

Core A: Agency & Escrow Issues

COR-1651



Agency Relationships

Sec. 15-10. Relationships between licensees and consumers.

Licensees shall be considered to be representing the consumer they are working with as a designated agent for the consumer unless:

- there is a written agreement between the sponsoring broker and the consumer providing that there is a different relationship; or
- the licensee is performing only ministerial acts on behalf of the consumer.

Sec. 15-15. Duties of licensees representing clients

- A licensee representing a client shall:
 - Perform the terms of the brokerage agreement between broker and client.
 - Promote the best interest of the client by:
 - Seeking a transaction at the price and terms stated in the brokerage agreement, or at a price and terms otherwise acceptable to the client.
 - Timely presenting all offers to and from the client, unless the client has waived this duty.
 - Disclosing to the client material facts concerning the transaction of which the licensee has actual knowledge, unless that information is confidential information
 - Timely accounting for all money and property received in which the client has, may have, or should have had an interest.
 - Obeying specific directions of the client that are not otherwise contrary to applicable statutes, ordinances, or rules.
 - Acting in a manner consistent with promoting the client's best interests as opposed to a licensee's or any other person's self-interest.

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- Exercise reasonable skill and care in the performance of brokerage services.
 - Keep confidential all confidential information received from the client.
 - Comply with all requirements of this Act and all applicable statutes and regulations, including without limitation fair housing and civil rights statutes.
- A licensee representing a client does not breach a duty or obligation to the client by showing alternative properties to prospective buyers or tenants or by showing properties in which the client is interested to other prospective buyers or tenants.
 - A licensee representing a buyer or tenant client will not be presumed to have breached a duty or obligation to that client by working on the basis that the licensee will receive a higher fee or compensation based on higher selling price or lease cost.
 - A licensee shall not be liable to a client for providing false information to the client if the false information was provided to the licensee by a customer unless the licensee knew or should have known the information was false.
 - Nothing in the Section shall be construed as changing a licensee's duty under common law as to negligent or fraudulent misrepresentation of material information.

Sec. 15-25. Licensee's relationship with customers.

Licenses shall treat all customers honestly and shall not negligently or knowingly give them false information. A licensee engaged by a seller client shall timely disclose to customers who are prospective buyers all latent material adverse facts pertaining to the physical condition of the property that are actually known by the licensee and that could not be discovered by a reasonably diligent inspection of the property by the customer. A licensee shall not be liable to a customer for providing false information to the customer if the false information was provided to the licensee by the licensee's client and the licensee did not have actual knowledge that the information was false. No cause of action shall arise on behalf of any person against a licensee for revealing information in compliance with this Section.

Agent is Party to Transaction (Section 1450.215)

A licensee may not serve as a dual agent in any transaction to which he or she or an entity in which he or she has an ownership interest is a party to the transaction.

Quiz for Agency Relationships

1. Licensees are presumed to be representing the consumer they are working with as a designated agent unless there is a written agreement to the contrary or the licensee is performing ministerial acts. **T F**
2. A buyer agent must disclose any material facts regarding the transaction to their buyer client unless these facts are confidential information. **T F**
3. Licensees can act as a dual agent in a transaction in which they are the principals only with the written permission of the other party to the transaction. **T F**
4. Who the designated agent is should be disclosed in writing when an agency relationship is established. **T F**
5. The obligation to disclose material defects in properties is owed only to clients – not to customers. **T F**



Dual Agency

Dual Agency (Article 15-45)

A licensee may act as a dual agent only with the informed written consent of all clients. Informed written consent shall be presumed to have been given by any client who signs a document that includes the following: (note: this is not the entire Dual Agency Disclosure Form)

What a Licensee Can Do For Clients When Acting As a Dual Agent

1. Treat all clients honestly
2. Provide information about the property to the buyer or tenant
3. Disclose all latent material defects in the property that are known to the Licensee
4. Disclose financial qualification of the buyer or tenant to the seller or landlord
5. Explain real estate terms
6. Help the buyer or tenant to arrange for property inspections
7. Explain closing costs and procedures
8. Help the buyer compare financing alternatives
9. Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer

