

# Indiana Real Estate Brokers CONTINUING EDUCATION

## Maintaining an Indiana License & Indiana Agency Relationships

PDH Academy Course Approval #CE21600004 | 4 CE HOURS



### HOW DOES THIS COURSE WORK?

To enhance comprehension, non-graded review questions will be asked throughout the course. After reading the course, take the final exam. These questions will be graded.

If you do not pass the final exam, you can review the course material and retake the exam at no additional cost.

If assistance is needed with this course you can contact PDH Academy at 888-564-9098 or at [support@pdhacademy.com](mailto:support@pdhacademy.com)

After completing the course and final exam, we ask that you take our course survey to help us continue to provide high-quality continuing education.

# Maintaining an Indiana License & Indiana Agency Relationships - Final Exam

- Bob's license was issued in January of 2016. When does he have to be finished with his post-license education?**
  - December 2016
  - January 2017
  - January 2018
  - December 2018
- The licensing agency may delay license renewal for 90 days if**
  - the agency needs to investigate a report that a broker has committed an act warranting discipline.
  - the licensee is on full-time active duty in the military.
  - the licensee requests a delay because of illness.
  - the licensee is has recently activated an inactive license.
- In addition to signing and submitting a reassignment application, a transferring broker must**
  - retake the licensing examination.
  - request a temporary change to inactive status.
  - pay a reassignment fee.
  - transfer all unexpired listings to the new firm.
- The required number of continuing education hours a broker must complete each year after completing the post-license education requirement is**
  - 6
  - 12
  - 15
  - 30
- If a licensee cannot attend classroom courses to satisfy continuing education requirements, what other option is there?**
  - Passing a competency examination
  - Undertaking home study with another currently licensed broker
  - Completing distance learning courses
  - Asking the Commission to grant for credit for overtime hours spent working.
- When is a licensee required to complete the post-licensing requirements?**
  - During the first year after initial licensing
  - During the first 2 years after initial licensing
  - Each year after licensing
  - Each 3-year license period
- If Sue complete her broker licensing requirements and was issued her license in September of 2014, when would Sue need to complete her post-licensing education?**
  - September 2015
  - September 2016
  - December 2014
  - December 2016
- If a broker fails to renew the license by the expiration date, what happens?**
  - the license becomes invalid
  - the broker must pay a civil penalty
  - the Commission will renew the license if the broker explains why it was not renewed on time
  - the license will be permanently revoked
- A broker will need to complete the remediation and additional training if**
  - the broker did not renew the license within 3 years of expiration
  - the broker lied about completing continuing education requirements
  - the broker wants to reinstate the license after it has been expired for more than 3 years
  - the Commission believes the broker has committed an act that warrants discipline
- Under what condition may a renewal deadline be extended for 365 days?**
  - the broker has been called to out-of-state active military duty
  - the broker was injured in a skiing accident that left his unable to meet the deadline
  - the broker has become seriously ill due to exposure to a virus while on active military duty in Iraq
  - the broker did not have the finances available to pay the renewal fee
- If the licensing agency receives information that a broker may have committed an act that warrants discipline, what may the agency do?**
  - delay license renewal for 90 days to investigate
  - suspend the license
  - require the broker to appear before the Commission
  - nothing until the allegation is proven

