

Connecticut Real Estate Agent Fiduciary Duties Review *and* Law Update

Connecticut Real Estate Licensee
Mandatory Continuing Education Course
2010-2012 CE Cycle

This course was developed at the request of the Connecticut Department of Consumer Protection and the Connecticut Real Estate Commission. It was **approved by the Real Estate Commission on September 1, 2010** for use as the **one mandatory course requirement for the 2010-2012 real estate continuing education cycle.**

Schools wishing to use the course still need to fill out a course application using the Connecticut Real Estate Course Application for Continuing Education.

Application for live courses to be taught using the required course slides do not need to include a course outline or syllabus, text information, or copies of handouts.

Application for online courses or courses proposing to deliver the material without the slides need to complete the full application, and specifically describe how the material will be covered and interaction will occur.

The course was developed by the
Center for Real Estate and Urban Economic Studies
University of Connecticut
at the request of the Connecticut Real Estate Commission

Special thanks to the following individuals for their contributions:

- **Katherine Pancak, Professor, University of Connecticut**
- Marilyn Keating, Vice-Chair, Connecticut Real Estate Commission
- Lana Ogrodnik, Commissioner, Connecticut Real Estate Commission
- Linda Dick, Gateway Community College
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- Kelly Harvey, CT Department of Consumer Protection
- Terry Hastings, HamiltonLadd Home Loans
- Judith Johannsen, Esq., Connecticut Association of Realtors, Inc.®
- John Morgan, Morgan Testing Services
- Laureen Rubino, Real Estate Consultant

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This course was developed by the University of Connecticut Center for Real Estate and Urban Economic Studies and approved by the Connecticut Real Estate Commission and Department of Consumer Protection. Recognition is given to the individuals listed above for their valuable research, writing, and review.

All Connecticut schools and instructors are free to use the course material, as long as appropriate credit is given.

Course Goals

- Understand the difference between a **client** and a **customer**.
- Identify **common law** and **state licensing law** FIDUCIARY DUTIES owed to clients.
- Discuss facts and outcomes of **actual cases** related to real estate agent fiduciary duties.
- Talk about **current topics** in practice that agents seem confused about.
- Learn about **recent legislation** related to real estate practice.

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There are three primary goals of this course.

1. Review of common law and state licensing law **FIDUCIARY DUTIES** owed to real estate clients. Coverage of this material should take approximately **2 hours**.
2. Discuss **current topics** that the Real Estate Commission has identified as problematic. Coverage of this material should take approximately **25 minutes**.
3. **Update on recent state and federal legislation** related to real estate brokerage. Coverage of this material should take approximately **25 minutes**.
4. This leaves time for a **10 minute break**.

Licensee Relationships

Real estate **licensee** can work with a real estate **consumer** in one of two ways:

1. Client – agency relationship

- signed agency agreement with your brokerage firm
- fiduciary duties owed

2. Customer – no agency relationship

- either another brokerage firm represents consumer or consumer is unrepresented
- no fiduciary duties owed

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A party to a real estate transaction is referred to as a real estate **consumer**. A real estate licensee can have one of two relationships with a real estate consumer. The consumer can be a **client** or the consumer can be a **customer**.

It is important to understand the difference between a client and a customer. A real estate licensee owes a client fiduciary duties.

Instructor should stress that a listing agent does not need to represent a buyer. A listing agent can work with a buyer as a customer. An agent that represents a buyer as a client owes greater duties to the buyer than an agent working with a buyer as a customer.

Who's Your Client?

- Firm's **designated broker** enters into agency relationship with client
 - written representation agreement
- **All** salespeople and brokers sponsored by or affiliated with firm **represent** client
 - only exception – a salesperson who is a designated agent
- Agency relationships **do not** run along in-house team lines

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Client relationships run from the designated broker (individual or legal entity), and bind all salespersons and brokers in the firm.

Stress that client relationships do not run along team lines within a brokerage firm. So if a client is represented by Firm X, all salespersons and brokers working in Firm X's Teams A, B, and C represent that client.

Duties to Clients

- **Common Law**
 - judge-made law
- **State Licensing Law and Regulations**
 - state legislature and commission made law
 - Connecticut General Statutes Chapter 392
 - Connecticut administrative regulations

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There are two sources of laws governing real estate salespersons' and brokers' duties to clients.

1. **Common law – law passed down through court decisions.** If an agent breaches a common law duty to a client, the client has the right to sue the agent in a court of law.
2. **State licensing law and regulations** – law enacted by the Connecticut General Assembly, and regulations implementing those laws enacted by the Connecticut Real Estate Commission. In certain respects, Connecticut **statutes codify the common law fiduciary duties.** If an agent violates a state licensing law or regulation, a client can file a complaint with the Real Estate Commission. The Commission then has the power to hold hearings and impose sanctions against the agent. **STRESS POSSIBLE SANCTIONS.** Sanctions can include license suspension, license revocation, and fines up to \$2,000. CGS Section 20-320. Sanctions for some violations can even be up to six months in jail. CGS Section 20-324.
3. Note that professional organizations, such as Realtor® organizations, may have additional levels of obligations to clients and customers.

