

AGENCY

**CONTINUING EDUCATION COURSE
(BY CORRESPONDENCE)
FOR CALIFORNIA REAL ESTATE LICENSE RENEWAL**

**(3 Hours Credit)
Agency Requirement**

Distributed by:
Real Estate License Services
(California Bureau of Real Estate Sponsor #1035)
5059 Newport Ave. #209
San Diego, CA 92107
Phone Toll-Free 1-800-877-5445

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For Courses presented by:
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- 1) These courses are presented as correspondence/internet presentation consisting of text reading, mandatory quiz questions and a final exam for each booklet &/or textbook.
- 2) If you enrolled in the 15 hours of continuing education (Agency; Ethics, Professional Conduct, and Legal Aspects of Real Estate; Fair Housing; Trust Fund Accounting and Handling and Risk Management for Real Estate Professionals) the minimum time to complete these courses is two days from the date you have access to the course material. However, if you have enrolled in the 45 hours of continuing education (Selling Business Opportunities in California or Mortgage Lending along with the courses: Agency; Ethics, Professional Conduct, and Legal Aspects of Real Estate; Fair Housing; Trust Fund Accounting and Handling and Risk Management for Real Estate Professionals) then the minimum time you may start taking the exams is two days from time of enrollment if text material is delivered online, or six days if enrollment involves delivery of books with no online delivery of text material. The maximum time limit to complete the 15 hours &/or 45 hours CE courses is six (6) months from the date of enrollment. Two three (3) month extensions may be obtained (see section below on the Extension and Re-enrollments). Under NO circumstances may your enrollment last beyond twelve (12) months.
- 3) The Bureau of Real Estate provides a Course & Instructor Evaluation form on the California Bureau of Real Estate Website for students to evaluate and make suggestions. The evaluation can be accessed on the CalBRE website www.bre.ca.gov Click on "Forms" and you may print form "RE318A" to give your input.
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MANDATORY QUIZZES: Beginning January 1, 2011, the CalBRE Regulations mandate that quizzes be taken for each correspondence course prior to the final exam. The quiz answers do not count toward your final course grade; however you may not proceed to the final exam until your quiz answers have been submitted to us. The quiz answers may be submitted on paper or over the Internet. You may access your quiz questions on the Internet by going to www.RELSTONEexams.com or you may use the printed quiz questions which come with the printed books if you order your text material in book form rather than reading your text material on the Internet. In no case may you see the quiz answers before you take the mandatory quizzes. If you take the quizzes online, then you will be provided with the correct answer(s) to any questions you miss, along with the page and paragraph number where the topic of that question and answer may be found. If you do your quizzes on paper, then you **MUST** send the answers to us by mail to: 5059 Newport Ave # 209 San Diego CA 92107 and you must include a self-addressed stamped envelope in which we will return the answers to the quiz questions. If the quiz is not taken online, we will not provide quiz answers unless a self-addressed stamped envelope is provided.

FINAL EXAMINATION: Once the mandatory quizzes have been completed, and you wish to take your final exam on paper instead of on the Internet, please fill out the form "Request To Take Final Exam." You may mail this form to Real Estate License Services, 5059 Newport Ave., #209, San Diego, California 92107, or fax to (619) 222-8593. Real Estate License Services will arrange for your final exam online or with a test administrator. If your final exam is not online, course provider will select a test administrator for you. The examination consists of 15 multiple-choice questions each for Agency, Ethics, Fair Housing, Trust Fund Handling and Risk Management. You must complete each test within 15 minutes.

When you finish the test(s), if your final exam is not online, turn it in to the test administrator, who will mail it to Real Estate License Services. The test administrator will need to include a photo copy of the student's current California Driver License OR California ID OR another identification issued by a governmental agency or a recognized real estate related trade organization which bears a photograph, signature and identification number of the student, issued within the immediately preceding five years.

The questions used for the final exam(s) must be mailed to Real Estate License Services, 5059 Newport Ave # 209, San Diego CA 92107, along with the answers.

If you are enrolled in more than 15 hours of approved continuing education, please be aware that DRE regulations "Do not permit taking more than 15 hours credit of C.E. finals in one 24 hour period." The number of questions on the final examination for the Consumer Protection CE courses is as follows: Business Opportunities Part I & Part II OR Mortgage Lending Part I & II each part consists of 40 multiple-choice questions and you must complete the exam for each part within 40 minutes.

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AGENCY

EXISTENCE OF AGENCY

In the majority of real estate transactions, the agency relationship is used on at least two occasions. First, a real estate broker is employed as an agent for the owner of real estate for the purpose of finding a buyer. Second, an escrow agent is ordinarily used to consummate the transaction. This course will only deal with the first relationship.

An agency is the relationship between a principal and an agent whereby the agent represents the principal in dealing with a third party.

Agency is referred to as a triangular relationship, in the ordinary sales transaction whereby the broker is the agent for the seller, the principal, in dealing with a third party, the buyer. (See California Civil Code §2295.)

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According to the California Civil Code, there are two kinds of agency, either actual or ostensible. An agency is actual when the agent is really employed by the principal. On the other hand, an agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

An agency relationship in real estate can exist in a number of forms. The following discussion covers the three most prevalent.

EXCLUSIVE RIGHT TO SELL OR EXCLUSIVE AUTHORIZATION TO SELL LISTING

An exclusive right to sell or exclusive authorization to sell listing entitles the listing broker to a commission no matter who sells the property, including the owner, during the listing period. This is the most widely used listing in the United States. The advantage to the broker is that the money and effort the broker expends on advertising and showing the property will be to the broker's benefit. The advantage to the owner is that the broker will more likely put more effort into selling a property if the broker holds an exclusive right to sell than if the broker has an exclusive agency or an open listing.

EXCLUSIVE AGENCY LISTING

The exclusive agency listing is similar to the exclusive right to sell, except that the owner may sell the property himself during the listing period and not owe a commission to the broker. The broker, however, is the only broker who can act as an agent during the listing period. The broker is less enthusiastic and

may not expand as much effort on advertising and showing the property as with an exclusive right to sell.

OPEN LISTING

Open listings carry no exclusive rights. An owner can give an open listing to a number of brokers at the same time, and the owner can still find a buyer and avoid a commission. A commission will be earned only if the broker is the one who actually makes the sale. A broker may be reluctant to accept an open listing, since the broker may spend a great deal of time and money trying to market the property only to discover that no commission has been earned because another broker has found a buyer, or the property has been sold by the owner.

CREATION OF AGENCY

The relationship of principal and agent can be created by contract, by ratification, or by estoppel. The most common form of relationship in real estate is creation of an agency by contract. The basic principles of contract law apply. However, consideration is not always essential. Although one may gratuitously undertake to act as an agent, generally, there is a contract, and consideration is necessary. Consideration occurs in a unilateral contract when the principal signs a listing agreement promising compensation (commission) for services rendered by the agent, and the agent subsequently renders the services requested. Consideration occurs in a bilateral contract when the broker makes a counterpromise to "use due diligence" in finding a purchaser.

An agency relationship can also be established when a broker acts under an oral contract of employment, such as an oral open listing agreement. An agency relationship can be implied from the acts of the parties.