12. An application for reassignment to a new broker company must be submitted within \_\_\_\_\_ of the broker's termination from the current broker company?
- 30 days
  - 10 business days
  - 6 months
  - 5 business days
13. If a broker is not assigned to a broker company, what real estate acts may he or she perform?
- listing properties only
  - negotiating commissions
  - answering questions about a property's asking price
  - selling properties
14. If a broker applied for an inactive license status, what circumstance would prevent the Commission from granting that status?
- the broker has been licensed for less than 1 year
  - there are already too many Indiana brokers on inactive status
  - the broker has not completed the continuing education requirements
  - the broker has a disciplinary hearing pending
15. How many hours of continuing education must a broker complete during each license period after the initial license period?
- 12
  - 24
  - 30
  - 36
16. Four hours of yearly managing broker continuing education requirements must focus on
- licensure law and finance
  - management skills and legal knowledge
  - fair housing and employment laws
  - environment issues
17. Which of the following might warrant a waiver from continuing education requirements?
- the broker's conflicting work schedule
  - unlicensed broker who makes referrals to a licensed broker
  - 9 months of military active duty
  - reactivation of an inactive license
18. What is the result of failure to complete post license education requirements within the statutory deadline?
- additional coursework and fine imposed
  - notice of noncompliance and denial of license renewal
  - letter of reprimand and license suspension
  - license revocation and reinstatement fee imposed
19. A license renewal deadline can be extended 180 days if
- the licensee is under disciplinary action
  - the expiration date occurs after the licensee is released from active military duty
  - the licensee must serve 20 consecutive days of active duty within Indiana
  - the licensee is called to full-time active military duty and then provides the military discharge document at the time he or she renew the license
20. The continuing education year is
- July 1 to June 30
  - January 1 to December 31
  - May 1 to April 30
  - The year following the initial license issue date
21. In an in-house agency relationship, how many clients are there?
- only 1
  - at least two
  - more than three
  - none
22. If a broker has a no-agency relationship with a customer,
- the broker must present offers and counter-offers to the seller and buyer
  - the broker cannot collect a commission
  - the broker has no duties to the customer
  - the broker must promote the interests of the customer
23. A managing broker could be held liable for an affiliated broker's misrepresentations to a client concerning the nature of their agency relationship if
- the managing broker knew or should have known about the misrepresentation
  - the affiliated broker is an undisclosed subagent
  - the client suffers a financial loss as a result of the misrepresentation
  - the managing broker has an agency relationship with the client
24. An agency relationship is involuntarily terminated when
- one party gives notice to the other party of the termination
  - one party undergoes a divorce settlement
  - the agent's license is revoked
  - the agreement expires

25. **Agent Alfie has a listing with seller Stephanie. Before hiring Alfie, Stephanie had already talked to a potential buyer who was interested in her house. After signing the agreement, Stephanie receives an offer directly from the buyer and agrees to sell. Alfie asks for a commission but is denied. Why?**
- Stephanie's contact with the buy predated the listing agreement
  - Alfie did not present the offer
  - Alfie did not assist in the sale
  - The listing agreement was other than an exclusive right to sell
26. **An agency relationship is**
- a compensated agreement
  - a fiduciary relationship
  - a casual relationship
  - an illegal relationship
27. **Which of the following laws that regulate agency relationships is based on previous cases that have established precedence?**
- common law
  - contractual law
  - statutory law
  - all of the above
28. **In Indiana, if Tom lists his property for sale with a brokerage, with whom does Tom sign an agency relationship contract?**
- the designated broker
  - the subagent
  - the buyer
  - the managing broker
29. **Which of the following statements is true?**
- in an agency relationship, a broker may only represent sellers and buyers
  - in an agency relationship, two brokers may represent the same buyer
  - in an agency relationship, one broker may represent all parties in the transaction
  - in an agency relationship, separate parties must be represented by separate brokers
30. **An agency relationship is based on authorization and mutual consent, not on**
- a contract
  - compensation
  - a listing agreement
  - a property management agreement
31. **In an in-house relationship**
- two clients are represented by the same broker
  - two clients are represented by different brokers in the same firm
  - the broker must list the property in a local MLS
  - two clients are represented by different brokers from different firms
32. **In a limited agency,**
- two clients are represented by different brokers in the same firm
  - the broker is limited to representing either buyers or sellers
  - the broker is acting for another broker
  - the broker represents both the seller and the buyer in the same transaction
33. **Which type of agency relationship is illegal in Indiana?**
- in-house agency
  - limited agency
  - single agency
  - subagency
34. **When a property is listed in a local MLS, what is the incorrect assumption?**
- the property will be seen by multiple brokers and probably sell faster
  - the listing broker is offering a subagency
  - the listing does not automatically create a blanket unilateral offer of subagency
  - the buyer's agent will most likely receive a portion of the commission for the property
35. **Broker Theo has no agency relationship with Property Seller Hannah but is still helping Hannah with the sale of her property. Hannah received an offer on her property which she did not understand, so she sent Theo several questions about the offer. Theo never responded to Hannah's questions, but Broker Justin did respond. What is the result of Justin's response?**
- Justin created an agency relationship with Hannah
  - Justin must be paid a portion of the commission when Hannah's property sells
  - Justin was being helpful
  - Justin is now Hannah's broker of record

