Chapter 12

Real Estate Brokerage and Listing Contracts

What Do Brokers Do?

• Bring buyers and sellers together
  – In real estate needs
  – Physically
  – Emotionally

• Collect commission for a successful transaction
  – Normally, percentage of price
  – Net commission: Difference between required price and actual price

Expert Knowledge Brokers Can Provide

• Prices and terms in current market
• Marketing approaches that work
• Legal obligations of buyers and sellers
• Properties in market
• Potential customers and their needs
• Procedures and requirements of transaction

Law of Agency and Agents

• Law of agency: Governs relationship between a principal (client) and someone charged to act on principal's behalf
• Rights and obligations of agent
• Rights and obligations of principal

Types of Agents

• Universal agent: Power to act for principal in all matters
• General agent: Power to act within limits of a business or employment relationship
• Special agent: Power to act in a specific event or transaction

3 Types of Agents

Universal Agent:
Can act for the principal in ALL matters

General Agent:
Can act for principal within a specific business

Special Agent:
Can act for principal in a specific transaction

Brokers
Duties or Fiduciary Responsibilities

• Disclosure: Being completely open and honest
• Confidentiality: Never betraying confidential information
• Accounting: Keeping principal informed about financial aspects of assignment
• Obedience: Following instructions of the principal fully
• Loyalty: Never subordinating the best interest of principal
• Skill and care: Representing principal as agents would represent themselves

An Example of Principal and Agent?

Broker Relationships

<table>
<thead>
<tr>
<th>Brokerage Relationship: Single Agency</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duties to both buyer &amp; seller</td>
<td></td>
</tr>
<tr>
<td>• Honesty and Fairness</td>
<td>✔</td>
</tr>
<tr>
<td>• Accounting for funds</td>
<td>✔</td>
</tr>
<tr>
<td>• Disclosure of all known facts</td>
<td>✔</td>
</tr>
<tr>
<td>affecting value</td>
<td>✔</td>
</tr>
<tr>
<td>Duties to:</td>
<td></td>
</tr>
<tr>
<td>• Skill, care and diligence</td>
<td>✔</td>
</tr>
<tr>
<td>• Timely present all offers</td>
<td>✔</td>
</tr>
</tbody>
</table>

Broker Relationships

<table>
<thead>
<tr>
<th>Brokerage Relationship:</th>
<th>Trans-</th>
<th>Single Agency</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Duties of a Fiduciary:</td>
<td>Customer</td>
<td>Principal</td>
<td>Customer</td>
</tr>
<tr>
<td>• Confidentiality</td>
<td></td>
<td>Limited</td>
<td></td>
</tr>
<tr>
<td>• Loyalty</td>
<td></td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>• Obedience</td>
<td></td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>• Full Disclosure</td>
<td></td>
<td></td>
<td>✔</td>
</tr>
</tbody>
</table>

Listing Contract

• Creates an agency relationship (special agent)
• A contract for services, not for real estate
• Usually a contract between seller and broker
• Increasingly between buyer and broker
• Frequently involves subagency through multiple listing service (MLS).
• Dual agency: Representing both buyer and seller
The Problem of Dual Agency

• Natural tendency in brokerage for dual agency
  – Salesperson works closely with buyer but is distant from seller
  • FTC Study (1984): 74.2 percent of buyers believed the sales agent worked for them
  • This misunderstanding appears to be unchanged
  – Firm with both seller and buyer agents could represent both sides of transaction

The Problem of Unintended Dual Agency

• Solutions?
  – Designated agent: Brokerage representing both sides appoints separate agent for each
  – Buyer agent by law: Salesperson showing a house becomes buyer agent unless declaring otherwise
  – Transaction broker: Not an agent for buyer or seller

Licensing of Brokers and Salespersons

• Must be licensed to provide real estate transaction services for others: buying, auctioning, renting, selling, appraising, leasing, exchanging (BAR SALE)
• Two levels of licensure
  – Salesperson: Must work for a broker
  – Broker: Can operate own brokerage agency
• Implementation of state real estate license law

Licensing of Brokers and Salespersons - continued

• Exemptions from licensure: Attorneys, resident managers, government employees, trustees, executors, and those with power of attorney
• General requirements for licensure:
  – Minimum age, high school diploma, good reputation
  – Prelicensing education requirement
  – Pass state licensing exam
  – Minimum experience (for broker’s license)

Industry Certifications or Designations

• Realtor® or Realtor-Associate®: Affiliation, through local board, with National Association of Realtors
• CCIM: Certified Commercial Investment Member
• SIOR: Society of Industrial and Office Realtors
Antidiscrimination Laws Affecting Real Estate Services
Title VIII of the Civil Rights Act of 1968 prohibits discrimination by race, color, religion, national origin, sex, familial status, and handicap, including:
- Refusing to rent or sell
- Offering different terms and conditions
- Selective advertising
- “Blockbusting”
- Denying home loans
- Denying real estate services
- Coercing, intimidating or interfering with exercise of these rights

Antidiscrimination Laws Affecting Real Estate Services (continued)
- Title VIII exempted owner-occupants in 1-4 family residences
- Supreme Court overrode the exemption regarding racial discrimination
- Discrimination by familial status allowed for elderly

Growth Areas in Real Estate Brokerage
- Internet Marketing
  - Residential
    - www.realtor.com
    - www.homestore.com
  - Commercial
    - www.costar.com
    - www.loopnet.com
- International brokerage
  - Foreign purchases in the United States
  - U.S. interests purchasing abroad

Innovations in Brokerage
- Buyer brokerage
- “Unbundling” of brokerage services
  - Advertising
  - Document preparation
  - Administration of transactions
- Discount brokerage
- Electronic Marketing for local brokerage firms

Listing Contracts
- A broker earns a commission by finding a ready, willing and able buyer for the specified price and terms
- Types of contracts
  - Exclusive right of sale
  - Exclusive agency
  - Open listing

Deriving a Gross Selling Price to Achieve a Target Net Price
<table>
<thead>
<tr>
<th></th>
<th>Without Broker</th>
<th>With Broker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price</td>
<td>$190,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>Owner’s marketing costs</td>
<td>$1,500</td>
<td>—</td>
</tr>
<tr>
<td>Time of owner (60 hrs. @ $50 per hr.)</td>
<td>3,000</td>
<td>4,500</td>
</tr>
<tr>
<td>Commission (6.5%)</td>
<td>—</td>
<td>13,000</td>
</tr>
<tr>
<td>Proceeds to owner</td>
<td>$185,500</td>
<td>$188,000</td>
</tr>
</tbody>
</table>
Commission Splitting: Example

- Sale of Property: $100,000
- Commission: 6.0% = $6,000
- Listing Broker Firm: 50% of Commission = $3,000
- Selling Broker Firm: 50% of Commission = $3,000
- Listing Salesperson: 50% of Firm’s Commission* = $1,500
- Selling Salesperson: 50% of Firm’s Commission* = $1,500

*These Percentages can vary from 50 percent to 90 percent depending on such factors as the length of time the salesperson has been with the firm and whether he or she is an officer of the firm.

Considerations in Selecting a Broker
- How will the firm market the property?
- Amount and type of advertising?
- Experience of others with the firm?
- General reputation in the community?
- Much like the process of selecting any other professional

Single Agent vs. Transaction Broker

- Single Agent
  - Dealing honestly and fairly
  - Loyalty
  - Confidentiality
  - Full disclosure

- Transaction Broker
  - Dealing honestly and fairly
  - Limited confidentiality
  - Disclosing all known facts...affecting value...that are not readily observable to buyer