AGENCY BY AGREEMENT

The first form by which an agency relationship is created is an agency by agreement. This form is consensual in nature and normally arises by agreement of the parties.

An agency by agreement must be based upon mutual consent through some indication or manifestation by the principal to the agent that P consents to having A act on P's behalf, and a similar manifestation of consent by A to act for P.

The agency agreement may be either express or implied from the conduct of the parties.

No formalities are required to create an agency, thus the relationship may be created by word of mouth, by conduct, or by a writing. However, in real estate it is normally created by an express contract, the listing agreement.

Remember that only a person having the capacity to contract may be a principal and appoint an agent; therefore, minors, insane persons, or other persons who are legally incompetent cannot appoint agents.

AGENCY BY RATIFICATION

The second form by which an agency relationship is created is an agency by ratification. This occurs when a principal accepts the benefits of a contract negotiated by someone who was not an agent. If the principal is made aware of all material facts of the transaction when the contract is accepted, the principal becomes bound by the statements of the ratified agent.

A principal is only bound by the action of an agent who is acting within the scope of actual or ostensible authority.

An agent who has very limited authority is called a "special agent." In most cases a broker is a special agent who is authorized to act only as an intermediary to bring together a buyer and a seller.

If an agent acts beyond the scope of authority, the principal is not bound. A third person who reasonably relied on the agent's statement that the agent had sufficient authority may sue for damages, claiming the agent breached an implied warranty of authority.

AGENCY BY ESTOPPEL

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The third and most common form by which an agency is created is an agency by estoppel. This occurs where the principal intentionally or negligently causes a third person to reasonably believe another to be his agent. When the third person relies in dealing with the supposed agent, the principal will be estopped to deny the agency. The principal is bound by the acts of the ostensible agent as if an actual agency agreement existed between them.

This differs from ostensible authority, where there is an actual agency between the parties, but the principal's actions cause third parties to believe that the agent has powers greater than those actually conferred upon him.

EFFECTS OF AGENCY RELATIONSHIP

There are three levels of agency:

- universal;
- general; and
- specific.

In a universal agency the principal gives the agent legal power to transact all types of matters on the principal's behalf. An example is an unlimited power of attorney.

Universal agencies are rare. In a general agency, the agent is given the power to bind the principal in a particular business. Two examples of this are that a salesperson is a general agent of the employing broker and a property manager is a general agent for the property owner. In a special agency, the principal empowers the agent to perform a particular act. One example is a real estate listing while another is a power of attorney to sign a deed on behalf of someone else.

In real estate, there are four dominant agency relationships:

- broker-seller;
- broker-buyer;
- broker-salesperson; and
- broker-broker relationships.

BROKER-SELLER RELATIONSHIP

In California, listing agreements are required to be in writing when a commission is to be paid for securing a buyer. The "equal dignities" rule states that when a contract (purchase contract) is required by the Statute of Frauds to be in writing, the authority (listing agreement) to enter into such a contract must also be in writing to be enforceable. Thus any agreement authorizing or employing a broker to sell or purchase real estate is invalid unless it is in writing and signed by the person to be charged (or this person's agent).

BROKER-BUYER RELATIONSHIP

A buyer can be either the principal or the customer of a broker. A buyer acting as a principal usually hires a broker to locate a parcel of real estate with certain characteristics or for a specific use, often seeking commercial or industrial property. The broker and buyer usually draw up a commission agreement detailing the property desires and the broker's compensation.

When treating a buyer acting as a customer, the broker (as agent of the seller) must use extreme caution and be well aware of the laws and ethics that affect this relationship. A broker must be careful of the statements that the broker or agents make about a parcel of real estate.

The broker must be careful of any transaction which might be considered a dual agency. The California Real Estate Law prohibits a broker from representing and collecting compensation from both parties to a transaction without their prior, mutual knowledge and consent.

BROKER-SALESPERSON RELATIONSHIP

A salesperson is a subagent of the broker under whom licensed, responsible

only to that broker and can only carry out responsibilities assigned by that broker.

A salesperson's activities must be performed in the name of the broker, who is fully responsible for the actions of any salesperson licensed under the broker.

Salespeople are engaged by brokers as either employees or independent contractors. California law requires that a broker must have a written agreement with each salesperson that defines the obligations and responsibilities of their relationship.

The employer-employee relationship allows a broker to exercise certain controls over salespeople who are employees. The broker may require an employee to adhere to certain regulations, may provide the employee with certain benefits, and is required to withhold and pay certain taxes from wages paid to employees.

A broker's relationship with an independent contractor differs in that the broker may control what the independent contractor will do but not how it will be done. An independent contractor assumes responsibility for paying his or her own taxes and employee benefits. The majority of real estate salespeople are independent contractors.

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Actual
Authority

BROKER-BROKER RELATIONSHIP

Most listing contracts in common use authorize the listing broker to delegate much of the work of procuring a buyer to cooperating brokers. In such a situation, the co-broker, like the listing broker, will be a fiduciary to the principal and must act with the loyalty and good faith expected of a fiduciary. The co-broker becomes a subagent much like the listing broker's own salespersons.

The cooperating broker may not generally sue the seller of the property for a commission. However, a cooperating broker acting with express permission of the listing broker has been held liable to the seller of the property for damages sustained by the seller on account of misrepresentations by the cooperating broker. (See *Kruse v. Miller*, 143 CA 2d 656, and *Hale v. Wolfsen*, 276 CA 2d 285.)

DURATION AND TERMINATION

An agency is ordinarily terminated by the acts of one or both of the parties. It may also be terminated by operation of law, that is, the expiration of its term, extinction of its subject matter, the death or incapacity of either principal or agent, or by bankruptcy of the principal or agent.

ACTS BY ONE OR BOTH OF THE PARTIES

Mutual Agreement

If both parties, the broker and seller, wish to terminate the agency, the agreement is considered ended by mutual agreement.

Agent Renounces

The broker/agent can refuse to fulfill the listing agreement at anytime but may be subject to damages for breach of contract. The agent is liable for damages that result from the breach, but the principal may not demand specific performance of the contract. Since the contract is a personal services contract whereby the agent agrees to provide personal and professional skills, the courts will not force the agent to perform.

Principal Revokes

The principal may fire the agent (revoke the authority) at any time without good cause, but the principal will have breached the contract and is liable for damages to the agent resulting from the breach. The principal is liable for expenses incurred by the agent's pursuit of a buyer before revocation. If the broker produces a ready, willing, and able buyer prior to expiration of the agency's term, the principal may be liable for the commission.

The principal's absolute power to revoke an agency is limited if the agency is coupled with an interest. The California Civil Code states that if an agency was created by a recorded instrument, the revocation of the agency is not effective unless in writing and acknowledged and recorded in the same place as the instrument creating the agency.

In an open listing with no fixed term, the listing may be revoked at any time without liability prior to production of a ready, willing and able buyer. In an open listing with a fixed term, it is possible that despite revocation, the commission will be earned if the broker produces such a buyer within the time specified.