- 36. Which of the following statements is true regarding the duties a broker has to a seller?**
- a. the broker must present all purchase offers to the seller within 5 days of receipt
  - b. the broker may be held liable for not disclosing adverse material facts even if the broker had no way of knowing the facts
  - c. the broker may not disclose that the seller will accept a lower price for the property
  - d. the broker may not disclose the nature of the agency relationship with the client
- 37. The broker in an agency relationship with a buyer or tenant**
- a. must investigate the client's ability to pay the seller or landlord
  - b. has no duty to verify the accuracy of any of the client's statements
  - c. may not legally show properties of interest to the client to other buyers or tenants
  - d. must disclose whether or not the buyer or tenant will pay more than the listed price or rental rate
- 38. A limited agent must not**
- a. make a written statement that the broker represents parties whose interests are different
  - b. disclose adverse material facts about the property
  - c. disclose what motivates one party to buy, sell, or lease the property
  - d. obtain any information that could harm the bargaining position of one party
- 39. Which of the following is an agency disclosure requirement?**
- a. the broker must disclose one party's financial ability to pay the other party
  - b. the broker must disclose a limited agency relationship only to the seller
  - c. the broker must disclose a non-agency to all parties involved
  - d. the broker must disclose existing agency relationships to all parties after a purchase offer is signed
- 40. When the agency relationship terminates, the broker must**
- a. disclose all information obtained about one party to the other party
  - b. do nothing because the broker has no duties after the relationship terminates
  - c. provide all information obtained during the relationship to a third party so it may be made public
  - d. account for all money received during the relationship

## MAINTAINING AN INDIANA LICENSE & INDIANA AGENCY RELATIONSHIPS

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## POST- LICENSE EDUCATION REQUIREMENTS

After an individual has completed the 90-hour broker course, passed the examination, and met all other licensure application requirements, he or she will be issued a broker license. Within the next 2 years, the new licensee will be required to complete 30 hours of post-licensing education. This coursework covers the practical matters of real estate transactions. The 30 hours of post-licensing education may be taken as one 30-hour course or as five separate courses that cover all required content.

If the broker fails to complete the post-licensing education, he or she will be issued a notice of noncompliance from the Commission and will not be allowed to renew the license.

This post-licensing education takes the place of continuing education for the initial 2 years. The year in which the broker is initially licensed is not included in calculating the 2 years, so continuing education is not required until the third year after initial licensure.

For example, if Joe completed his licensure requirements and was issued his license in June of 2016, he will not be required to complete the post-licensing until the end of 2018. Then in 2019, Joe will be required to begin his actual continuing education.

## RENEWAL PROCEDURES

To renew a broker license, the licensee must submit a renewal application and pay the renewal fee on or before the expiration date specified by the licensing agency. Remember, the agency sets the expiration date when the license is initially issued. Before renewing the license, the licensing agency may require proof that the broker meets the minimum requirements for licensure and is not in violation of real estate laws or rules.