FIDUCIARY DUTIES

- Confidentiality
- Obedience
- Accounting
- Loyalty
 - *includes using reasonable care and due diligence*
- Disclosure

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A real estate agent that represents a client is in a position of special trust and confidence to that client. This is known in the law as a fiduciary relationship. The law imposes fiduciary obligations on a real estate agent that represents a client.

The purpose of this portion of the course is to specifically review fiduciary obligations owed by real estate agents to clients. Students may recall the list of fiduciary duties from their prelicensing class by remembering the mnemonic from the first letters of the duties: **COALD**.

Fiduciary duties are:

Confidentiality: to safeguard your client's secrets, unless keeping the confidence would violate disclosure requirements about the property's condition.

Obedience: to promptly follow all *lawful* instructions of your client.

Accounting: to account for all money entrusted to you by your client.

Loyalty: to act at all times in the best interest of your client and to put those interests above all others, including yourself. Loyalty includes diligently using your real estate skills and knowledge to further your client's interest in the real estate transaction.

Disclosure: to disclose all known, relevant facts about the property and transaction to your client.

Note that fiduciary obligation is **not determined by who pays the commission**

or if any commission is paid at all (for example, a seller might agree to pay the buyer agent's commission; this does not change the fact that the buyer agent owes fiduciary duties to the buyer not the seller). A fiduciary relationship is most commonly created when a broker enters into an agency agreement with a client.

Confidentiality

- **Common Law:**
 - Agent must keep client's personal and financial information confidential.
- **State Licensing Law:**
 - Agent cannot reveal confidential information about client.
 - during or after agency relationship
 - also cannot use confidential information to that person's disadvantage

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Connecticut real estate salespersons and brokers must abide by the common law and statutory law duty of confidentiality.

CGS Section 20-325h prohibits an agent from using or disclosing confidential information about a client. Confidential information is defined as facts concerning a person's

- assets, liabilities, income, expenses,
- motivations to purchase, rent or sell real property, and
- previous offers received or made to purchase or lease real property

which are not authorized by the client, a matter of general knowledge, or in the public record.

Confidentiality? You be the judge!

- ***Confidentiality Case Study 1***

- First Agent enters into a listing with sellers and learns that the property is being sold because sellers are getting divorced. Listing expires. Sellers relist property with another firm. First Agent shows house to buyer client. Can First Agent disclose information about divorce?

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The instructor should tell the students that they are now going to have the opportunity to discuss the duty of confidentiality.

Before discussion, the instructor should present the two case studies.

Confidentiality? You be the judge!

- ***Confidentiality Case Study 2***

- First Agent enters into listing with sellers. Learns about foundation cracks in sellers' property. Listing expires. Sellers paint over cracks and relist house with another firm. First Agent shows house to buyer client. Can First Agent share information about cracks?

Confidentiality? You be the judge!

- **Time for Group Discussion**



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Divide the class into groups of 4-5 students each, or allow the students to self-select into groups. Each group should then be assigned one of the two case scenarios to discuss.

Tell the groups that they should be ready to present their case verdict and rationale. Give the groups about 5 minutes to deliberate. Then call on group members to talk about their answers.

Encourage class discussion and participation.

Confidentiality? You be the judge!

- **Confidentiality Case Study 1: RESULT**

- Agent cannot disclose confidential information.
- Confidential information is facts concerning a person's
 - assets, liabilities, income, expenses,
 - motivations to purchase, rent or sell real property, and
 - previous offers received or made to purchase or lease real property
- Not confidential: information authorized to be disclosed by the client, that is a matter of general knowledge, or that is in the public record.

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Confidentiality Case Study 1 is a theoretical case. Agent cannot disclose this confidential information about a former client.

An agent cannot reveal confidential information about a client at any time DURING or AFTER an agency relationship. Confidential information includes facts concerning a client's assets, liabilities, income, expenses, motivations to sell, purchase, or rent, and previous offers received or made that are not a matter of public record.

Confidentiality? You be the judge!

- **Confidentiality Case Study 2: RESULT**
 - Agent must disclose information about the condition of the former clients' property.
 - Property condition is not confidential information.
 - Agent has a duty to both client and customer to disclose property conditions.

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Confidentiality Case Study 2 is a theoretical case. Property condition is not considered confidential information. Agent must disclose this information to the buyer client. While an agent must keep personal information about a former client confidential, an agent is always required to disclose information about the physical condition of the property regardless of how the agent obtained the information.

Obedience

- **Common Law:**
 - Agent must obey client's instructions.
 - as long as instructions are legal and ethical

Connecticut real estate salespersons and brokers must abide by the common law duty of obedience.

Obedience? You be the judge!

- ***Obedience Case Study 1***

- Buyer client asked for a home inspection, and agent said he would take care of it. Agent failed to have an inspection done. After closing buyer client found serious defects and sued agent. What result?

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The instructor should tell the students that they are now going to have the opportunity to discuss the duty of obedience.

Before discussion, the instructor should present the two case studies.

Obedience? You be the judge!

- ***Obedience Case Study 2***

- Buyer client asked agent for information about the ethnic make-up of a neighborhood, insisting that they could not live in a neighborhood where people had ethnic backgrounds that would make them potential terrorists. Agent failed to investigate the neighborhood's ethnic background. After closing buyer client found that the house they bought was located in a middle-eastern neighborhood. What result?

Obedience? You be the judge!