An exclusive listing contract must contain a specified date of termination. If the listing does not contain a specified termination date, the listing is unenforceable by the agent and the claim or receipt of any fee by the agent (under the agreement) is a cause for disciplinary action against the agent's license. [See the Business and Professions Code, Section 10176(f).]

OPERATION OF LAW

Expiration of the Term

The exclusive agency agreement and the exclusive authorization to sell have a specified termination date. These listings will end automatically on the

stated date unless terminated by some other manner prior to that date. Other types of listings do not require a termination date since they can be terminated at any time. However, when no time is specified by the parties, a "reasonable time" is implied and may be determined by the surrounding circumstances.

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Extinction of the Subject Matter

When the real estate (subject matter of the agency) is sold, destroyed, damaged, or other change of circumstance, the agency agreement is terminated. Included are destruction by fire, loss through mortgage foreclosure, eminent domain proceedings, and a sudden change in value so as to affect the listed sales price.

Death or Incapacity

The agency is terminated before execution if either the principal or the agent dies or is declared legally incompetent or insane. Agents should note that such a termination is automatic, and does not depend on the agent acquiring knowledge of the principal's death. Generally, the agent has no authority to act after the principal's death, even if the agent is unaware of the death. Any transaction by the agent after the death or insanity of the principal is not binding on the principal or the principal's estate.

However, an exception in California Civil Code Section 2356 provides that any "bona fide transaction" with a third party who had no knowledge of the death or incapacity of the principal shall be binding on the principal or his estate. The reasoning is that it is unjust to penalize third parties dealing with an agent because of the unknown death or incapacity of the principal.

Another exception is that agencies coupled with an interest do not terminate upon the death or incapacity of the principal, and their exercise binds the estate.

Bankruptcy

The bankruptcy of either the principal or the agent will terminate the agency.

NOTICE REQUIRED TO TERMINATE

Generally an agent's authority continues until the agent knows, or has reason to know, of a change which would terminate the authority. No particular form of notice is required. Notice is equally effective whether the principal informs the agent directly or the agent learns independently of the event which terminates the authority.

However, as stated above, an agent's authority is generally destroyed without notice upon the death or incapacity of the principal, except when coupled with an interest.

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SCOPE AND AUTHORITY

SOURCE OF AUTHORITY

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There are two types of authority granted to the agent in California, actual and ostensible authority.

Actual authority is defined by the California Civil Code (Section 2316) as that which "a principal intentionally confers upon the agent, or intentionally or by want of ordinary care allows the agent to believe himself to possess." Actual authority is expressly or impliedly given by the principal. The principal is bound by contracts made within the scope of the agent's actual authority.

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An express actual authority is communicated to the agent in express oral or written terms. It includes all acts incidental or necessary to accomplish the principal's specific instructions. A power of attorney is the best example of express authority. Also, if a principal ratifies an agent's unauthorized act by accepting the benefits, it is equivalent to having authorized the agent's actions in advance.

An implied actual authority is an authority which is implied as necessary to the performance of an express authority. It can be conferred by the conduct of the principal, or by the custom or usage of the trade. An agent has the implied authority to act as necessary to perform the duties expressly authorized in the agency agreement, unless expressly restricted by the agency agreement.

Ostensible or apparent authority is defined by the California Civil Code (Section 2317) as that which "a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess." It is also referred to as "authority by estoppel." Ostensible authority results from either 1.) when a principal manifests that another is his agent to a third person rather than to the agent himself; or 2.) when the principal has intentionally or negligently caused or allowed a third person to believe that his agent has authority to do that which he is not authorized to do, and the third person detrimentally relies so that it would be unjust to allow the principal to deny the agent's authority.

The principal will be bound by the acts of the agent who performed within the scope of the agent's ostensible authority. The declarations of the agent alone or the mere impression by a third party that the agent is authorized cannot establish the ostensible authority. However, if the principal is aware of the agent's declarations or acts or remains silent and makes no effort to denounce the authority, then the ostensible authority is established.

SCOPE OF AUTHORITY

The question focuses on whether or not the agent had the power to bind the principal within the scope of authority granted to the agent by the principal.

An agent authorized to sell property on behalf of the owner has the inherent power to make the usual covenants of warranty concerning the property as are implied by law or customary in the community in connection with sales of such property. (See Lindow v. Cohn, 5 Cal. App. 388 1907).

Customary warranties in the sale of real property include such things as the description, size, character of soil, boundary lines, and title.

In the sale of a business, warranties concerning income, expenses, assets, and liabilities are customary. An agent authorized to purchase property on behalf of the principal is generally deemed to be empowered to make warranties regarding the principal's credit, assets and liabilities in order to qualify the principal as a purchaser.

Since the power to warrant may increase the principal's liabilities, courts in general narrowly construe the agent's authority to warrant.

FIDUCIARY DUTIES OF THE AGENT

The agency relationship is a fiduciary relationship whereby the agent is a fiduciary with respect to the principal. As a fiduciary, the agent must act within the standards of loyalty and good faith because the relationship is based on trust and confidence. The standard owed by a fiduciary requires the agent to serve the principal's best interests.

Under California law, the real estate agent also owes a special duty to the buyer in transactions of one to four unit dwellings. The agent has the duty to make a reasonably thorough inspection of the property and to disclose to the buyer all facts that materially affect the property's value and desirability.

Following are duties owed by the agent toward the principal in real estate transactions:

DUTY OF DISCLOSURE (DUTY TO NOTIFY)

Of crucial importance is the duty of an agent to make a full disclosure of all material facts which might influence the principal. The agent must utilize ordinary care to communicate to the principal knowledge acquired during the agency regarding material facts of the sale.

Any fact which would influence the principal's judgment or decision should be revealed. This includes the price that can be obtained; the possibility of a sale at a higher price; dealing with the property in a different fashion; the tax consequences of sale or an exchange if certain improvements would make the property more saleable; and any other matter that a disinterested and skillful agent would think relevant. (See Fisher v. Losey, 78 CA 2d 121, 1947)

One reason for this duty is that the principal is presumed by law to have knowledge of all facts disclosed to the agent, and vice versa. An agent is

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An agent's powers are generally strictly constructed. An agent is deemed to have only powers which are specifically given or reasonably required to perform according to the principal's granted authority.

The California courts have held that a third party which knows of the agency is under a duty to ascertain its scope. If an agent acts beyond his actual authority, the third party cannot look to the principal unless the principal's conduct misled the third party or conferred ostensible authority on the agent. (See Ernst v. Searle, 218 Cal. 233 1933).

In most cases, a principal does not expressly grant detailed powers to the agent but gives a general authority, such as selling a piece of property. Such a grant of authority carries with it the power to do acts which are incidental (reasonably necessary or customary) to accomplish the authority granted by the principal.

An agent given authority to sell the principal's real property has certain incidental powers and authority, such as to warrant the title of the principal and to give the usual covenants of warranty and to receive payment of the purchase price according to the terms the principal authorized.

Note that in real estate, an authority to sell is only an authority to find a purchaser to whom the principal may sell. The authority to negotiate and conclude a sale must be a specified authority beyond the mere authority to sell.