If the broker fails to renew the license by the expiration date, the license expires and automatically becomes invalid. The broker may be reinstated by the Commission if he or she completes all of the following requirements within 3 years after the license expired:

- submits a completed renewal application
- pays the renewal fee
- pays a reinstatement fee
- completes all continuing education or other requirements imposed
- provides a sworn statement that continuing education requirements have been met, or meets any other imposed requirements in lieu of continuing education completion

If the broker has not met the requirements for reinstatement and the license has been expired for more than 3 years, the broker must meet all of the following requirements to be reinstated:

- submit a completed renewal application
- pay the renewal fee
- pay a reinstatement fee equal to the current application fee
- complete 36 hours of continuing education within the 3 years prior to applying for reinstatement
- provide a sworn statement that continuing education requirements have been met, or meet any other imposed requirements in lieu of continuing education completion
- complete remediation and additional training as directed by the commission
- meet any other requirements that may be included in the statutes or rules and that is not related to fees

**Renewal extension.** The deadline to renew a broker license or to complete continuing education may be extended for any licensed real estate practitioner who is called to full-time active duty in a branch of the U.S. military. The extension is for 180 days which begins after the practitioner has been discharged or released from active duty. Late renewal fees will be waived with this extension.

The 180 days may be extended further if the practitioner sustained an illness or was injured or disabled as a result of the active duty and the practitioner's condition prevents him or her from renewing or completing continuing education. The maximum extension is 365 days from the date of discharge or release from active duty.

To receive a 180-day extension, the practitioner must meet the following requirements:

- the duty must be served for more than 30 consecutive days outside of Indiana
- the practitioner's license may not be revoked, suspended, expired, or the subject of a complaint at the time the practitioner enters active duty
- the license expiration date must occur while the practitioner is out of state on active duty
- the practitioner must not have received the notice of expiration prior to entering active duty
- the practitioner must provide a copy of a military discharge document or government movement orders

to the Commission or licensing agency as proof of out-of-state active duty. This proof is to be provided when the practitioner renews the license.

**Renewal delay.** If the licensing agency has received information that the practitioner may have committed an act which would warrant discipline, the agency may delay the renewal up to 90 days. The agency would use that time to investigate the allegation. The agency must notify the practitioner of the investigation and also do one of the following:

- deny renewal of the license after the practitioner appears before the Commission, or
- renew the license after the practitioner has satisfied all other requirements for renewal, or
- renew the license and file a complaint with the Attorney General's office or Division of Consumer Protection, or
- request the Attorney General to investigate if the practitioner's appearance before the Commission has given the Commission cause to believe the practitioner has engaged in a prohibited activity, or
- renew the license and place the practitioner on probation status if both the practitioner and the Commission agree to that status following the practitioner's appearance before the Commission

## TRANSFERS, ASSIGNED AND UNASSIGNED

When a broker is newly licensed, he or she may choose to be assigned to a brokerage company. If the broker's association with the brokerage company is later terminated, the broker must submit a reassignment application to the Commission, attesting to the termination. The application must include the broker's request to either be unassigned or be assigned to a new brokerage company. The application must be submitted within 5 business days of termination. All listings the broker obtained through the current brokerage company must be turned over to that company upon termination.

Prior to reassignment, the broker may not practice real estate except as a sole proprietor brokerage company.

If the broker chose to be unassigned on the reassignment application, he or she must have the unassigned status changed to assigned before again practicing real estate.

When the broker transfers to a new brokerage company, he or she must sign the reassignment application and have the new company's designated broker sign the application attesting to the assignment. The broker must also pay the reassignment fee. An unassigned broker requesting assignment to a new broker company must

complete the same reassignment application steps to have his or her license status changed from unassigned to assigned.

In Indiana, brokers may complete brokerage company association changes and license status changes online. When a broker submits a reassignment application online, the broker license number is included. The licensing agency can then obtain approval of the change from the new brokerage company. The new managing broker can see the change request online and approve or deny the request.

## ACTIVE AND INACTIVE LICENSE STATUS

After an individual has met all licensing requirements, has been issued a broker license, and has been assigned to a brokerage company, the license is in active status. This allows the broker to engage in real estate activities that require a broker license.

