

Connecticut Real Estate Agent Fiduciary Duties Review and Law Update

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

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:

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- Marilyn Keating, Vice-Chair, Connecticut Real Estate Commission
- Lana Ogrodnik, Commissioner, Connecticut Real Estate Commission
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- Terry Hastings, HamiltonLadd Home Loans
- Judith Johannsen, Esq., Connecticut Association of Realtors, Inc.®
- John Morgan, Morgan Testing Services
- Lauren Rubino, Real Estate Consultant

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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.

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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
 - _____

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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

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Duties to Clients

- **Common Law**
 -
- **State Licensing Law and Regulations**
 -
 -
 -

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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**

- _____
- _____
- _____

Confidentiality? You be the judge!

- **Confidentiality Case Study 2: RESULT**

-
-
-

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Obedience

- **Common Law:**

- Agent must _____ client's instructions.

-

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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?

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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?

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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**
 -
 -

Accounting

- **Common Law:**
 - Agent must _____ for all _____ and _____ held for client.
- **State Licensing Law:**
 -
 -
 -

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: RESULT

-
-

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Loyalty

• Common Law:

- Agent must put _____ first.
- Agent must use _____ and _____ to represent client competently.

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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.

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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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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?

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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?

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Loyalty? You be the judge!

• Time for Group Discussion



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Loyalty? You be the judge!

• Loyalty Case Study 1: RESULT

-
-
-
-

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Loyalty? You be the judge!

• Loyalty Case Study 2: RESULT

-
-

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Loyalty? You be the judge!

• Loyalty Case Study 3: RESULT

-

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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 _____.

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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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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**



Disclosure? You be the judge!

• **Disclosure Case Study 1: RESULT**

–
–

Disclosure? You be the judge!

• **Disclosure Case Study 2: RESULT**

–
–

Disclosure? You be the judge!

• **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 market analysis of property listed with other.

Are you illegally conducting market analyses?

FREE List of Broker Price Opinion (BPO) :

[Agent Management, LLC](#) • [Florida Real Estate](#) • [First American Broker](#)
[Real Estate Solutions](#) • [Franchise.com](#) • [GLA/BPO Services](#)
[Korwin, PA](#) • [REI Network](#) • [Florida State](#) • [Pro Tech Solutions &](#)
[Real Estate Solutions](#) • [Black Stone Real Estate Services](#) • [Kaiserpro](#)
[The Mortgage Corporation](#) • [Home Realty Advisors](#) • [Integrated Real Estate](#)
[Management Inc.](#) • [National BPO Brokers](#) • [Lighthouse Banker](#)
[Safeport, Inc.](#) • [Home BPO](#) • [BPO Corporation](#)
[bpo4hire.com](#) • [BPO Corporation](#) • [Active Engagement Tool](#)

[USA](#) • [Finance Inc.](#) • [Special Mortgage Serv](#)
[Home Services](#) • [National Network Services](#) • [National Properties](#)
[Real Estate Review](#) • [CBI Connect](#) • [Fidelity National Info](#)
[Disclosure Services](#) • [REI Mortgage Services](#) • [Newburgh Real Estate](#)
[Atlanta](#) • [PMA Financial](#) • [BPO.com](#)
[BPO Management](#) • [America Software](#) • [Saratoga Real Estate](#)
[operation](#) • [Mortgage Lenders Network USA](#) • [BPO Agent Network](#)

Forums to discuss Broker Price Opinion (BPO)

[Real Estate](#) • [AppraisalForum.com](#) • [ActiveBPO Forum](#)
[BPO.com](#) • [BPO.com](#) • [BPO.com](#)

Real Estate Short Sales
 For Sale
 For Sale

1. How much can you make from BPO?
 BPO (Broker Price Opinion) offers will pay between \$40 and \$1.
 There are mainly two different types of BPO's.

CURRENT TOPICS

- **Internet Advertising**
 - Must include:
 - _____
 - _____
 - _____
 - _____

Are your internet ads in compliance?

The screenshot shows a real estate website interface. At the top, there's a search bar with the text 'licensee name, company name, email, phone'. Below that, there's a large image of a house. To the right of the image, there's a 'View Details' button. Below the image, there's a 'Contact Us' form with fields for 'Name', 'Email', and 'Phone'. The form also includes a 'Send Message' button. The website has a green and white color scheme.

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

- **Legal Entity Licensing, continued**
 - Each _____ of a real estate brokerage firm must be licensed as a broker (salespersons not allowed).
 - Each _____ 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).

*Is your company
(or other legal entity) licensed?*

www.elicense.ct.gov

Lookup a License
Generate Roster
Download Roster

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Current Topics, continued

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

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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 _____
 - formerly 30 day period to pay with no fine
 - as of 10/01/2010, will be late fee if even 1 day late
 - Sanctions:
 -
 -

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

www.elicense.ct.gov

renew online

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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

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LAW UPDATE, continued

- **Appraisal Independence Requirements**
 - Part of Dodd-Frank Act (*federal*)
 - replaces _____
 - Prohibits
 - _____ of an appraiser
 - appraisers and appraisal management companies from having an _____
 - a creditor from _____ if it knows about appraisal coercion or a conflict of interest

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LAW UPDATE, continued

- Mandates
 - parties to a transaction report _____ to state appraiser licensing authorities
 - payment of reasonable and customary _____ to an appraiser

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LAW UPDATE, continued

- **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*

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Law Update, continued

- **Tenant Foreclosure Protection** (*federal*)
 - Protecting Tenants at Foreclosure Act of 2009
 - clarified by Dodd-Frank Act
 - sunsets 12/31/2014
 - Tenants can stay in _____ the longer of
 - 90 days after foreclosure
 - remainder of lease
 - Does not protect non-arms length tenants, and tenants who pay far below market rent

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Law Update, continued

- **Tenant Foreclosure Protection** (*state*)
 - Identification of landlord - *CGS Section 47a-6*
 - tenants must be notified of _____
 - Security deposit returned - *CGS Section 47a-21(e)*
 - _____ must be paid to tenants by new owner
 - Cash for Keys - *CGS Section 47a-20f*
 - _____ must be greater of twice the security deposit, twice the monthly rent, or \$2,000

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Law Update, continued

- **Tenant Foreclosure Protection** (*state*), *continued*
 - Just Cause Eviction Act - *CGS Section 47a-23c*
 - can not _____ tenants over 62 years old or with a disability because of foreclosure

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LAW UPDATE, continued

- **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%

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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

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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)

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LAW UPDATE, continued

- **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)

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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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