What A Licensee Cannot Disclose to Clients When Acting as a Dual Agent

1. Confidential information that Licensee may know about a client, without that client's permission.
 2. The price the seller or landlord will take other than the listing price without permission of the seller or landlord.
 3. The price the buyer or tenant is willing to pay without permission of the client.
 4. A recommended or suggested price the buyer or tenant should offer
 5. A recommended or suggested price the seller or landlord should counter with or accept.
- The dual agency disclosure must be presented by a licensee who offers dual representation to the client at the time the brokerage agreement is entered into and may be signed by the client at that time or at any time before the licensee acts as a dual agent as to the client.
 - A licensee acting in a dual agency capacity in a transaction must obtain a written confirmation from the licensee's clients of their prior consent for the licensee to act as a dual agent in the transaction. This confirmation should be obtained at the time the clients are executing any offer or contract to purchase or lease in a transaction in which the licensee is acting as a dual agent. This confirmation may be included in another document, such as a contract to purchase, in which case the client must not only sign the document but also initial the confirmation of dual agency provision.
 - No cause of action shall arise on behalf of any person against a dual agent for making disclosures allowed or required by this Article, and the dual agent does not terminate any agency relationship by making the allowed or required disclosures.
 - In the case of dual agency, each client and the licensee possess only actual knowledge and information. There shall be no imputation of knowledge or information among or between clients, brokers, or their affiliated licensees.
 - In any transaction, a licensee may, without liability, withdraw from representing a client who has not consented to a disclosed dual agency. The withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or limit the licensee from representing the client in other transactions. When a withdrawal as contemplated in this subsection occurs, the licensee shall not receive a referral fee for referring a client to another licensee unless written disclosure is made to both the withdrawing client and the client that continues to be represented by the licensee.

Note: Brokerage agreement means a written or oral agreement between a sponsoring broker and a consumer for licensed activities to be provided to a consumer in return for compensation or the right to receive compensation from another. All exclusive brokerage agreements shall be in writing.

Quiz for Dual Agency

1. When doing Designated Agency, a dual agency transaction can occur when one agent in an Office shows another agent's listing. **T F**
2. An agent should not be doing a CMA for a buyer when acting as a dual agent. **T F**
3. The license law does not mandate language to be used in the dual agency disclosure form. **T F**
4. Dual agency does not need to be disclosed to the buyer prior to writing an offer if the listing agent's name was on the sign. **T F**
5. If an agent refers either the buyer or seller to another agent to avoid a dual agency and a referral fee is to be paid, the license law requires the existence of the referral fee be disclosed to both parties. **T F**



Ministerial Acts

Ministerial Acts (Articles 1-10 and 15-35)

Ministerial acts means those acts that a licensee may perform for a consumer that are

- informative or clerical in nature and do not rise to the level of active representation

Examples of these acts include:

- responding to phone inquiries by consumers as to the availability and pricing of brokerage services
- responding to phone inquiries by consumers concerning the price or location of property
- attending an open house and responding to questions about the property from a consumer
- setting an appointment to view property
- responding to questions of consumers walking into a licensee's office concerning brokerage services offered or particular properties
- accompanying an appraiser, inspector, contractor, etc. on a visit to a property
- describing a property or the property's condition in response to a consumer's inquiry
- completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client
- showing a client through a property being sold by an owner on his or her own behalf
- referral to another broker or service provider

Quiz for Ministerial Acts

1. Ministerial acts are those things that licensees do for consumers that are informative in nature and do not rise to the active level of representation. **T F**
2. Ministerial acts needs written disclosure prior to the consumer disclosing any confidential information. **T F**
3. Ministerial acts does not allow for an agent to write and negotiate a sales contract. **T F**
4. When you sell a for-sale-by-owner property you will be the agent of the seller because they are paying you. **T F**
5. The duties owed to a customer when doing Ministerial Acts is substantially the same as the duties owed to a client. **T F**



Confidential Information

Confidentiality (Article 1-10; Section 1450.207)

Licensees in receipt of confidential information shall take reasonable steps to safeguard the information from unauthorized disclosure.

Confidential information means information obtained by a licensee from a client during the term of a brokerage agreement that

- was made confidential by the written request or written instruction of the client
- deals with the negotiating position of the client, or
- is information the disclosure of which could materially harm the negotiating position of the client

Unless, at any time:

- the client permits the disclosure of information given by that client by word or conduct
- the disclosure is required by law
- the information becomes public from a source other than the licensee

Confidential information shall not be considered to include material information about the physical condition of the property.

Confidential information remains confidential after the termination of the agency relationship.

Quiz for Confidential Information

1. Confidential information ceases to be confidential once the agency relationship is terminated. **T F**
2. Confidential information ceases to be confidential once it becomes public knowledge. **T F**
3. A listing agent must not disclose defects in the property of which he has knowledge if he is directed by his seller to keep such information confidential. **T F**
4. Even though the information could harm the client in the negotiating process, it is not confidential unless the client specifically states it is confidential **T F**
5. The duty of confidentiality ceases when you are a dual agent. **T F**

Handling Escrow

Escrow moneys are all moneys, promissory notes or any other type of legal tender or financial consideration deposited with any person for the benefit of the parties to the transaction.

- A transaction exists once an accepted real estate contract is signed or lease agreed to by the parties.
- Earnest money constitutes escrow moneys whether in the form of personal checks, cashier's checks, money orders, cash or any other forms of legal tender.

Escrow accounts. Brokers who accept escrow moneys must deposit them in an account separate and apart from personal or other business accounts.