The licensed broker may apply for an inactive license from the Commission. If the broker has a disciplinary or suspension hearing pending, the Commission will not grant the inactive license.

A broker whose license status has been changed to inactive

- may not perform any act that requires a broker license
- is not required to complete continuing education requirements for the period the license is inactive
- must pay any fees that a licensee is required to pay
- must comply with license renewal requirements
- must satisfy post-licensing or continuing education requirements before applying for reactivation of the license

Prior to statutory changes, Indiana issued salesperson licenses. On July 1, 2014, those licensees were required to transition to brokers. Consequently, any previously issued inactive salesperson license became an inactive broker license on that date. A salesperson whose license became an inactive broker license may not perform any act that requires a broker license unless the individual applies for license reactivation. To be reactivated, the individual must

- complete at least 24 hours of required coursework as outlined in the statutes, with 100% attendance, or complete the 90-hour broker course
- meet all general requirements to become a licensed broker
- attest to the Commission that the 24 hours of required education has been completed

- pass the broker licensure examination with a score of 70% by taking the examination no more than three times or retake the complete course
- file an application for reactivation within 1 year of course completion
- pay the reactivation fee

The Commission is empowered to adopt rules regarding continuing education requirements for brokers who apply to reactivate an inactive license with less than 12 months left in the licensing period.

## CONTINUING EDUCATION REQUIREMENTS

To enhance the practitioner's knowledge and skill in providing real estate services, he or she must complete continuing education courses each year. The continuing education year is considered to be July 1 of one year to June 30 of the next year. All courses and the sponsors offering the courses must be approved by the Commission. Completing the continuing education requirements is a condition of license renewal.

### Brokers

The continuing education requirements for brokers are as follows:

- each broker is to complete 30 hours of approved post-licensing coursework during the first 2 years after initial licensing
- each broker is then to complete 12 hours of approved continuing education coursework each year after the first 2 years
- each continuing education course is to include at least 2 hours of instruction with 50 minutes equaling 1 hour
- each course must be completed for credit to be given
- hours in excess of the required 12 may not be carried over to help meet the following year's requirements
- at license renewal, the broker is to provide a sworn statement to the commission that he or she completed all continuing education requirements for that license period
- the broker is to retain copies of coursework completion certificates for at least 3 years after the end of the license period

## Managing brokers

The continuing education requirements for managing brokers are as follows:

- each managing broker is to complete 12 hours of approved continuing education coursework each year, with 4 of those hours focused on necessary business and management skills and legal knowledge needed by a managing broker
- all other broker continuing education requirements apply to managing brokers

## General

All courses that qualify for continuing education credit and those that do not qualify are outlined in the statutes and Title 876.

An extension to complete continuing education requirements may be granted under the same circumstances as those for extending renewal of a license.

If a broker does not complete the required continuing education coursework, or if the coursework completed is not approved by the Commission, the broker will be in noncompliance and will not be allowed to renew the license. The Commission will send the broker a notice of noncompliance and deny the application for renewal or reinstatement.

If a broker receives a notice of noncompliance and feels it is unwarranted, he or she may send a notice to the Commission within 21 days requesting a review to allow the broker to submit proof of compliance.

If the broker agrees with the noncompliance, the broker may have the license reinstated if he or she meets the following requirements:

- the broker must pay the commission a civil penalty not to exceed \$1,000
- the broker must complete all required continuing education within 6 months after receipt of the notice of noncompliance
- the commission will issue a conditional license to the broker that is effective until the broker meets all reinstatement requirements

If the broker fails to comply with these reinstatement requirements, the Commission will suspend or refuse to reinstate the license. The Commission will then send a notice of suspension or refusal to the broker by certified mail.

If the broker provides false or misleading information regarding continuing education coursework or completion, the broker may be subject to disciplinary action and sanctions as the Commission deems

appropriate. Disciplinary action may include a civil penalty up to \$5,000.