- **Time for Group Discussion**



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Divide the class into groups of 4-5 students each, or allow the students to self-select into groups. Each group should then be assigned one of the two case scenarios to discuss.

Tell the groups that they should be ready to present their case verdict and rationale. Give the groups about 5 minutes to deliberate. Then call on group members to talk about their answers.

Encourage class discussion and participation.

Obedience? You be the judge!

- ***Obedience Case Study 1: RESULT***

- Agent's failure to obtain the inspection was a breach of fiduciary duty.
- Buyer client awarded over \$60,000 in damages.

Obedience Case Study 1 is based on the Connecticut Superior Court case of Ajruli v. Possemato, 2007 Conn. Super. LEXIS 1676 (2007).

That case found that the agent had a duty to either obtain an inspection and report the results to the buyers, or to disclose the fact that the agent did not do so. Failure to obtain the inspection amounted to a breach of the agent's fiduciary duty to the buyers. The buyers were awarded damages for breach of contract, emotional distress, and attorneys fees, amounting to over \$60,000.

Obedience? You be the judge!

- ***Obedience Case Study 2: RESULT***

- Agent would violate fair housing laws if agent obeyed buyer client.
- Agent should have informed buyer client that providing information about a protected classification was a violation of fair housing laws, and therefore agent would not be able to follow those instructions.

Obedience Case Study 2 is a theoretical case. Agent is under no fiduciary obligation to provide client with information about classifications protected under fair housing laws. At the time the buyer client requested the information about ethnic make-up, agent should have informed buyer client that the agent's activity of pre-screening properties on the basis of ethnic make-up would be a form of steering that would be in violation of fair housing laws.

Accounting

- ***Common Law:***
 - Agent must account for all money and documents held for client.
- ***State Licensing Law:***
 - Agent must account for money belonging to others.
 - Agent must hold client and customer money in separate escrow account.
 - Monies must be deposited in escrow account within 3 banking days of contract acceptance.

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Connecticut real estate salespersons and brokers must abide by both the common law duty of loyalty and state licensing law duties related to accounting.

State licensing provisions can be found at Connecticut General Statute Section 20-320(5), 20-320 (10), and 20-324k, and Regulation Section 20-328-7a.

Accounting? You be the judge!

- **Accounting Case Study 1**

- Seller's broker held \$16,000 escrow deposit that was to be used as liquidated damages if buyer defaulted on contract. Buyer defaulted; parties agreed to split escrow. Broker refused to release escrow until commission was paid. Can broker do that?

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The instructor should tell the students that they are now going to have the opportunity to discuss the duty of obedience.

Before discussion, the instructor should present the two case studies.

Accounting? You be the judge!

- **Accounting Case Study 2**

- Seller and buyer entered into a rescission agreement, where escrow deposit was to be returned to the buyer. Seller's broker did not deliver check; buyer contacted DCP. DCP required broker to deliver check to DCP office where buyer broker could pick it up. Check was written on seller's brokerage firm general operating account. Check bounces at first, then clears after redeposit. What result?

Accounting? You be the judge!

- **Time for Group Discussion**



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Divide the class into groups of 4-5 students each, or allow the students to self-select into groups. Each group should then be assigned one of the two case scenarios to discuss.

Tell the groups that they should be ready to present their case verdict and rationale. Give the groups about 5 minutes to deliberate. Then call on group members to talk about their answers.

Encourage class discussion and participation.

Accounting? You be the judge!

- **Accounting Case Study 1: RESULT**

- Broker cannot refuse to release escrow funds for reason that broker's commission has not been paid.
- Real Estate Commission fined broker \$2,000 for violation of statutory accounting duty.

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Accounting Case Study 1 is based on the Connecticut Superior Court case of Hayber v. Department of Consumer Protection, Real Estate Commission, 49 Conn. Supp. 192; 2004 Conn. Super. LEXIS 499; 866 A.2d 732 (2004).

In that case, the broker represented seller. Listing contract required the seller to pay broker a 6% commission if the property was sold or if a ready, willing, and able buyer agreed to buy the property. The broker introduced a buyer; seller and buyer signed purchase agreement. Buyer gave broker a down payment of \$16,000 to be held in escrow and as liquidated damages if buyer backed out of the agreement. Buyer subsequently backed out of contract due to disputes regarding home renovations. Buyer and seller agreed to split the \$16,000 among themselves. The broker refused to release the funds until he received a commission. The court held that a good-faith writing delivered to the escrow agent by the party's attorney sufficed to authorize the release of the funds, and that the broker was not entitled to the escrow money.

This case was first heard by the Connecticut Real Estate Commission. The Real Estate Commission ordered the broker to pay the escrow deposit to the sellers and former buyers, plus interest, and a \$2,000 civil penalty after the broker, who was acting as a fiduciary, refused to release the funds. The broker appealed to the Superior Court. The court agreed with the Commission.

Accounting? You be the judge!

- **Accounting Case Study 2: RESULT**

- Broker cannot refuse to release escrow funds.
- Real Estate Commission has right to
 - fine broker
 - suspend or revoke broker's license
 - have broker imprisoned for up to six months

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Accounting Case Study 2 is based on the Connecticut Department of Consumer Protection complaints numbers 2007- 9703, 2008-11258, and 2009-1832.

