LAW OF AGENCY – COURSE OUTLINE – AGENCY BASICS

SOURCES OF AGENCY LAW:

Common Law - Agency law & Contract law

Statutory Law - The Texas Real Estate License Act

THIS COURSE WILL COVER THE RELATIONSHIPS BETWEEN:

Brokers and their Salesperson
Brokers and Sellers / Buyers
Brokers and Other Brokers
Buyers and Sellers

AGENCY IS A RELATIONSHIP WHERE ONE PERSON IS AUTHORIZED TO ACT FOR (REPRESENT) ANOTHER INVOLVING:

Third Party
Discretion / Judgment
Money / Property
Knowledge / Ability

AGENCY IS A FIDUCIARY RELATIONSHIP - BASED ON TRUST & CONFIDENCE:

All agents are fiduciaries

Not all fiduciaries are agents – doctors, lawyers, trustee (these may also be agents)

AGENCY IS A PERSONAL NON-ASSIGNABLE OBLIGATION
PARTIES TO AN AGENCY AGREEMENT:

Principal – the person who delegates authority – also called the Client

Agent – the person who accepts authority and acts on behalf of the Principal

Third Party – the person whom the agent deals with on behalf of the Principal – also called the Customer

TYPES OF AGENCY BASED ON AUTHORITY DELAGETED:

UNIVERSAL AGENCY – the broadest and most general scope of authority – ongoing in nature – the agent can bind the Principal if authorized to do so

GENERAL AGENCY – narrower, more specific range of activities – ongoing in nature – the agent can bind the Principal if authorized to do so

SPECIAL AGENCY - limited scope of authority to single act – not ongoing - the agent can bind the Principal if authorized to do so

REAL ESTATE TRANSACTIONS WHERE THE BROKER REPRESENTS THE SELLER OR BUYER USUALLY DO NOT ALLOW THE AGENT TO CONTRACT FOR THE PRINCIPAL (THE SELLER OR BUYER)

AGENT’S FIDUCIARY DUTIES TO THE PRINCIPAL / CLIENT:

OBEEDIENCE

LOYALTY

DISCLOSURE

CONFIDENTIALITY

ACCOUNTING

REASONABLE CARE AND DILIGENCE
PRINCIPAL / CLIENT’S DUTIES TO THE AGENT:

COMPENSATION - if agreed to

INFORMATION

INDEMNIFICATION

AVAILABILITY

AGENT’S DUTIES TO THIRD PARTIES / CUSTOMERS:

HONESTY

FAIRNESS

DISCLOSURE OF KNOWN AND MATERIAL PROPERTY CONDITIONS

COMPETENCE

FOLLOW THE LAWS – Fair Housing, Disclosure, etc.

CREATION OF AGENCY:

NOT NEEDED TO CREATE AGENCY –

Written consent / contract

Compensation

PARTIES TO A REAL ESTATE TRANSACTION:

BROKER
AGENT
SUB-AGENT
BUYER
SELLER
CLIENT
CUSTOMER

REAL ESTATE IN HOUSE TRANSACTIONS – OTHER BROKER (CO-BROKER) TRANSACTIONS

IN HOUSE TRANSACTION IS COMPLETED WITHIN ONE COMPANY
METHODS OF CREATING AGENCY:

Express Agreement – specifically agreed to orally or in writing

Implied Agreement – created by words or actions of the parties

Agency by Estoppel / Ostensible Agency – when the Principal leads a third party to believe a person is the agent, then the principal cannot deny the agency relationship

Agency by Ratification – when the Principal accepts an unauthorized act of an agent after the fact and accepts the benefits

DISTINGUISH BETWEEN EXPRESS AND IMPLIED AGENCY AND EXPRESS AND IMPLIED AUTHORITY

TERMINATION OF AGENCY:

COMPLETION OF AGENCY OBJECTIVE

LAPSE OF TIME SPECIFIED IN THE AGREEMENT – TREL A requires a specific termination date for service contracts

RECESSION – mutual agreement of the parties to terminate

RENUNCIATION OF AUTHORITY BY THE AGENT

REVOCATION OF AUTHORITY BY THE PRINCIPAL

DESTRUCTION OR CONDEMNATION OF THE PROPERTY

DEATH OR INCAPACITY OF THE PRINCIPAL OR AGENT

BANKRUPTCY OF THE PRINCIPAL

LEGAL CONSEQUENCES OF THE AGENCY RELATIONSHIP:

LIABILITY

Common law – the principal is responsible for the acts of the agent and sub-agent

TREL A – no liability for unknown misrepresentations – if a
misrepresentation is discovered the principal must correct it

NOTICE
Notice to the agent is notice to the Principal

CONFIDENTIALITY
The duty of confidentiality continues even after the agency relationship terminates

COMMON LAW AGENCY

SINGLE AGENCY – representing one party to the transaction
DUAL AGENCY – representing both parties to the transaction with informed consent of both parties
Disclosed Common Law Dual Agency – Undisclosed Common Law Dual Agency (was always wrong)
IN TEXAS SINCE 2005 – COMMON LAW DUAL AGENCY MAY NOT BE USED FOR REAL ESTATE TRANSACTIONS

MINIMUM SERVICE REQUIREMENT:

IF A BROKER REPRESENTS A SELLER UNDER AN EXCLUSIVE LISTING AGREEMENT THEY MUST AT MINIMUM PRESENT ANY OFFER AND ANSWER THE PARTY’S QUESTIONS