This also applies where the agent is specifically given the exclusive right to sell since such language is deemed to only protect the agent's right to a commission, not to authorize him or her to convey title. Thus where the authority to sell is given to a real estate broker, it usually means that the broker has no actual power to convey title or even to contract to convey. (See Mason v. Mazel, 82 Cal. App. 2d 769, 1947).

An agent is deemed to have certain powers by virtue of the fact that he is an agent even if the principal has specifically denied him the powers. These powers are referred to as "inherent powers" since they are not dependent upon the principal's grant of authority and are recognized only where necessary to protect third persons. Inherent powers include any powers which a third person would reasonably suppose the agent to have, as customary under the circumstances, unless the third person were put on notice that the principal had limited the agent's authority.

The agent's power to make representations to third persons concerning real estate is an inherent power. Every agent is generally deemed to have this power, even though he has been specifically instructed by the principal not to make representations, thus the principal is liable for the agent's unauthorized misrepresentations to third persons.

Before proceeding with reading, please do Mandatory Quiz Section #1

duty. If an agent is offered a secret profit, he has a duty to let the principal know.

Also, the broker may not allow others to make a secret profit with his knowledge.

The broker must also be careful to inform the principal of the true value of his property, if such information is known to the broker. If the broker fails to inform the principal of the property's true value and the broker subsequently purchases it for himself, he has broken his fiduciary duty by failing to reveal all material facts and thus has gained a secret profit.

It is proper for the broker to buy the principal's property for himself and then resell it for a profit, provided the broker informed the principal of the true value of the property before the principal knowingly consented to the sale.

Dual Agency

An agent acting for more than one principal in the same transaction is a dual agent and is liable for fraud to either principal unless there is a full disclosure to and consent by all principals.

DUTY OF REASONABLE CARE (DUTY TO PERFORM COMPETENTLY)

The real estate agent is deemed to have superior knowledge and skills in the real estate field, and is under an obligation to exercise greater care and skill than the ordinary person. He or she will be held to a higher standard of care and is liable for negligence or incompetence in the performance of his duties.

The real estate law is designed "to protect the public not only from the conniving real estate salesperson but also from the uninformed, negligent, or unknowledgeable salesperson." (See Handeland v. D.R.E., 58 CA 3d 513, 1976, and Richards Realty v. R.E. Commissioner, 144 CA 2d 357, 1956.)

The skill required includes an ordinary professional knowledge concerning the title and natural characteristics of the property the broker is selling. Further, an agent has a duty to the principal to act with standard care, with skill that is standard in the locality in the real estate field, and to exercise any special skills that he may possess. Since the broker is charged with superior knowledge, he has a duty either to make an investigation of any matter pertaining to the agency relationship of which he does not have sufficient knowledge to allow him to make reliable recommendations or to disclose to the client the fact that he lacks such knowledge. There is a duty to refer a certain situation to a specialist if the agent does not have adequate experience to handle it.

The duty of reasonable care also requires an agent to take proper care of property entrusted to him by his principal. If a broker is entrusted with a key to an owner's house to show it to prospects, it is the broker's responsibility to see that it is used for only that purpose and that the house is locked upon

#14
Full Disclosure

Q-3
#-a

Full Disclosure

leaving. Also, if a broker receives a check as an earnest money deposit, he must properly deposit in a bank trust account and not carry it around for several weeks. Such acts can give rise to liability on the agent's part for any loss due to negligence on the exercise of poor judgment.

DUTY OF ACCOUNTING

The broker must be able to report upon demand the status of all funds entrusted to him by the principal. The law requires brokers to give copies of documents to all parties affected by them and to keep copies of such documents on file for a period of three years. The law also requires brokers to deposit immediately all funds entrusted to them in a special trust account or in a neutral escrow depository and makes it illegal for brokers to commingle such monies with personal funds.

#8
All Record
Keep 3 yr.
e

#7
Mix the
Fund
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If a broker places money belonging to a client or customer in his own personal account (commingling), it is grounds for suspension or revocation of the broker's real estate license. If it is conversion, actually using trust funds for the agent's personal use, this is an even more serious offense. Also, clients' and customers' money placed in a broker's personal bank account can be attached by courts to pay personal claims against the broker.

If a broker receives a check as an earnest deposit with instructions that it remain uncashed, the broker may comply as long as the seller is informed when the offer is presented. The broker can also accept a promissory if he informs the seller. Disclosure of all material facts to the seller that might influence his decision to accept or reject the offer is crucial. If a deposit accompanying the offer is not cash is a material fact. If the broker withholds this information, there is a violation of the agency relationship.

A broker's trust account must be reconciled monthly and open for inspection. The broker must keep receipt and cash disbursement journals for each beneficiary or transaction which must show dates, check numbers, etc., and include checks which are never deposited or held uncashed. The broker can keep up to \$200 of his own funds in the trust account to cover check fees and other charges. Earned commissions may remain in the trust account for no longer than 25 days. Trust accounts be demand deposit non-interest-bearing checking accounts. A broker may not withhold trust funds as an offset against another debt owed him by either the owner or the buyer.

STATUTORY DUTIES OF THE AGENT

California law is to a large extent codified, especially when compared to other states. As a result, real estate agents should be familiar with the statutory duties required of them by the state legislature. These duties are found in California's Civil Code, Business and Professions Code, Administrative Code, and Government Code. We shall cover these duties in the order set out here.

Continued Misrepresentation – Section 10176(c)

This section gives the Commissioner the right to discipline a licensee for "a continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons."

Dual Agency – Section 10176(d)

Failure to inform all principals that the licensee is acting as agent for more than one party in a transaction.

Commingling – Section 10176(e)

Commingling takes place when a broker has mixed the funds of a principal with the broker's own money. (Conversion is misappropriating and using a principal's funds. Conversion, of course, can be a more serious offense.)

Definite Termination date – Section 10176(f)

Failure to include a specified termination date on all exclusive listings relating to transactions for which a real estate license is required. The exclusive listing itself must be clear as to expiration.

Secret Profit – Section 10176(g)

Secret profit cases usually arise when the broker, who already has a higher offer from another buyer, makes a low offer, usually through a "dummy" purchaser. The broker then sells the property to the interested buyer for the higher price. The difference is the secret profit.

Listing Option – Section 10176(h)

A licensee who has used a form which is both an option and a listing must inform the principal of the amount of profit the licensee will make, and must obtain the written consent of the principal approving the amount of such profit, before the licensee may exercise the option. This section does not apply where a licensee is using an option only.

Dishonest Dealing – Section 10176(i)

"Dishonest dealing" is a sort of catch-all section similar to Section 10177(f). The difference is that under Section 10176(i) the acts must have been those requiring a license, while there is no such need under Section 10177(f).

Signatures of Prospective Purchasers – Section 10176(j)

Brokers must obtain a written authorization to sell from a business owner before securing the signature of a prospective purchaser to any agreement providing for compensation to the broker if the purchaser buys the business.

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#2-b

Convictions – Section 10177(b)

Criminal conviction for either a felony or a misdemeanor which involves moral turpitude and is substantially related to the qualifications, functions, or duties of a real estate licensee. A court has defined moral turpitude as "everything done contrary to justice, honesty, modesty, or good morals."