There was actually a series of three complaints with DCP against the broker regarding return of escrow money after failed transactions. All checks eventually cleared, so consumers did not proceed with filed complaints. However, in the case involving the fact pattern above, DCP opened its own complaint based on the evidence of commingling of funds.

Real Estate Commission has the ability to suspend or revoke broker's license, and/or fine broker up to \$2,000 for failing to account for escrow money within a reasonable time (CGS Section 20-320 (5)) and commingling funds (CGS Section 20-320(10)). CGS Section 20-324(k) also provides for sanctions including jail time.

If brokerage firm's designated broker's license is suspended or revoked, all agents working for designated broker would be forced to transfer their affiliation to another broker.

Loyalty

- **Common Law:**
 - Agent must put client's interests first.
 - Agent must use reasonable care and due diligence to represent client competently.

Connecticut real estate salespersons and brokers must abide by both the common law duty of loyalty and state licensing law duties related to loyalty.

Loyalty, continued

- **State Licensing Law:**
 - Agent must disclose any interest that agent has in property to client and customer.
 - Agent (or anyone in agent's family) can't buy property listed with that agent without disclosure to seller.
 - Agent selling own property must disclose ownership interest to buyers.
 - Agent entering into exclusive representation agreement must make diligent effort to sell, lease, or find a property.

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State licensing provisions can be found at Connecticut General Statute Section 20-320 and Regulation Section 20-328-2a (a), (b), and (c). Additionally Section 20-320 (11) prohibits dishonest, fraudulent, and improper dealings.

Loyalty? You be the judge!

- ***Loyalty Case Study 1***

- Brother and sister inherit a house. Siblings entered into listing agreement with designated broker in firm. Second broker in firm makes an offer of \$115,000; siblings accept. Second broker immediately resells house for \$160,000. Is this a problem?

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The instructor should tell the students that they are now going to have the opportunity to discuss the duty of loyalty.

Before discussion, the instructor should present the three case studies.

Loyalty? You be the judge!

- ***Loyalty Case Study 2***

- Buyer client sued real estate brokerage firm for failure to disclose that firm represented other buyers bidding on the same property. What result?

Loyalty? You be the judge!

- ***Loyalty Case Study 3***

Agent represented buyer. Agent recommended a home inspector; inspector lacked necessary expertise to perform a home inspection and failed to discover insect infestation. Buyer sued agent for violation of fiduciary duty. What result?

Loyalty? You be the judge!

- **Time for Group Discussion**



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Divide the class into groups of 4-5 students each, or allow the students to self-select into groups. Each group should then be assigned one of the three case scenarios to discuss.

Tell the groups that they should be ready to present their case verdict and rationale. Give the groups about 5 minutes to deliberate. Then call on group members to talk about their answers.

Encourage class discussion and participation.

Loyalty? You be the judge!

- **Loyalty Case Study 1: RESULT**

- All licensees working for the brokerage firm must put the firm's client's interests first.
- Broker and firm had a duty to communicate information about the value of the property and a more advantageous offer.
- Broker is liable to seller for money damages.
- Broker is precluded from collecting a commission.

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Loyalty Case Study 1 is based on the Connecticut Appellate Court case of Licari v. Blackwelder, 14 Conn. App. 46; 539 A.2d 609; 1988 Conn. App. LEXIS 93 (1988).

That case stressed that a real estate broker representing a client is a fiduciary of the client, and as such the broker is required to exercise loyalty and good faith, and cannot put himself in a position adverse to his client's interest. The court held that any agent in the broker's firm was required to communicate information about the value of the property and a more advantageous sale. Failure to do so meant the broker and firm were liable to the sellers for their monetary loss and precluded from collecting a commission. The court added that this conduct also violated CGS Section 20-320, and therefore could also result in licensing law sanctions.

Loyalty? You be the judge!

- **Loyalty Case Study 2: RESULT**

- Other state court held firm representation of two buyers bidding on same property was not dual agency.
 - caveat: as long as separate salespersons worked with the different buyers
- Buyer/buyer representation in same transaction may be looked at by a court as dual agency.

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Loyalty Case Study 2 is based on the New York Appellate Court case of Rivkin v. Century 21 Teran Realty LLC, 535 F.3d 105; 2008 U.S. App. LEXIS 15480 (US Court of Appeals for 2nd Circuit, 2008). While not necessarily binding precedent on Connecticut courts because it is looking at New York law, Connecticut cases appealed in the federal court system would be heard by the same court.

In that case, the US Court of Appeals agreed with the New York Court of Appeals that the brokerage firm did not breach a fiduciary duty to the buyer client by failing to disclose the firm's representation of a competing buyer client. The court ruled that only the buyer client's individual agent was subject to the fiduciary duties of undivided loyalty and full disclosure and that, unless the firm and the client specifically agreed otherwise, the firm was not obligated to insure that its affiliated agents forgo making offers on behalf of other buyers for property on which the buyer client had already bid.

It was clear from the record that the buyer client's individual agent did not represent multiple buyers in the transaction at issue. If an individual agent represents multiple buyer clients interested in making an offer on the same property, there is a potential that a court would view this as dual agency. Therefore, an individual agent representing multiple buyers interested in the same property should consider explaining the potential conflict and obtain

permission from the multiple buyers before proceeding and/or recuse self from the multiple representation.

