Connecticut Real Estate Agent
Fiduciary Duties Review
and Law Update

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

Course Goals

• Understand the difference between a _____ and a ________.
• Identify _________ and _____________ FIDUCIARY DUTIES owed to clients.
• Discuss facts and outcomes of ________ related to real estate agent fiduciary duties.
• Talk about __________ in practice that agents seem confused about.
• Learn about __________ related to real estate practice.

Licensee Relationships

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

1. Client – __________
   – signed agency agreement with your brokerage firm
   – _______________

2. Customer – ______________
   – either another brokerage firm represents consumer or consumer is unrepresented
   – _______________

Who’s Your Client?

• Firm’s __________ enters into agency relationship with client
  – written representation agreement
• ___ salespeople and brokers sponsored by or affiliated with firm ____________ client
  – only exception – a salesperson who is a designated agent
• Agency relationships _______ run along in-house team lines

Duties to Clients

• Common Law
  –
• State Licensing Law and Regulations
  –
    –
    –
FIDUCIARY DUTIES

• C________________
• O________________
• A________________
• L________________
• D________________

Confidentiality

• Common Law:
  – Agent must keep client’s _________ and _________ information confidential.

• State Licensing Law:
  – Agent cannot reveal confidential information about client.

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?

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

Confidentiality? You be the judge!

• Confidentiality Case Study 1: RESULT

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Confidentiality? You be the judge!

- Confidentiality Case Study 2: RESULT

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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?

Obedience? You be the judge!

- Common Law:
  - Agent must _____ client’s instructions.

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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Obedience? You be the judge!

- Obedience Case Study 1: RESULT

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Obedience? You be the judge!

- Obedience Case Study 2: RESULT
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Accounting

- Common Law:
  - Agent must _________ for all _____ and _________ held for client.

- State Licensing Law:
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  -

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?

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

Accounting? You be the judge!

- Accounting Case Study 1: RESULT
  -
  -

Accounting? You be the judge!

- Accounting Case Study 2
  -
Accounting? You be the judge!

- Accounting Case Study 2: RESULT
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Loyalty

- Common Law:
  - Agent must put _______ _________ first.
  - Agent must use _________ _____ and _____ _________ to represent client competently.

Loyalty, continued

- State Licensing Law:
  - Agent must _______ any interest that agent has in property to client and customer.
  - Agent (or anyone in agent’s family) can’t ____ listed property listed without disclosure to seller.
  - Agent ____________ must disclose ownership interest to buyers.
  - Agent entering into exclusive representation agreement must make _______ _________ to sell, lease, or find a property.

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?

- 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 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

Loyalty? You be the judge!

• Loyalty Case Study 1: RESULT

Loyalty? You be the judge!

• Loyalty Case Study 2: RESULT

Loyalty? You be the judge!

• Loyalty Case Study 3: RESULT

Disclosure

• Common Law:
  – Agent must ______ client of all information ___________ to the transaction.

• State Licensing Law:
  – Agent cannot _______ or _______ any _____________.
    • However, certain facts are considered legally ___________, including _________________.

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?
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 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?

• Time for Group Discussion

• Disclosure Case Study 1: RESULT

• Disclosure Case Study 2: RESULT

• Disclosure Case Study 3: RESULT
CURRENT TOPICS

• Broker Price Opinions
  – Must be licensed appraiser to
  – Only exception for real estate licensee.
  – Licensee can’t _________ to lenders for
t market analysis of property listed with other.

• Internet Advertising
  – Must include:
    •
    •
    •

Current Topics, continued

• Legal Entity Licensing
  – All partnerships, associations, corporations,
and LLCs engaging in real estate must be
  – ______ % or more of entity must be owned by
one or more licensed _________.
Current Topics, continued

• Lapsed Licenses
  – Once license expires, individual cannot lawfully engage in real estate.
  - BROKER –
  - SALESPERSON –
  – Broker with expired license cannot

Do you renew every year in a timely manner?

Do you know the date your license expires?

LAW UPDATE

• Appraisal Management Companies (state)
  - Public Act 10-77
  – Defined as companies that perform ___________________________, including:
    • administering an appraisal panel
    • recruiting appraisers to serve on panel
    • receiving appraisal requests and delivering to panel
  – Must register with _____________
    • registration good for ______ years
    • $1000 fee
    • application at DCP website

• Appraisal Independence Requirements
  – Part of Dodd-Frank Act (federal)
    • replaces _________________
  – Prohibits
    • __________________ of an appraiser
    • appraisers and appraisal management companies from having an ___________ if it knows about appraisal coercion or a conflict of interest
• Mandates
  • parties to a transaction report to state appraiser licensing authorities
  • payment of reasonable and customary to an appraiser

• Foreclosure Mediation Program (state)
  – Mediation to assist borrower and lender to come to an agreement to .
  – Applies to foreclosures of 1, 2, 3, or 4 family owner-occupied residential property.
  – Foreclosing lender must give borrower notice of foreclosure mediation and forms.
  – Mediation is .
  – Recently extended to June 30, 2014 – Public Act 11-201

• Tax Law Changes (state) – Public Act 11-6
  – ________ Conveyance Tax
    • .25% base rate
    – temporary increase made permanent
    • plus up to additional .25% in 18 eligible municipalities
  – ________ Conveyance Tax
    • Increase of .25%
    • Residential property: 0.75% on first $800,000; 1.25% on remaining value
    • Commercial property: 1.25%
**LAW UPDATE, continued**

- **Tax Law Changes** *(state)* – Public Act 11-6
  - Income Tax
    - Reduced from $500 to $300, and now phased out at steeper rate

- **Brownfields Development** *(state)* – Public Act 11-141
  - Changes to the laws and programs related to investigation and development of ____________ property

**LAW UPDATE, continued**

- **Gender Identity Discrimination** *(state)* – Public Act 11-55
  - "Gender Identity or Expression" is a new
    - Defined as "person's gender-related identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth"
  - Prohibits discrimination in _______ or _______ of housing (as well as in other areas)

**WRAP-UP**

- **Live Here, Learn Here Program** *(state)* – Public Act 11-140
  - Home down payment _______ program for graduates of CT public colleges and universities and vocational technical schools

- **Retiree Licenses** *(state)* – Public Act 11-117
  - Allows real estate licensees over ___ years or older to renew license as a _______ license (can’t practice with this status)

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

- **QUESTIONS?**
- **COMMENTS?**