Chapter 10: Real Estate Brokerage

The Real Estate Sales Process
- listing agreement
- marketing the property and qualifying buyers
- presentation and negotiations
- contracts
- settlement or closing

Real Estate Brokers and Salespersons
- A broker is an intermediary who brings together buyers and sellers, assists in negotiating agreements between them, executes their orders, and receives a commission (or brokerage) in compensation for services rendered.
- Real estate brokers are individuals licensed by state governments to arrange real estate sale or lease transactions for a commission.
- Real estate salesperson are individuals licensed by state governments to arrange real estate sale or lease transactions under the supervision of a real estate broker.
- All states require real estate brokers and salespersons to meet minimum educational requirements and to pass an examination that covers basic real estate concepts. Many states also require that licensees complete regular continuing education courses to keep abreast of current developments in the field.
- Licenses may be revoked and other penalties imposed on licensees who violate the regulations imposed on them by the licensing authority.

Legal Aspects of the Broker-Client Relationship
- In an “agency relationship,” one party (the principal) authorizes another party (the agent) to act on his or her behalf.
- In real estate, a property owner may hire a real estate broker to help find a buyer for the property. Or, a potential buyer may hire a real estate broker to help find a property for purchase. Or, a real estate broker may hire a real estate salesperson to assist in locating buyers or properties.
- Real estate brokers (and salespersons) who are hired by a principal as an agent owe the principal their complete loyalty and must always act in the principal’s best interest.
- Some real estate transactions involve more than one broker. Frequently, one broker will list the property for sale on behalf of the seller, while another broker actually locates the buyer. The listing broker in this situation typically represents the seller, but the selling broker may represent either the seller (as a subagent of the other broker) or the buyer.
- If a real estate broker attempts to represent both the seller and the buyer in the same transaction, the broker is said to be acting as a dual agent. Most states prohibit this type of agency relationship. Some states, however, allow real estate brokers to serve as a “transaction broker” and provide limited representation to both a buyer and a seller simultaneously to assist them in closing a deal.

Creation of Agency Relationships
- Listing Agreements establish the agency relationship between sellers and brokers.
  o Open Listing (Figure 10.1, page 206) – seller may hire several brokers to search for a
    buyer and only be obligated to pay the broker who finds the actual buyer
  o Exclusive Agency Listing (Figure 10.2, page 207) – seller agrees to hire only one broker
    to search for a buyer, but reserves the right to sell the property without the assistance of
    the broker and thus avoid paying a commission
  o Exclusive Right to Sell Listing (Figure 10.3, page 207) – seller agrees to hire only one
    broker and to pay that broker a commission even if the seller locates a buyer without the
    assistance of the broker
- Buyer representation agreements establish the agency relationship between buyers and
  brokers. (Figure 10.5, page 210)

Brokers as Fiduciaries
- A fiduciary is a person who occupies a position of trust and confidence in relation to another
  person or his or her property. Fiduciaries must act in the best interest of their client at all
  times.
- Fraud occurs when a fiduciary, with the intention to mislead, makes a false statement
  material to a transaction that is justifiably relied on by the client, resulting in injury to the
  client.
- Misrepresentation is the same as fraud except the intention to mislead is not present.

Termination of Agency Relationships
- when a transaction occurs
- when the agreement expires
- when the parties agree to terminate
- when one party breaches the agreement
- when one party becomes contractually incapacitated
- the listing property is destroyed
- the listing property is condemned

Types of Brokerage Firms
- Franchises
- Desk Fee Arrangements
- Multiple-Listing Services

Broker and Salesperson Compensation
- usually calculated as a percentage of the transaction amount
- broker and salesperson often have an agreed upon “split” between themselves
- cooperating brokers (through the MLS) often split any commissions paid by agreement