Loyalty? You be the judge!

- **Loyalty Case Study 3: RESULT**

- Agent would be liable to client for violating fiduciary duty if

- agent knew that inspector lacked necessary expertise, or
- agent did not use reasonable care to investigate the background of the inspector before recommending

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Loyalty Case Study 3 is based on the Connecticut Superior Court case of Marx v. McLaughlin, 2001 Conn. Super. LEXIS 1791 (2001).

That case dealt with a procedural motion by the agent to throw out the buyer's fiduciary duty complaint. The court did not throw out the complaint, stating that it *could* be a violation of fiduciary duty if (1) the agent knew that the inspector lacked the necessary expertise and skill to perform the home inspection, or (2) did not use reasonable care to investigate the background of the inspector before recommending him.

Note that it would not make a difference if more than one inspector was recommended.

Disclosure

- **Common Law:**
 - Agent must inform client of all information relevant to the transaction.
- **State Licensing Law:**
 - Agent cannot misrepresent or conceal any material facts.
 - However, certain facts are considered legally nonmaterial, including disease, death, and felony.

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Connecticut real estate salespersons and brokers must abide by both the common law duty of disclosure and state licensing law duties related to disclosure.

State licensing provisions regarding misrepresentation can be found at CGS Section 20-320(1) and Regulation Section 20-328-5a. Provisions specifying non-material facts can be found at Sections 20-329cc – 20-329gg.

Disclosure? You be the judge!

- ***Disclosure Case Study 1***

- Agent failed to tell buyer client that seller would take \$24,000 less for property. Buyer client complained to state real estate board. What result?

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The instructor should tell the students that they are now going to have the opportunity to discuss the duty of obedience.

Before discussion, the instructor should present the three case studies.

Disclosure? You be the judge!

- ***Disclosure Case Study 2***

- Agent represented buyer. Agent failed to explain to buyer that purchase was subject to short sale bank approval. Buyer expended money in preparation for purchase. Short sale was not approved. Buyer sues agent and files complaint with Real Estate Commission. What result?

Disclosure? You be the judge!

- ***Disclosure Case Study 3***

- Agent represented buyer. Buyer bought property and later found out that the property acreage was incorrectly reported in the listing. Agent did not independently verify the acreage. Buyer sues agent. What result?

Disclosure? You be the judge!

- **Time for Group Discussion**



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Tell the groups that they should be ready to present their case verdict and rationale. Give the groups about 5 minutes to deliberate. Then call on group members to talk about their answers.

Encourage class discussion and participation.

Disclosure? You be the judge!

- **Disclosure Case Study 1: RESULT**

- Agent's failure to tell buyer client that a non-client seller would take \$24,000 less for property is a breach of fiduciary duty.
- Agent's license was revoked.

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Disclosure Case Study 1 is based on the Ohio Appellate Court case of Randolph v. Ohio Division of Real Estate, 2010 Ohio 2558; 2010 Ohio App. LEXIS 2091 (2010). While this court case is not necessarily binding precedent on Connecticut courts, it does give an indication of judicial opinion on this topic.

In that case the seller agreed to pay the buyer agent an "investor fee" of \$24,000 if the agent sold the property. The court found that this amounted to fact that the seller was willing to net \$24,000 less in the sale. The Ohio Real Estate Commission had found that the agent's failure to disclose this information to buyer client was a breach of fiduciary duty, and revoked broker's license. Broker appealed to Ohio court system. Ohio lower court and appellate agreed with Commission and the broker's license was revoked.

Disclosure? You be the judge!

- **Disclosure Case Study 2: RESULT**
 - Agent's failure to inform and educate buyer client about short sale was a breach of fiduciary duty.
 - Agent was fined \$1,000.

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Disclosure Case Study 2 is based on the Connecticut Department of Consumer Protection complaint Docket No. 08-1194.

That case found that the buyer agent violated his fiduciary duty to the buyer client by not disclosing that the transaction was subject to short sale bank approval. Real Estate Commission imposed a fine of \$1,000.

Disclosure? You be the judge!

- **Disclosure Case Study 3: RESULT**

- Buyer agent's fiduciary duty to disclose to buyer client is much more than seller agent's duty to disclose to a buyer customer.
- Buyer agent may be found liable for failure to investigate property conditions on behalf of buyer.

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Disclosure Case Study 3 is based on a series of California court cases starting with Field v. Century 21 Forness Realty, 63 Cal.App.4th 18, 21 (1998). While California court cases are not necessarily binding precedent on Connecticut courts, it does give an indication of judicial opinion on this topic.

While the outcome of the case did not hinge on this issue, the course stated that a buyer agent could be found liable for failure to investigate property conditions on behalf of the buyer.

The court made a *strong distinction* between a seller agent's statutory duty to disclose to non-client buyers versus a buyer agent's common law fiduciary duties to a client buyer. The court stated that the fiduciary duty that a real estate buyer agent owes to a client buyer is "substantially more extensive" than non-fiduciary duties of disclosure owed by a seller agent to a non-client buyer, noting that an agent's duty to his or her own client was a "fiduciary duty of utmost care, integrity, honesty, and loyalty."