False Advertising – Section 10177(c)

Includes subdivision sales as well as general property sales.

Violations of Other Sections – Section 10177(d)

This section is the Bureau's authority to proceed against the licensee for violation of any of the other sections of the Real Estate Law, the Regulations of the Commissioner, and the Subdivided Lands Law.

Misuse of Trade Name – Section 10177(e)

Use of any trade name or insignia of membership in any real estate organization if the licensee is not a member of that organization.

Conduct Warranting Denial – Section 10177(f)

An essential requirement for the issuance of a license is that the applicant be honest and truthful. If any of the acts of a licensee establish that the licensee is not possessed of these characteristics, Section 10177(f) will apply. This section also provides for disciplinary actions when a real estate licensee has either had a license denied or a license issued by another agency of this state, another state, or the federal government, revoked or suspended for acts which if done by a real estate licensee would be grounds for the suspension or revocation of a California real estate license.

Negligence or Incompetence – Section 10177(g)

The Bureau proceeds in those cases where the licensee is so careless or unqualified that to allow the licensee to handle a transaction would endanger the interests of clients or customers.

Supervision of Salespersons – Section 10177(h)

Disciplinary action may result if a broker fails to exercise reasonable supervision over the activities of the broker's salespersons.

Violating Government Trust – Section 10177(i)

Using government employment to violate the confidential nature of records thereby made available.

Other Dishonest Conduct – Section 10177(j)

Any other conduct which constitutes fraud or dishonest dealing.

Restricted License Violation – Section 10177(k)

Violation of the terms, conditions, restrictions and limitations contained in any order granting a restricted license.

Inducement of Panic Selling – Section 10177(l)

To solicit or induce the sale, lease, or the listing for sale or lease, of residential property on the grounds, wholly or in part, of loss of value, increase in crime, or decline in the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry, or national origin.

Violation of Franchise Investment Law – Section 10177(m)

Violation of any of the provisions of the Franchise Investment Law (Division 5 commencing with Section 31000 of Title 4 of the Corporations Code) or any regulations of the Corporations Commissioner pertaining thereto.

Violation of Corporations Code – Section 10177(n)

Violation of any of the provisions of the Corporations Code or of the regulations of the Commissioner of Corporations relating to securities as specified in Section 25206 of the Corporations Code.

Failure to Disclose Ownership Interest – Section 10177(o)

Failure to disclose to buyer the nature and extent of ownership interest a licensee has in property which is the subject of a transaction in which the licensee is an agent for the buyer. Also, failure to disclose such ownership on the part of licensee's relative or special acquaintance or entity in which licensee has ownership interest.

BUSINESS AND PROFESSIONS CODE – OTHER PENALTY SECTIONS

There are additional sections in the Business and Professions Code which provide for the revocation or suspension of licenses under Section 10177(d) of the law.

The following are brief summaries:

- **Sections 10137 and 10138** – It is unlawful to employ or compensate any unlicensed person to perform acts requiring a license.
- **Section 10140** – Anyone who engages in false advertising is guilty of a public offense and, if a real estate licensee, will be held to trial by the

Commissioner for a suspension or revocation of his license.

- **Section 10140.6** – Advertising of acts which require a license must contain a designation disclosing that the licensee is performing such acts.
- **Section 10141** – A broker must cause notice of sales price to be given to both buyers and sellers within one month after the sale is completed.
- **Section 10141.5** – Within one week after the closing of a transaction, a broker must cause a deed of trust to be recorded with the county recorder or cause it to be delivered to the beneficiary with a written recommendation that it be recorded unless, of course, written instructions not to record are received from the beneficiary.
- **Section 10142** – A licensee must give a copy of any contract to the party signing at the time it is signed.
- **Section 10145** – A broker who accepts funds belonging to others must deposit those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal into a trust fund account maintained by the broker in a bank or recognized depository in this state.
- **Section 10148** – This section requires retention and availability for inspection and copying of all listings, deposit receipts, cancelled checks, trust records, and other similar documents for a three-year period.
- **Section 10160** – Brokers must retain and make available for inspection the licenses of salespersons in the broker's employ.
- **Section 10161.8** – A broker must notify the CalBRE when a salesperson is employed or terminated.
- **Section 10162** – All active brokers must maintain a definite place of business in the State of California.
- **Section 10163** – Brokers maintaining more than one place of business must first procure branch office license(s).
- **Section 10167** – This section requires the licensing of individuals, other than real estate licensees, engaged in prepaid rental listing services and makes a willful violation of the law a misdemeanor.
- **Section 10176.5** – The Commissioner may suspend or revoke the license of one in violation of any of the Civil Code Sections (1102, et seq.) which deal with use of the Real Property Transfer Disclosure

Q-2
#3-2

Statement.

- **Section 10177.1** – The Commissioner may, without a hearing, suspend the license of any person who procured the license by fraud, misrepresentation, deceit, or by the making of any material misstatement of fact in the application for license.
- **Section 10177.2** – The Commissioner may suspend or revoke the license of a licensee for violations while performing acts under Section 10131.6 (mobilehome sales).
- **Section 10177.4** – The Commissioner may suspend or revoke the license of a licensee who accepts compensation for referring customers to any escrow agent, structural pest control firm, home protection company, title insurer, controlled escrow company, or underwritten title company.
- **Section 10177.5** – When a final judgment is issued in a civil action against a licensee upon the grounds of fraud, misrepresentation, or deceit, the Commissioner may suspend or revoke the license.
- **Section 10178** – If a broker terminates a salesperson for cause and then fails to notify the Commissioner, the Commissioner may temporarily suspend or permanently revoke the real estate license of the employing broker.
- **Section 10475** – Automatic suspension of a real estate license will result if the Commissioner pays a claim against a licensee from the Recovery Account. No license may be reinstated until full reimbursement to the fund with interest is made.

DUTIES OWED OTHER PARTIES

An agent's obligations are primarily to the principal who has employed him. State law nevertheless makes certain demands on the agent in relation to third parties dealt with on behalf of the principal. Paramount duties owed to third parties are honesty, integrity, fair business dealing, and the absence of negligence. The ancient rule of caveat emptor ("let the buyer beware") has little application in today's real estate market. The buyer cannot be charged with knowledge of what is hidden or latent. The seller's agent is under the same duty as the seller to disclose to the buyer material facts affecting the value and desirability of the property which are known or discoverable. The agent is jointly and severally liable with the seller for the buyer's damages resulting from fraud for nondisclosure of material facts.

A 1984 California case, *Easton v. Strassburger* (152 CA 3rd 90), widened the liability of real estate agents. Agents are now required to be aware of all material facts negatively influencing the value of a property, whether obvious or not, and must disclose these facts to all prospective buyers. In the *Easton* case, the appellate

judge stated that a real estate broker has a "...duty to conduct a reasonably competent and diligent inspection of the residential property listed for sale and to disclose to prospective purchasers all facts materially affecting the value or desirability of the property that such an investigation would reveal."

