

2007-2008
Real Estate
Continuing Education

COURSE 3:

New Developments

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ANSWERS TO: Q & A

AGENCY LAW QUESTIONS & ANSWERS

a. What should an agent do if his buyer-client rejected all multiple representation relationships and now wants to see a property listed by the agent's broker/company?

Amend the buyer agency agreement or don't show the property.

b. What happens when there is one agent working with a seller-client and a buyer-client who both consented to designated agency?

A single agent cannot participate in designated agency. There must be two employees of the company.

c. Can a sole proprietor practice multiple representation with designated agency?

A single agent cannot participate in designated agency. Therefore if there is one broker and one salesperson, they would not be able to participate in designated agency. However, if the sole practitioner broker had structured the company differently by obtaining a business entity license, both the broker and salesperson could be deemed employees of the brokerage company and if structured properly could legally participate in designated agency.

d. In a pre-agency stage, would it be possible for an agent to accompany a buyer to the showing of a FSBO property without first having a buyer agency agreement or a one-party listing in place?

Yes because it is the pre-agency stage, although not advisable. The buyer could go back without the agent and purchase the property. Also, the agent should check with office policy.

e. A buyer's agent is writing an offer on a For Sale By Owner (FSBO). What agency disclosure form does the buyer's agent present to the seller?

The buyer's agent should present the Broker Disclosure Form to the seller.

f. May a listing broker request the subagent to provide its Broker Disclosure to Customer form presented to the subagent's buyer-customer?

There are no legal rules requiring a subagent to provide a listing broker a copy of the agency disclosure form presented a buyer-customer. Listing brokers are advised to request a copy of the signed agency disclosure form from a selling broker in a subagency transaction. Because the listing brokers may be jointly liable with subagent selling brokers for undisclosed multiple representation relationships, it is prudent for the listing broker to confirm the non-client status of the buyers in these transaction.

g. If a buyer who is also an attorney writes his own offer on a property, does the listing agent still need to present a Broker Disclosure to Customer form to the buyer/attorney?

Any buyer may draft an offer to purchase on his or her own behalf. If the broker is working directly with such a buyer, the broker should provide a broker disclosure to customer form to the buyer.

h. The listing broker has a co-broker submitting an offer on a commercial property. On the offer the co-broker states they are working as an agent of the seller. The listing broker requested that the co-broker provide a copy of the Broker Disclosure to Customer form presented to the buyer. The co-broker said that he or she did not provide a copy of the agency disclosure to the buyer because it was a commercial transaction. Is this correct?

No. A written statement of agency disclosure is required in all transactions. Therefore the co-broker is required to provide a copy of the written agency disclosure form to the buyer-customer. If the two brokers are realtor members, the co-broker is are obligated under NAR's Code of Ethics Standard of Practice 3-5 as a subagent to provide the listing agents with all pertinent facts relating to the transaction, which would include the agency disclosure form. If the two are not Realtor members, then there is no legal rule requiring a subagent to provide a listing broker a copy of the agency disclosure form presented to a buyer-customer.

i. Is it possible to change an agency relationship after the agent has provided a broker disclosure to customer form stating that he or she is the agent of seller and now the prospective buyer wants to have buyer agency, is this okay?

With written permission from the listing broker and seller the agent may "switch sides".