The court stated that this fiduciary duty of care included a duty to investigate property conditions on behalf of the buyer. A subsequent California case, dealing with a commercial property, stated that a buyer agent can meet the duty

by investigating or advising the buyer to investigate. Morgano v. Hank Sybrandy,
2004 Cal. App. Unpub. LEXIS 7343 (2004).

CURRENT TOPICS

- **Broker Price Opinions**

- Must be licensed appraiser to estimate value of real estate for a fee.
- Only exception for real estate licensee.
 - when conducting a market analysis for a client
 - when determining value for prospective client
 - in pursuit of listing or agency agreement
 - fee must be credited if agent lists and sells property
 - can't refer to as "appraisal"
- Licensee can't charge fee to lenders for market analysis of property listed with other.

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The Real Estate Commission has identified four current topics that seem confusing to agents, and would like instructors to provide clarification so that agents do not find themselves in violation of Connecticut licensing laws.

The first current problematic topic is Broker Price Opinions. The law related to Broker Price Opinions can be found in the Appraisal Licensing Law. Connecticut General Statute Section 20-501 requires that persons engaging in the real estate appraisal business be licensed. Section 20-500(5) defines "engaging in the real estate appraisal business" as "the act or process of estimating the value of real estate for a fee or other valuable consideration." Section 20-526 provides for exceptions.

The Department of Consumer Protection is actively pursuing claims against real estate licensees that are illegally conducting broker price opinions. DCP staff shared the following true story about an open investigation. A complaint was filed against a real estate salesperson who was being paid by a financial institution for providing BPOs. As part of the DCP investigation, the salesperson stated that the financial institution approached her to do a BPO on a property that financial institution was holding the mortgage on and had been actively listed on the MLS by the seller with another broker. A purchase offer had been received and the bank wanted verification of the home's value before agreeing to the short sale for this buyer. The BPO salesperson called the listing broker to make an appointment to view the property. She performed the BPO and the listing broker complained to DCP for two reasons: illegal BPO and interference in a client relationship.

When called to Hartford for a compliance meeting, the BPO salesperson stated that she was in

pursuit of a listing. She was told by DCP legal staff that it is **not possible to be pursuing a listing when the property is already listed** and the reason for the BPO is to determine value for a purchase offer. This is still an open investigation.

Are you illegally conducting market analyses?

FREE List of Broker Price Opinion (BPO) :

- Asset Management, LLC
 - Freddie Mac
 - First American Resid
 - tal
 - TransUnion
 - ELAM REO Services
 - Real Estate Solutions
 - Evaluate USA
 - Pro-Tech Valuation S
 - Services, Inc
 - REO Network
 - Countrywide
 - or Collateral Solutions
 - Black Hawk Valuation Services
 - Regional REO Service
 - Mortgage Corporation
 - Ocwen Realty Advisors
 - Integrated Real Estat
 - Asset Management Inc
 - National REO Brokers
 - Coldwell Banker
 - HamEq REO
 - REM Corporation
 - BPOsOnline.com
 - Asset Disposition Sol
- InfoMart, Inc.
- Short Sale Funding** Funding for your short sale flips! No credit or income needed. [www.inde](#)
- Obama's HAMP Program** Prevent Foreclosure! Pre-Qualify Instantly Here. 866-935-6526 [www](#)
- Free Flipping Videos** Tutorials On Virtual Flipping Nothing To Buy, No Email Required. [www](#)
- Obama's Loan Modification** Would A 2% Loan Modification Help? Qualify Today. Call 1-877-[www](#)
- ica
- Fiserv Inc.
- Sprint Mortgage Serv
- Asset Services
- National Default Servicing
- Safeguard Properties
- RealEstate Review
- CBCInnovis
- Fidelity National Info Services
- oreclosure Services
- M&M Mortgage Services
- McDargh Real Estate
- NPHS
- NewRep.com
- PNH Financial
- Atlas REO
- ational
- America Infomart
- Grasha Real Estate
- et Management
- Mortgage Lenders Network USA
- Orix Asset Managem
- orporation

Forums to discuss Broker Price Opinion (BPO)

- Real Estate
- AgentBrokerForum.com
- ActiveRain BPO Forum
- Ads by Google
- REO Companies
- REO Real Estate
- REO Lots
- REO

Real Estate Short Sales
ew 2010
 7:22pm
 US \$99.99
 Find Date: Wednesday

1. How much one can make from BPO?
BPO (Broker Price Opinion) Orders will pay between \$45 and \$1
 order!
 There are mainly two different types of BPO's:



Remind students of CT law – don't fall into the BPO trap! If real estate agents are not licensed appraisers, they can't charge a fee for conducting a market analysis unless they are in pursuit of a listing or buyer agency agreement, or they represent a buyer or seller!

This ad appears to be telling real estate licensees that they can conduct BPOs for lenders in short sales, without discussing appraisal licensing issues.

CURRENT TOPICS

- **Internet Advertising**

- Must include:

- licensee's name and office address
 - name of affiliated broker
 - all states where licensee is licensed
 - last date when property information updated

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The second current problematic topic is Online Advertising. Regulation Section 20-328-5a(e).

Real Estate Commission recently received a complaint that a mortgage broker's website contained advertising of properties (for free) for agents and did not include any broker information, only the name of the listing agent and his or her phone number. DCP sent the broker and salesperson a cease and desist letter (could also have imposed a fine, and/or suspended or revoked their licenses). Complaint #2010-239

Are your internet ads in compliance?