The Easton decision has broadened the agent's duties in that agents can not only be held liable for defects they know about but for defects about which they should have known. Real estate agents must carefully inspect properties to determine obvious defects or red flags. A "red flag" warns a reasonably observant agent that there may be an underlying problem. The agent is responsible for disclosing this fact to the seller and any prospective buyers. Further information on the Easton case is contained in Appendix A following this part of your course.

Furthermore, California case law requires disclosure of:

1. improvements that were added without a building permit (see Barter v. McClung, 93 CA 2d 692, 1949); and
2. improvements that were added in violation of building codes (see Curran v. Heslop, 115 CA 2d 476, 1953).

Real estate agents, by the nature of their business, are continuously making representations to prospects concerning property offered for sale. A representation may be an expression of opinion or "puffing" on the part of the agent. However, if it is reasonably understood by both agent and prospective purchaser to be a factual representation, it becomes a part of the agreement. An agent may be held liable for representations purporting to be fact, which are false or misleading.

The California Civil Code sets out the following duties of agents to third persons.

- **§2343** – One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:
 1. When, with his consent, credit is given to him personally in a transaction;
 2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,
 3. When his acts are wrongful in their nature.

• **§2344** – If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, ^{on} demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

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#5-b

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Before proceeding with reading, please do Mandatory Quiz Section #2

Final
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ETHICAL RESPONSIBILITIES

Q-3
#1-a

Ethics is a system of moral principles, rules, and standards of conduct which defines the duties owed by a member of a profession to the public, clients, or other members of his profession. Codes of ethics establish and maintain a standard of behavior for the members of a profession and provide an assurance to the public that such professionals possess the qualities of integrity and fairness essential to honest business dealings. The underlying purpose of codes of ethics is to avoid unethical conduct which occurs when one takes advantage of his position of trust to the detriment of another person solely for his own gain.

Ethical codes are promulgated by the National Association of Realtors®, the National Association of Real Estate Brokers, Inc., and other trade organizations. A real estate broker or salesperson who is not a member of a real estate board is not obligated to abide by the National Association of Realtors® Code of Ethics or to arbitrate disputes with other licensees. A licensee must abide on becoming a member of a local real estate board. By belonging to a local real estate board, one also joins the California Association of Realtors® and the National Association of Realtors®.

The National Association of Realtors® Code of Ethics is not a legally binding instrument, but it does set the standard of conduct for all Realtors®. Any Realtor® who does not abide by the Code of Ethics may be expelled from the association. For a Code of Ethics violation, a member may be suspended from membership for up to one year, his membership may be revoked, or he may receive a letter of censure. Due to potential penalties involved, the procedural aspects must be more closely adhered to in ethics hearings than in arbitration hearings the National Association of Realtors® Code of Ethics is provided in Appendix B following this part of your course.

AGENCY LIABILITIES

BREACH OF CONTRACT

The unjustified failure to perform the material part of a contract is a breach. Any measurable injury resulting from a breach damages. A total breach excuses performance by the innocent party while a partial breach only excuses performance for a material breach. A partial breach is more likely to be considered material at the beginning, rather than after substantial performance. Breaches occur either after nonperformance without good faith or repudiation of a contract covenant.

Liability on an agent's contract depends on whether the agent acted with or without the principal's authority, for example, where an agent purportedly acts on behalf of a principal but in fact acts without authority or in excess of authority and without a subsequent ratification of acts, in which case the agent would be solely liable to third parties. The rationale is that the agent's liability is not under the contract but is based on a breach of warranty.

A breach occurs when the agent impliedly warrants that he has authority to bind a principal, but actually was not authorized or exceeded his authority. Although an agent might in good faith believe that he is authorized, he is liable if the third person relies on the warranty. However if the third person knows that the agent was mistaken as to his authority, the agent is not liable. An agent is free from liability on the contract if he clearly indicates to a third person that he is uncertain of his authority.

Although an agent's implied warranty of authority does not include a warrant a principal's performance of a contract, it does warrant the principal's competence. A third party's performance of a contract is enforceable by the agent, if he acted without authority unless the principal ratifies the contract or if the third party executed the contract on the knowledge he was dealing with the principal and could have refused to deal directly with the agent. If an agent exceeds his authority and the third party under the contract, the third party may be entitled to sue the principal in quasi-contract for any benefits conferred. The principal cannot repudiate the agent's representations and still retain the third party's benefits.

If the agent's acts were authorized, the principal alone is bound to the contract with the third party. However, rights and liabilities of the parties vary whether the principal's identity was disclosed or undisclosed. If the agent negotiates a contract in the name of the principal, the agent is not a party, is not liable, and is not entitled to enforce the contract. The third party is directly liable to the principal. The agent need not specifically state he is acting for the principal, it is sufficient if the third party knows or should know that he is dealing with an agent for another person.

If no agency relationship is between the parties, the contract is usually held binding on both the agent and the principal. However, if the signature or description of the agent establishes that he signed in a representative capacity only, the principal alone is liable. (See *Carlesimo v. Schwebel*, 87 Cal. App. 2d 482, 1948).

An undisclosed principal and agency exist when the agent's name alone appears on the contract with no statement regarding the fact of agency of the principals. The agent is personally obligated on the contract since the third party relied on his credit and reputation. The agent has rights against the undisclosed principals if the agent is held by a third party. If the principal's identity is made known, he also may be held liable under a contract where the agent's acts were authorized.

In some situations, the third party may know an agent's identity but not that of the principal. The courts generally apply the same rules of "undisclosed principals" to such cases of "partially disclosed principals". The agent discloses the agency and agent, but since the principal's name is not in the contract, the agent is still personally liable unless otherwise agreed by the parties.

Finally, if the third person knows the principal's identity, the principal is disclosed although his name is not in the contract. The agent is therefore not a contract party. Although the principal's identity is not known at the time of contract, if the third party subsequently acquires such knowledge, then any further dealings with the agent are subject to the principal's rights.

In order to avoid the possibility of an agent's personal liability, the principal's name must appear on the contract. The manner in which an agent signs a contract on behalf of the principal may determine whether the agent has any personal liability to the third party. Ordinarily an agent should enter the name of the principal as the contracting party and should then sign the contract by himself as agent for the principal. The agent is practically assured that he will not be held liable on the contract if the fact of agency and the name of the principal are both disclosed.

BREACH OF FIDUCIARY DUTY

The agent's fiduciary duties may be properly fulfilled by performing his duties personally, following the principal's instructions, and making a full disclosure of all material facts. Otherwise, a breach of the agent's fiduciary duties may occur.

Performing Duties Personally

Discretionary acts of the agent should be performed personally by the agent while ministerial or mechanical functions may be assigned. Discretionary acts may be delegated with only the principal's approval. It is common in real estate for a broker to delegate discretionary acts to a salesperson, however, without the principal's consent, the broker will be liable for the salesperson's actions.

Following the Principal's Instructions

Since the agent must follow the principal's instructions in good faith, an agent's deviation is a misuse of authority and will result in damages.

Disclosing all Material Facts

The agent's duty to disclose material facts can be breached by the agent's failure to provide a full and immediate disclosure of all such facts.

