should be included on the listing agreement? **The individual broker that is signing the agreement on behalf of the firm.**
- Sellers must receive a copy of the signed listing agreement within how many days of the brokers receipt of it? **3 days**
- In an exclusive right-to-sell listing agreement, who can sell the property and not pay the listing firm a commission? **Nobody**
- Is it acceptable for a broker to put "TBD" in the listing price field and fill it in later after a CMA has been completed? **No**
- Do limited-service listing agreements generally call for the broker to schedule and conduct showings? **No. Scheduling and conducting showings is generally done by the owner/seller.**
- Can a broker use a listing agreement to waive their statutory agency duties? For example, waiving responsibility to discover and disclose material facts, waiving duty to deliver offers and contracts to parties to a transaction, waiving responsibility for the accuracy of information provided by the seller. **No**

### Multiple Listing Services

- What type of listings are accepted by an MLS? **Exclusive, Limited-Service**
- What types of listings would not be accepted? **Non-exclusive (open listings)**
- Who is held responsible for incorrect property information entered into MLS by an unlicensed assistant? **Yes**
- Can a listing broker avoid liability for the accuracy of information entered into MLS by including a disclaimer of liability? **No**

### Commissions

- Who or what determines the amount of the commission charged on the sale of a property? **The company or firm's policy**
- Are commissions negotiable? **Yes, with the parameters set by the firm's policy.**
- What response can you give to a prospective seller that questions the similarity of fees quoted by different real estate agencies? **"That's the listing rate my company charges."**
- What group or organization determines the commission rate for New Hanover and Brunswick County? **None**
- Are limited-service listings always done for a flat fee? **No. A limited-service listing agreement generally includes a flat fee paid by the owner/seller but it is not required. For example, seller could pay a percentage of the sales price to the limited-service broker.**
- Is there any such thing as a market rate, customary fee, standard rate, etc.? **No**

### Regulation

- What is a Trigger Term? **Financing terms such as down payment amount, amount of any payment, number of payments or repayment period, finance charge.**
- What type of statements would not require Reg Z disclosure? **Seller-paid closing costs offered by the seller, HOA dues, property taxes.**
- Trigger Term under Regulation Z? Yes or No
  - Low Monthly Payments **No**
  - Payments under \$800/month **Yes**
  - Only 5% down payment needed **Yes**
  - Up to 4% seller-paid closing costs **No**
  - Owner financing available **No**

### Working with an Unrepresented Seller (FSBO)

- Is a selling agent representing a buyer client required to provide the Working with Real Estate Agents Disclosure to an unrepresented seller? **Yes**
- When should the broker provide and review the WWREA Disclosure with the unrepresented seller? **No later than first substantial contact.**
- Should the Broker have a signed compensation agreement with the seller prior to showing the property? **Yes**
- Must a broker get a listing agreement signed by the seller? **No**
- What advice may the broker provide to the seller? **None**

### Working with Buyers

- When must the broker have a Buyer Agency Agreement with a buyer? **Before showing the buyer property, the broker and the buyer should come to an agreement on how they are going to work together. Either under an oral or written buyer agency agreement or as an unrepresented buyer customer.**
- Are oral Buyer Agency Agreements exclusive or non-exclusive? **Non-exclusive**
- Is oral buyer agency implied if the broker begins working with the buyer without a written agency agreement? **No**
- When must oral Buyer Agency Agreements be reduced to writing? **Prior to presentation of the first offer.**
- What terms must be included in an oral Buyer Agency Agreement? **The same terms as in a written buyer agency agreement.**

- If a buyer refuses to reduce an oral Buyer Agency Agreement to writing prior to presentation of the first offer, can the broker continue to work with the buyer? **No**
- When a listing agent is working with an unrepresented buyer, what can the listing agent say to and/or provide to the buyer regarding an appropriate offer price for the property? **The broker can give the buyer unadjusted data on recent sales of comparable properties and tell the buyer that the broker represents the seller and cannot provide an opinion on the property's market value or suggest an amount the buyer should offer.**
- Is dual agency possible in an oral buyer agency relationship? **Yes**
- Can Buyer Agency Agreements be open-ended with no termination date? **No**
- Can Buyer Agency Agreements include an automatic renewal provision? **No**

### Practicing Law

- Can a broker recommend how a buyer should take title to a property? **No**
- Can a broker interpret what subdivision covenants will and will not allow? **No**
- Can a broker select service providers for the buyer or seller? **No**
- Can a broker recommend a buyer talk with their attorney after we have alerted them to a possible zoning issue? **Yes**

