

## RE 310 – Principles of Real Estate

### *How Do You Buy Real Estate?*

#### Practice Homework Problems – Solutions

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- 1) George owns a downtown warehouse property. He lists this property with Ringo using an open listing agreement. John would like to buy a warehouse property located near downtown, and Ringo shows him George's property.

- a) In this example, who is the principal and who is the agent?

George is the principal and Ringo is his agent.

- b) Who is the customer and who is the client? What responsibilities does the agent owe each?

George is Ringo's client and John is his customer, because George and Ringo have entered into an agency relationship.

As a result, Ringo owes George all of the obligations implied by his fiduciary duty: Care, Obedience, Accounting, Loyalty, and Disclosure.

Ringo only owes John reasonable skill and care in performing his role as a broker, honest and fair dealing, and disclosure of any material adverse facts about the transaction of which he has actual knowledge.

- c) If John buys the property, does Ringo receive a commission?

Yes, because Ringo brought the buyer to the table.

- d) Suppose that George independently shows the property to Paul and sells it to him? Does Ringo receive a commission in this case?

Given that George and Ringo entered into an open listing agreement, Ringo will only receive a commission if he actually brings the customer to the table. If George found Paul independently, Ringo is *not* entitled to any commission.

- e) How does Yoko Ono fit into the mix?

Sorry, just an attempt at humor. Yes, the Beatles are before my time as well, but I figured they were sufficiently ingrained into pop culture that everyone would get the joke.

- 2) What is a transaction broker in Kansas, and when would one be used?

A transaction broker is a broker that intermediates the real estate transaction, without serving as the direct agent of either the buyer or the seller. It is used in Kansas in place of dual agency (which is illegal) when a broker would otherwise have a fiduciary duty to both parties to the transaction.

- 3) George hires Martha to oversee the management of a property he owns. Who is the principal and who is the agent in this relationship? What type of agency relationship is this?

George is the principal and Martha is the agent. Property management is a general agency relationship, because the agent has broad responsibility for conducting the principals affairs with respect to a particular business or activity.

- 4) List and briefly describe each of the five basic duties an agent owes to the principal.

The five basic duties an agent owes a principal are *care*, *obedience*, *accounting*, *loyalty*, and *disclosure*.

- Care means that the agent use his skill and expertise to serve the interests of the principal
- Obedience requires that the agent act in good faith at all times, obeying the principal's instructions in accordance with the contract.
- The agent must be able to report (account for) the status of all funds received from or on behalf of the principal.
- Loyalty requires that the agent put the principal's interest above all others. Confidentiality is a key element of loyalty.
- Disclosure means that the agent must keep the principal informed of all facts or information that could affect the transaction.

- 5) What is the difference between a *dual agent* and a *transaction broker*? Which is the type of relationship that is permissible in Kansas?

A *dual agent* owes a fiduciary responsibility to both parties in the transaction. In contrast, a *transaction broker* is not an agent of either party, and must protect the confidences of each. Dual agency is not permitted in Kansas.

- 6) You are the seller's agent for the owner of a class B commercial office building downtown. If your contract with the seller is a "exclusive agency listing," under what circumstances will you earn a commission on the sale?

With an exclusive agency listing, you have sole rights to act as the seller's agent in the transaction. You will earn a commission if you, or any other real estate agent, brings a buyer to the seller. If, however, the seller finds a buyer on his own without the assistance of an agent, you will receive no commission.

- 7) Explain briefly the seller's agent's obligations to his client under BRRETA. How do these differ from his obligations to a customer?

A seller's agent represents the interests of the seller only. In doing this, the agent must:

- Perform the terms of the written listing agreement;
- Promote the interests of the seller with the utmost good faith, loyalty, and fidelity;
- Protect the seller's confidences, unless disclosure is required (see below);
- Present all offers in a timely manner, unless the seller has instructed the broker in the agency agreement not to submit further offers after an offer has been accepted by the seller;

- Advise the seller to obtain expert advice regarding matters that are relevant to the transaction but are beyond the expertise of the agent;
- Disclose to the client all adverse material facts about the buyer that the agent actually knows;
- Account for all property and money received in a timely manner; and
- Comply with all applicable federal, state, and local laws and regulations.

A seller's agent owes no duty or obligation to a client, except that the agent must disclose any adverse material facts actually known to the agent. Such facts include, but are not limited to:

- Environmental hazards;
- The physical condition of the property;
- Material defects in the property;
- Material defects in the title to the property; and
- Any material limitation on the seller's ability to perform under the terms of the sales agreement.

8) What are the required elements of a valid contract?

The required elements of a valid contract are: offer and acceptance, consideration, legally competent parties, consent, and legal purpose.

9) Tom has given Dick general power of attorney to oversee Tom's affairs. Who is the *principal* and who is the *agent* in this relationship? What type of agency relationship is this?

Tom is the *principal* in this relationship, while Dick is the agent. Dick is a *universal agent*.

10) Explain briefly the difference between a *general warranty deed* and a *special warranty deed*.

The difference between a *general warranty deed* and a *special warranty deed* is the time period of the covenants and warranties. The general warranty deed assures against title defects that occurred during the ownership period of all previous owners, while the special warranty deed only protects against occurrences during the current grantor's period of ownership.

11) Give an example of when you might use a *quitclaim deed* to transfer an interest in real estate.

A *quitclaim deed* transfers any interest that the grantor may have in the property but carries no implication that the grantor has any valid interest in it. Its most common use is to clear title defects, such as a missing signature.

12) List and explain briefly the required elements of a valid deed.

- a) The name of the grantor(s).
- b) The name of the grantee with sufficient specificity to be identified.

- c) A recital of consideration, or the giving up of value and receipt of a benefit.
- d) A granting clause (words of conveyance).
- e) An habendum clause to define or explain the ownership to be enjoyed by the grantee, if necessary.
- f) A legal description of the real estate (we will discuss this in a moment)
- g) A listing of any exceptions and reservations – i.e., encumbrances, reservations or limitations that affect the title being conveyed.
- h) The signature of the grantor(s).
- i) Delivery and acceptance