An agent's failure to meet his fiduciary duties can lead to the revocation of his license. The most common areas of agency violations in California are misrepresentation, false promise, commingling and/or conversion, secret profit and dual agency.

The agent's violation of his fiduciary duty is both a breach of contract (agency) and a tort (fraud). The principal has the following choice of remedies:

#12
Breach
Duty
a

Q-3
#2-b

a

1. The agent may be held accountable for any damages proximately caused to his principal by being required to disgorge any secret profits or advantages obtained.
2. Any agent transaction with the principal which violates fiduciary duty is voidable by the principal, irregardless whether the agent received any personal gain. The principal may rescind a sale upon discovering the agent was buying or selling the principal's property for himself.
3. Equity may impose a constructive trust on the property or where an agent has obtained property for himself from a third party in violation of his fiduciary duty to obtain it for the principal.

MISREPRESENTATION

A misrepresentation may be material or immaterial whether or not it has a measurable affect on the people relying on it. An agent who misrepresents his authority to act as an agent for someone else may be liable to the person who relies on it. Statements such as "This is the best house" are opinions and are usually considered "puffing" or exaggerations rather than misrepresentation. The three types of misrepresentation are innocent misrepresentation, negligent misrepresentation, and fraudulent misrepresentation.

INNOCENT MISREPRESENTATION

Innocent misrepresentation are false statements that are not known to be false at the time made. These statements can cause a rescission of a contract whereby all parties involved would be reinstated to their original positions. An agent is generally not held legally liable for such statements.

NEGLIGENT MISREPRESENTATIONS

Negligent misrepresentations are statements believed to be true but are false since made without reasonable grounds. An agent is legally liable for negligent statements made to buyers or sellers. Such statements are in effect deceit.

FRAUDULENT MISREPRESENTATIONS

Fraudulent misrepresentations are statements made when an agent knows the statements are false. A contract made while influenced by fraudulent information may become void. An agent making such fraudulent statements may be liable for civil or criminal fraud.

The failure to disclose a material fact about a property is known as misrepresentation by silence. Civil liability and disciplinary action against a licensee may result from a failure to disclose.

The tort of misrepresentation requires a false statement of material fact; knowledge;

Final
#13

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#3-a

SINGLE AGENCY

A general principle of agency law is that an agent may not represent more than one principal with respect to a transaction unless the agent makes full disclosure, including potential conflicts and the interest of the agent, to both principals. The rationale to this principle is that the interests are obviously adverse. If a broker represents a seller, it is the broker's duty to obtain the highest price and the best terms possible for the seller, while if the broker represents a buyer, the broker's duty is to obtain the lowest price and terms for the buyer.

The general principle has been strictly construed with respect to transactions involving real estate licensees to the point where "dual agency" (i.e. anything other than "single agency") is severely restricted. In *Smith v. Zak*, 98 Cal. Rptr. 242, CA 3d 785, the court, in applying Civil Code Sections 2228, 2235, and 2322, and Business and Professions Code Section 10176, held that a real estate licensee should refrain from dual representation in a real estate transaction unless full disclosure is made to both principals and both principals consent to the dual representation.

In a dual agency, the agent is under no duty to disclose, and has a duty not to disclose, to one principal confidential information given to him by the other. To eliminate any claim of an unknown dual agency, it should be specifically set forth in writing in the listing agreement and in the purchase contract and separately initialed by the respective parties so they are aware that it exists. If a cooperating broker wants to solely represent the buyer, and not the seller (but still receive a portion of the commission), this too should be disclosed in writing, severing any agency relationship the broker may have with the seller and indicating that all fiduciary duty is owed the buyer. A potential conflict of interest thereby should be avoided.

There is no uniformity regarding what constitutes a dual agency and as recently as 1985 there remained sharp differences within the real estate community as to whether dual agency is a problem and, if so, what should be done about it. The California Association of Realtors proposed legislation designed to educate buyers and sellers about the agency relationship and the Bureau of Real Estate recognized that there existed a need for clarification of the law. An Assembly Bill (Connelly-Grisham No. 1034) was passed and became operative January 1, 1988 that requires all brokers to disclose who they are representing and to confirm that in writing on the offer and acceptance.

BUYER BROKERAGE

Representation can be resolved if the buyer hires a broker whose task it is to find properties for sale and present them to the buyer for consideration. Under these circumstances it is clear that the buyer's broker is loyal to the buyer and working to get the best deal possible for the buyer. An advantage of buyer representation is that with the present system buyers are shown only listed properties. A buyer's broker can investigate properties offered for sale by owners and can approach owners who have not put their properties on the market.

A drawback to buyer's brokerage is that most people are accustomed to a system wherein the seller pays the full cost of marketing a property. A solution is for the buyer's broker to present an offer based on the net amount the seller will receive. As an example, a \$100,000 property listed at 6 percent commission and sold the traditional way using a cooperating broker and a 50/50 split: The buyer pays the seller \$100,000 and the seller pays the listing broker \$6,000, who pays \$3,000 of that to the cooperating broker. Using a buyer's broker, the buyer pays his broker \$3,000 and the seller \$97,000. The seller's broker is paid \$3,000 and splits with no one. The net result is that either way, the seller receives \$94,000 and the brokers each receive \$3,000. The difference is that in the second case, the buyer has a broker whose loyalty and efforts are clearly for the buyer.

When acting as the buyer's broker, the broker must notify the seller that they are the buyer's broker, and should obtain an acknowledgment for protection against possible disciplinary action or civil liability.

BUSINESS OPPORTUNITY TRANSACTIONS

The statutory merger of the real estate and business opportunity licenses occurred in 1966. Since then, a real estate license is required to engage as an agent in the sale or lease of business opportunities. The Real Estate Law defines "business opportunity" as the sale or lease of the business and goodwill of an existing business enterprise or opportunity.

The primary distinction between the business of real estate brokerage and that of business opportunity lies in the respective subject matters. Real estate is synonymous with real property. The sale of a business property involves the sale of personal property, and the rules and laws governing the transfer of chattels generally apply. A real estate license is required for a person to engage in the selling of business opportunities.

COMMERCIAL/INDUSTRIAL TRANSACTIONS

When advising investors, a reputable commercial/industrial real estate broker will be knowledgeable in the following areas:

- the properties which are available for commercial/industrial development;
- the appropriate method of valuing the property, both in its undeveloped and developed states;
- the method of developing the property as commercial/industrial property if the property has not yet been developed for commercial/industrial use;
- the best method of financing the acquisition and development of the property, and the identity of lenders from which funds can be borrowed; and
- methods for locating suitable tenants for the property. Before proceeding with reading, please do Mandatory Quiz Section #3

NOTICE: Keep these questions, but mark your answers on the accompanying quiz answer form and return to:
REAL ESTATE LICENSE SERVICES, 5059 NEWPORT AVENUE #209, San Diego, California 92107.

15 Hours Combined Quizzes

On, April 1, 2011 the Bureau of Real Estate began enforcement of new regulations regarding how real estate licensees must do their continuing education courses to renew their licenses. In accordance with those new regulations, the student must do mandatory quizzes prior to taking the final exam(s). Please note that your score on the mandatory quizzes will not determine in any way if you pass or fail your course. Only the final will determine if you pass or fail the course.