The screenshot shows a real estate website with the following elements:

- Header:** "name" (with a blue box), "Connecticut REALTOR, Short Sale Specialist", "Real Estate & Short Sale Services: Solutions for Homeowners in Central and Eastern Connecticut".
- Navigation:** Home, Search, Sellers, Investors, Foreclosure, Featured Homes, About Me, Blog.
- Search Home:** Search Home, MLS Numbers, City, Type, Price Range, Bedrooms, Bathrooms, GET SHORT SALE HELP (with a red box).
- Featured Home:** "Willimantic, Water, Beach, Near Ashok" with a photo and details: Price: \$80,000, Type: Single Family, Bed: 3, Bath: 1, Square: 112, Footage: 11, Lot: .23 Sqt, More.
- Connecticut Real Estate Solutions:** "Are you needing to sell your home in today's tough market? Are you faced with a difficult or time sensitive real estate situation and need help? Are you looking for a short sale specialist? You've come to the right place. As a local real estate professional, my area of expertise is in providing quick and creative solutions to homeowners and owners of distressed property. Whether you're faced with a foreclosure, a home in disrepair, tenets gone wrong, or if you just need a way to liquidate your assets quickly in a tight market, [CONTACT ME](#). I will be happy to assess your situation free of charge or obligation, explain all your options to you and help you decide on the best solution for you. [CONTACT ME](#) today for all your real estate needs."
- Sellers:** "The decision to sell a home is often dependent on many factors, some of which can be complicated and emotional. Regardless of your situation or your reasons for selling, I guarantee to provide you with professional, ethical and confidential service and keep you fully informed every step of the way. [READ MORE](#)."

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Does this ad have all the required elements?

Current Topics, continued

- **Legal Entity Licensing**

- All partnerships, associations, corporations, and LLCs engaging in real estate must be licensed.
- 51% or more of entity must be owned by one or more licensed brokers.

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The third current problematic topic is Legal Entity Licensing.

Connecticut General Statute Section 20-312(b) requires that all legal entities engaging in the real estate business be licensed. This means brokerage firms, team partnerships, and any other LLC, corporation, or partnership. NOTE that this requirement is in addition to individual licenses obtained by salespersons and brokers. In other words, an individual needs a license, and a legal entity needs a license.

Current Topics, continued

- **Legal Entity Licensing, continued**

- Each individual officer of a real estate brokerage firm must be licensed as a broker (salespersons not allowed).
- Each individual owner of a real estate brokerage firm that actively manages or controls the real estate brokerage business must be licensed as a broker (salespersons not allowed).

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Connecticut Real Estate Commission Declaratory Ruling dated July 19, 2002 interprets CGS Section 20-312(b) as requiring that the officers of a brokerage firm must be individually licensed as brokers (i.e., salespersons cannot be officers), and that each owner of a brokerage firm actively engaged in the management or control of a brokerage business be individually licensed as a broker.

Is your company
(or other legal entity) licensed?

The screenshot shows the Connecticut eLicensing website interface. At the top, there is a navigation bar with the 'ct.gov' logo and the text 'The State of Connecticut eLicensing Website'. Below this, there is a 'Search for a license' section with two tabs: 'Advanced Search' and 'Simple Search'. A green arrow points from the 'License Lookup & Download' menu item on the left to the search area. A large green box on the right contains the text 'www.elicense.ct.gov' and three red action items: 'Lookup a License', 'Generate Roster', and 'Download Roster'. The main content area shows a list of available licenses, including 'REAL ESTATE APPRAISER (STR)', 'REAL ESTATE BROKER (REB)', 'REAL ESTATE CONTINUING EDUCATION P...', 'REAL ESTATE PRE-LICENSING PROVIDER P...', 'Registered Nurse (RN)', and 'Registered Nurse TEMP (10-TEMP)'. Below the list, there is a table header with columns for 'Name', 'Credential', and 'Credential Description', and a note stating 'No records found for the criteria entered.'

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Information about whether a legal entity or an individual is licensed is readily searchable by the public.

Current Topics, continued

• Lapsed Licenses

- Once license expires individual cannot lawfully engage in real estate.
 - BROKER – March 31
 - SALESPERSON – May 31
- Broker with expired license cannot
 - collect commission
 - hold licenses of salespersons

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The fourth current problematic topic is unlicensed or lapsed license activities. The number of individuals engaging in real estate unlicensed has increased significantly. A lapsed license amounts to unlicensed activity and is a serious problem.

Broker licenses expire March 31 and salesperson licenses expire on May 31 – EVERY YEAR. Therefore, licensee must submit renewal by that date every year.

It is the responsibility of the licensee to know when his/her license expires. It is not the responsibility of the Real Estate Commission to keep reminding those people who do not renew in a timely manner. The Department of Consumer Protection issues renewals to any licensee that has an active license. Renewals are issued to the address of record approximately 45 days before expiration. In the case of a broker, the renewal is mailed approximately 45 days before the March 31 expiration date. And, currently in the case of active salespersons, all renewals are mailed to the broker with whom the salesperson is affiliated.

If a broker has not renewed his/her license and a salesperson has paid his/her license fee, the license of the salesperson will not be issued until the broker is active or the salesperson has transferred to a new broker.