### Prequalifying the Buyer

- What is included in housing expenses? **minimum required loan payment of principal and interest, projected costs for property taxes, insurance (hazard, flood, PMI), special assessments and HOA dues, if applicable**
- What is included in recurring debt? **personal loans, credit cards, other mortgage loans, child and alimony support, student loans and other similar installment debt**
- What should not be included in recurring debit? **utilities, gasoline, groceries, phone bills, and medical and dental expenses**

A borrower wants to obtain a conventional loan in the amount of \$236,000 with a monthly PITI \$2650 per month. The buyer's homeowners' association dues will be \$80 per month. The buyer's monthly car payment is \$320 and other monthly recurring debt obligations total \$350 per month. What is the minimum monthly income the buyer must be able to verify to the lender in order to qualify for the loan if the lender is using expense-to-income ratios of 28%/36%?

$$2,650 + 80 = 2,730$$

$$2,730 / .28 = 9,750$$

$$2,730 + 320 + 350 = 3,400$$

$$3,400 / .36 = 9,444.44$$

Answer: 9,750

### Dual Agency

- What creates a dual agency situation? **When a buyer-client wants to buy a property listed with the buyer agent's company. The firm is the agent for the buyer and seller in the same transaction. Must be an in-house sale.**
- Can a provisional broker be a dual agent? **Yes**
- What is required from the two parties before being represented by a single agent? **Disclosure and consent**
- What situations create undisclosed dual agency? **When an agent is brokering a transaction between two parties where the agent has both a listing agreement and a buyer's agency agreement, but neither party has been informed of this and have not agreed to it.**
- What situations create an implied dual agency? **When an agent for one party begins to act as if they are acting for the benefit of the other party.**

- Can a buyer's agent be compensated by the seller if acting as a dual agent in the transaction? **Yes**
- Do dual agency disclosure rules apply to commercial transactions? **Yes**

### Designated Dual Agency

- Is designated dual agency automatically formed if a firm represents the buyer and seller in the same transaction? **No**
- Can a Broker-in-Charge be a designated dual agent? **Yes**
- Can a Broker-in-charge (BIC) designate a provisional broker to be the designated agent for the buyer of a home the BIC listed? **No**
- Can a provisional broker be designated to represent the buyer opposite another provisional broker representing the seller? **Yes**
- Who does the designated agent represent? **The agent represents only the interests of his/her designated client.**

### Property Management

- What triggers the need for a NC Real Estate license to manage properties? **Managing properties for others for compensation (money or some other form of valuable consideration)**
- Can salaried, non-licensed persons show rental properties? **Yes**
- What types of terms should clearly be included in a property management agreement? **Scope of authority of the property manager, terms of the agreement, management fee, procedures for handling tenant security deposits, responsibilities of both the property manager and owner/landlord, etc.**
- What are some of the typical duties of a property manager? **Preparing a management plan, preparing an operating budget, establishing rental schedules, collecting rents and security deposits, assisting with maintaining the property, marketing, enforcing rules and regulations, instituting legal actions on behalf of the owner, maintaining records on the property, etc.**

### Moving to a new Agency

- When moving to a new brokerage company, what options does the broker have with regard to listings the broker obtained while at the previous company? **The broker can solicit the listing on behalf of their new brokerage company after the listing agreement expires with the previous company.**
- Can the broker be paid for the sale of listings left with the previous agency after leaving? **Yes. If company policies of both firms allow.**

### Licensing and Education

- What are the postlicensing education requirements? **Three 30-hour postlicensing classes must be completed within 18 months of the broker's date of licensure.**
- What happens to the broker's license if postlicensing education is not completed in a timely manner? **License status will be INACTIVE.**
- What are the annual continuing education requirements? **For Brokers and Provisional Brokers: four-hour GENUP class plus four-hour elective by June 10<sup>th</sup>. For BIC Eligible Brokers and Designated BICs: four-hour BICUP class plus four-hour elective by June 10<sup>th</sup>. Requirement starts after the broker renews license the first time.**
- What happens if CE is not completed in a timely manner? **License status will be INACTIVE on July 1<sup>st</sup>.**
- What happens if a broker does not renew their license in a timely manner? **If a broker does not renew their license by June 30<sup>th</sup>, the status of the broker's license on July 1<sup>st</sup> will be EXPIRED.**