After you answer your quizzes, please mail your answers to us. After we receive them, you may take your final exam. If you want the answers to the quizzes, you must send a self-addressed stamped envelope.

The quiz answers will not be sent to you unless you send a self-addressed stamped envelope with one ounce First-Class postage attached.

To expedite the completion of your final exams and courses, you may complete your quizzes online by logging in with your email address and password to www.RELSTONEexams.com

Agency

Review for Section #1

For the course Agency, Quiz Section #1 is to be taken after reading pages 1-9.

- 1-4
1. Ostensible agency takes place when a broker enters into a contract expressly authorizing an agent to perform certain duties relative to her work.
a. True b. False
 2. When real estate is the subject matter of an agency relationship is sold, the agency agreement is terminated.
a. True b. False
 - 8-1 3. The primary types of authority recognized under the common law of agency in California are actual and ostensible.
a. True b. False
 - 9-3 4. Express actual authority must be conveyed in writing.
a. True b. False
 - 9-2 5. In California, if an agent knowingly acts beyond his actual authority with respect to a third party and the agent's actions cause a loss to his principal, the principal will always be accountable to the third party.
a. True b. False

Review for Section #2

For the course Agency, Quiz Section #2 is to be taken after reading pages 10-24.

- 10-6
1. In California, real estate licensees are obligated to thoroughly inspect all properties under transaction.
a. True b. False

2. Conversion takes place when an agent or broker mixes the funds of a principal with his own money.
a. True b. False
3. In California, listings, deposit receipts, cancelled checks, trust records, and similar documents be kept for inspection for three years.
a. True b. False
4. In California, the Commissioner may suspend or revoke the license of a licensee who accepts compensation for referring customers to any escrow agent.
a. True b. False
5. In California, when an agent receives something for the benefit of his principal, he must surrender it to his principal immediately.
a. True b. False

Review for Section #3

For the course Agency, Quiz Section #3 is to be taken after reading pages 25-38.

1. Codes of ethics convey standards of behavior for members of certain professions.
a. True b. False
2. Generally, an agent's fiduciary duty can be properly carried out by asking someone else to perform tasks for his principal.
a. True b. False
3. The failure to disclose a material fact about a property is known as misrepresentation by silence.
a. True b. False
4. The reasonable standard of care for real estate licensees requires full disclosure.
a. True b. False
5. In California, the sale or lease of business opportunities require a business opportunities license.
a. True b. False

Transfer your answers to your quiz answer form.

15 Hours Combined Exams

FINAL EXAM ANSWER FORM INSTRUCTIONS

The Final Exam Answer Form is the blue answer card marked "SCANTRON FORM 90311-RELS." Before beginning your final exam, fill in your name and student file number on the line marked "NAME" on both sides of the form. Write the date on the "DATE" line and beginning time as the "HOUR".

The Final Exam Answer Form has room for 50 questions on each side. Answer 1 thru 15 multiple-choice questions. As you answer the questions on the final exam, make sure that you mark your answers in the appropriate row for each question number.

USE A NO. 2 PENCIL ONLY. Using a pencil other than a No. 2 may cause the computer to incorrectly score your final exam. For each answer, choose the best answer and fill in the appropriate box (A-D) on the Answer Form. Fill in the box completely and dark. For example, if your answer on question 11 was "B" you would do the following:

11. [A] [C] [D]

THIS IS AN "OPEN BOOK" EXAMINATION. THE TEXTBOOK MAY BE USED DURING THE EXAM.

Agency

- P.3
1. When a principal causes a third party to believe that a person is his agent when, in fact, that person is not an agent of the principal, which of the following takes place?
a. An ostensible agency relationship is created.
b. The principal has committed a crime.
c. An actual agency relationship is created.
d. The principal is required to resolve any confusion immediately.
- P.7
2. All of the following are causes for termination of an agency relationship EXCEPT
a. when the real estate in question is sold
b. when the real estate in question has decreased at all in value
c. when the real estate in question is taken by foreclosure
d. when the real estate in question is destroyed by fire
- P.8
3. Which of the following are the primary types of authority under the common law of agency in California?
a. apparent, arbitrary c. actual, ostensible
b. actual, agent d. arbitrary, actual
- P.5
4. The broker you work for enters into a contract with you expressly authorizing you to perform certain duties relative to your work as agent. Which of the following types of authority do you have as a result of the contract?
a. implied b. apparent c. actual d. anticipated
- P.9
5. In California, if an agent knowingly acts beyond his actual authority with respect to a third party and the agent's actions cause a loss to his principal, which of the following statements is correct?
a. The agent acted in good faith
b. The agent may be called upon to make full disclosure
c. The agent will be fully accountable to the principal for the loss
d. The third party cannot look to the principal unless the principal's conduct misled the third party or the principal conferred ostensible authority on the agent.
- P.10
6. Which of the following is a special duty owed by California real estate licensees to buyers of one- to four-unit dwellings?
a. to secure the best possible price for the buyer
b. to make the buyer aware of all other offers
c. to inform the buyer if the property is overpriced
d. to make a reasonably thorough inspection of the property and to disclose all material facts
- P.14
7. When an agent or broker mixes the funds of a principal with his own money, which of the following has occurred?
a. subrogating c. conversion
b. interchanging d. commingling
- P.14
8. In California, how long must listings, deposit receipts, cancelled checks, trust records, and similar documents be kept for inspection?
a. One year b. Two years c. Three years d. Five years
- P.23
9. When may a California real estate licensee refer a customer to an escrow agent or title insurer?
a. only when the licensee accepts compensation for the referral
b. only when no compensation is involved
c. when the licensee discloses the referral to the Commissioner
d. never
- P.24
10. In California, when an agent receives something for the benefit of his principal, when must he surrender it to the principal?
a. immediately c. within 30 days
b. on demand d. within 14 business days
- P.25
11. Codes of ethics convey which of the following?
a. standards for behavior conducive to honest business dealings
b. legal and illegal behavior
c. personal and legal standards
d. motivational but often unattainable ideals
- P.27
12. In which of the following scenarios is an agent likely breaching his fiduciary duty?
a. performing his duties personally
b. fully disclosing all material facts
c. following the principal's instructions
d. asking an acquaintance to perform his duties
- P.28
13. The failure to disclose a material fact is termed
a. misrepresentation by silence c. innocent misrepresentation
b. negligent misrepresentation d. fraudulent misrepresentation
- P.13
14. Which of the following is the best example of "reasonable care"?
a. Broker C refers a valued customer to a new agent with little experience.
b. In order to effect a sale, Agent B tells her principal that the buyer is financially qualified when she doesn't know this for certain.
c. Agent A makes full disclosure to her principal regarding her efforts to sell her principal's property.
d. Agent D signs the tenant's name to a lease agreement in order to obtain a full month's rent for her principal
- P.38
15. Which of the following is a correct statement about selling business opportunities in California?
a. A special business opportunity license is required.
b. No license is required for selling business opportunities.
c. A license is required to sell, but not to lease, business opportunities.
d. A real estate license is required to engage as an agent in the sale or lease of business opportunities