DCP staff has heard all the Excuses, Excuses, Excuses which are ALL NOT VALID!

I didn't get my renewal. I moved and forgot to change my address.

I lost my renewal.

My broker didn't give me my renewal.

The post office must have lost it.

I mailed it and DCP must have lost it. (State would ask proof of payment which usually doesn't exist.)

I paid all my board dues.

I took continuing education.

Used the renewal of another licensee. Fee applied to the person named on the renewal. Not the person who says I paid and didn't get my license. (Each renewal is bar coded to the person named on the renewal.) This scenario usually requires a time consuming investigation by the DCP staff.

I was too busy and forgot.

You should have notified me.

Current Topics, continued

• Lapsed Licenses, continued

- Do you know the date your license expires?
 - can check status of licenses at <https://www.elicense.ct.gov>
- There is **NO** renewal grace period.
 - formerly 30 day period to pay with no fine
 - as of 10/01/2010, will be late fee if even 1 day late
- Sanctions:
 - fines
 - jail time

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The biggest misconception among licensees is that because formerly a late fee was not applied until 30 days after a license expiration date that the 30 day period is a “Grace Period”. THERE IS NO “GRACE PERIOD”. Once the license expires, the individual with the expired license can no longer lawfully engage in real estate. CGS Section 21a-4(c).

And now as of October 1, 2010, the late fee will accrue immediately.

CGS Sections 20-320, 20-324 and 20-325 provide for sanctions against individuals engaging in real estate without a license. Note that these sanctions also apply to unlicensed assistants that cross the line into performing activities that require a license.

DCP staff are actively pursuing unlicensed individuals who are actively engaged in the real estate business but who are unlicensed, including individuals who were licensed but their license lapsed.

In a recent DCP case, a salesperson did not renew on May 31. The next month, in June, the DCP imposed a fine of \$200 on the broker and \$200 on the salesperson (for a total of \$400; maximum fine can be \$2000). Case # 2010-158.

DCP staff related the story of another salesperson whose license lapsed and was still actively engaged in real estate. DCP sought and obtained a warrant for her arrest. When she was pulled over for speeding, her name came up in the police system as being wanted on other charges, and she was handcuffed and arrested. Case # 2006 – 1461.

*Do you renew every year
in a timely manner?*

The screenshot shows the Connecticut eLicensing website in Microsoft Internet Explorer. The browser address bar shows <https://www.elicense.ct.gov/Lookup/LicenseLookup.aspx>. The website header includes the CT.gov logo and the text "The State of Connecticut eLicensing Website". A "Quick License Lookup" section features a "Search by Name" field and a "Login" button. The main content area is titled "Search for a license" and offers "Advanced Search" and "Simple Search" options. A note states: "Note: Hover over the field text to display any help. * Indicates a value is required." The search criteria include "License Type" (with a list of options: REAL ESTATE APPRAISER (RTA), REAL ESTATE BROKER (REB), REAL ESTATE CONTINUING EDUCATION PROVIDER (RCE), REAL ESTATE PRE-LICENSING PROVIDER (RPL), Registered Nurse (RN), Registered Nurse TEMP (RN-TEMP)), "License Number", "Business Name/DBA", "First Name" (Jane), and "Last Name" (Doe). A table below the search fields shows "Name", "Credential", and "Credential" columns, with a message: "No records found for the criteria entered." A green banner at the bottom of the screenshot contains the text www.elicense.ct.gov and "renew online". The footer of the website reads "Copyright © 1997-2008 CAMJ Corporation. All Rights Reserved, version 5.2.6.2041".

LAW UPDATE

- **Appraisal Management Companies**
(state, effective 10/01/2010)
 - Registration required
 - CT Public Act 10-77
- **Dodd-Frank Wall Street Reform and Consumer Protection Act** *(federal)*
 - Appraisal independence requirements
 - regulations to be developed
 - H.R. 4173

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Connecticut 2010 Public Act 10-77 will require that all appraisal management companies register with the state.

The federal Wall Street financial reform law signed by President Obama on July 21, 2010 requires that appraisal independence requirements be established. As of the time of the writing of the course, the regulations establishing those requirements have not yet been enacted.

Law Update, continued

- **Tenant Foreclosure Protection (*state*)**
 - 60 days after title transfers to vacate
 - Security deposit returned
 - if known, double deposit plus interest
 - if unknown, greater of 2 months rent of \$2,000
 - CGS Sections 47a-20e, 47a-20f
- **Tenant Foreclosure Protection (*federal*)**
 - 90 notice to vacate (*sunsets 12/31/2012*)

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Both federal and state law provide for protections for tenants living in property where the property owner's mortgage is being foreclosed.

WRAP-UP

- *Instructor should report and discuss any other current topics or recent real estate brokerage-related Connecticut legislation or court cases.*
- **QUESTIONS?**
- **COMMENTS?**

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This course was developed in the summer of 2010. Any relevant subsequent current topics and laws/court cases should be added by the instructor. New material is always provided at the semi-annual Connecticut Real Estate Instructors' Seminar. To be added to a mailing list for seminar notification, contact the Center for Real Estate at recenter@business.uconn.edu.

Instructor should invite comments and questions, and then wrap up the course.