- Must be non-interest bearing, unless principals to the transaction require, in writing, that the deposit be placed in an interest bearing account, in which case the recipient of the interest shall be specifically indicated.
- A broker may maintain more than one escrow account – and there is no requirement that every broker have an escrow account.
- Every escrow account must be maintained at a federally insured depository.

- Only escrow moneys received in connection with real estate transactions may be deposited in escrow accounts with the exception that personal funds can be deposited in the amount sufficient to avoid incurring services charges relating to the account.
- All moneys must be deposited not later than the next business day following the transaction with the exception that branch offices have one business day to transmit the funds to the main office
- Broker serving as escrow agent must notify all principals in writing if a principal:
 - fails to tender escrow moneys
 - payment as escrow moneys is dishonored by the bank
 - when there appears to be a deficiency in the amount on deposit

Disbursement of Escrow Money

- Broker must disburse escrow moneys upon consummation or termination of the transaction, provided the funds have been honored by the payer's bank.
- Disbursement must be according to the terms of the contract and must be
 - made not earlier than the day the transaction is consummated or terminated
 - not later than the next business day following broker's receipt of consummation or termination
 - or, in accordance with the written direction of all principals to the transaction
- If, prior to consummation or termination of the transaction, the broker receives written direction from all the principals agreeing to a disbursement, the broker must disburse the money according to the written direction.
 - or, the sales contract stipulated the release, payment or distribution of escrow money
 - or, the broker receives an order from a court of competent jurisdiction providing for the disbursement of the moneys
- In any case, disbursement must be made not later than the next business day following the broker's receipt of the last required written direction provided the check has cleared.

Disputes Regarding Escrow Money

- In the event of a dispute over the return or forfeiture of any escrow money being held by a broker or if the broker has knowledge that any party contests or disagrees with an anticipated disbursement, the broker shall continue to hold the deposit in the escrow account
 - until he or she has a written release from all parties, in which case they money must be disbursed according to the terms of the written direction no later than the next business day after the broker's receipt of the last required written direction
 - until a civil action is filed, at which time payment may be made into the court, or,
 - until the funds are turned over to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act because of inactivity or inability to locate the parties or inability of the parties to reach a resolution.

Miscellaneous Escrow Issues

- Escrow records must be retained for 5 years; the last 2 years in the office, the balance at another location.
- If escrow records are lost, stolen or destroyed, the broker must notify IDFPR within 30 days and obtain available bank records as soon as possible.
- Broker may delegate the bookkeeping duties to another person, however compliance remains the responsibility of the sponsoring broker.
- Sponsoring brokers must institute office policies to ensure that his or her sponsored licensees tender escrow moneys in compliance with the law.
- Branch offices may maintain escrow accounts or they may transmit moneys received to the main office or another branch office.
 - If the branch does not maintain escrow accounts, all moneys must be transmitted by the branch to the main office not later than the next business day following the transaction.
 - The branch must maintain records showing the date the escrow moneys were transferred to the main office.
 - Funds received at the main office from a branch must be placed in the escrow account not later than the next business day following receipt from the branch.

The broker must notify IDFPR within 10 days if there is a change of depository, method of doing business or persons authorized to make withdrawals from any escrow accounts.

The broker shall make available to IDFPR all escrow records and related documents maintained in connection with the offices transactions within 24 hours after a request. These items shall be: journal, ledger, monthly reconciliation statement and Master Escrow Account Log.

Quiz for Escrow Issues

- T F 1. If an interest bearing account is required for escrow money, the recipient of the interest shall always be the buyer.
- T F 2. If an earnest money check bounces, the Escrowee must notify all parties in writing.
- T F 3. All sponsoring brokers need an escrow account.
- T F 4. Every escrow account, whether interest bearing or non-interest bearing, shall be maintained at a federally insured depository.
- T F 5. Branch offices may maintain escrow accounts or may transmit all escrow moneys received to the main office, but not to another branch office.
- T F 6. All escrow monies accepted by a sponsoring broker shall be placed in the sponsoring broker's escrow account no later than the next business day following the transaction. With the except that a branch has an extra day to transmit money to the main office.
- T F 7. According to the rules on escrow accounts, a transaction exists once an accepted real estate contract is signed by the parties.
- T F 8. A broker may refuse to release escrow monies due to a claim for commission.
- T F 9. In the event of a dispute over the return or forfeiture of any escrow moneys, a broker holding the escrow monies must release as directed by the parties to a transaction (or their duly authorized agents) no later than 3 business days after the receipt of the last required written release provided the check has cleared.
- T F 10. If the seller refuses to authorize the release of earnest money in a timely manner, the Escrowee may return it to the buyer with written notice to the seller.

Quiz Answers

Quiz for Agency Relationships

1. T
2. T
3. F
4. T
5. F

Quiz for Dual Agency

1. F
2. F
3. F
4. F
5. T

Quiz for Ministerial Acts

1. T
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4. F
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Quiz for Confidential Information

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