When the broker provides proof of compliance with all reinstatement requirements, the Commission will reinstate or renew the broker's license in place of the conditional license.

**Continuing education exemptions.** The Commission may grant a waiver from the continuing education requirements if the broker meets one of the following waiver conditions:

- the broker certifies to the commission that he or she was not able to complete continuing education due to military service for a substantial part of the renewal period
- the broker certifies to the commission that he or she had an incapacitating illness
- the broker experienced other hardship circumstances determined by the commission to warrant a waiver
- the broker certifies to the commission that he or she has an active license but will not perform any act that requires a broker license
- the broker certifies to the commission that he or she is affiliated with a managing broker only to make referrals to a licensed broker and will not perform acts that require a broker license until completing continuing education requirements
- the broker has an inactive license and wishes to waive continuing education until the broker is ready to reactivate the license

**Continuing education options.** In addition to classroom coursework, practitioners are allowed to complete their continuing education through distance learning coursework. With distance learning, the instruction is presented in a sequential and logical order and is offered primarily through any media or media format, such as printed materials, communication technologies, and Internet-based delivery systems. Distance learning courses must be approved by the Commission and must meet all requirements under Title 876.

# MAINTAINING AN INDIANA LICENSE SNAPSHOT REVIEW

## POST-LICENSE EDUCATION REQUIREMENTS

- 30 hours required during first 2 years after initial licensing, taken as 1 total course or 5 divided courses
- failure to complete results in noncompliance and nonrenewal of license

## RENEWAL PROCEDURES

- submit application, pay renewal fee prior to expiration
- failure to renew within 3 years of expiration –
  - submit application,
  - pay renewal and reinstatement fee,
  - complete continuing education,
  - provide sworn statement of completion of requirements
- failure to renew after 3 years of expiration –
  - submit application,
  - pay renewal and reinstatement fee,
  - complete 36 hours continuing education within 3 years of reinstatement,
  - provide sworn statement of completion of requirements,
  - meet any other requirements
- 180-day renewal extension granted for being called to 30 or more days of out-of-state active military duty during which license expires;
- extended to 365 days for injury, illness, or disability related to active duty
- 90-day renewal delay resulting from licensee's act that warrants discipline; licensing agency to investigate and deny or renew the license with conditions including complaint with Attorney General's office or probation

## TRANSFERS, ASSIGNED AND UNASSIGNED

- termination from assigned broker company –
  - apply for reassignment or to be unassigned within 5 days of termination;
  - no practice of real estate prior to reassignment

## ACTIVE AND INACTIVE LICENSE STATUS

- license is active when assigned to broker company
- when inactive:
  - perform no acts that require license

- continuing education not required
- must pay applicable fees
- must renew license
- complete post-license or continuing education prior to reactivation of license

## CONTINUING EDUCATION REQUIREMENTS

- required each year as condition for license renewal
- continuing education year is from July 1 of one year to June 30 of next year

### Brokers

- 12 hours per year to meet course requirements,
- provide statement of completion at license renewal,
- retain copies of completion certificates for 3 years

### Managing brokers

- 12 hours per year with 4 hours focused on business and management skills and legal knowledge
- extensions for completion granted same as for renewals

### General

- incomplete or unapproved coursework results in noncompliance and nonrenewal of license; broker may disagree and send notice to Commission for review; broker may agree and comply with reinstatement requirements of paying civil penalty, completing coursework within 6 months, and receive conditional license
- failure to comply with reinstatement requirements results in suspension or no reinstatement of license
- providing false or misleading continuing education results in discipline and sanctions to include \$5000 civil penalty
- compliance with reinstatement requirements results in reinstatement or renewal of license and removal of conditional license
- exemptions to requirements include: military service; incapacitating illness; other hardship recognized by Commission; active license but no performing acts that require license; affiliation with managing broker only for referrals to licensed broker; inactive license
- distance learning includes correspondence, video instruction, and Internet with conditions for each

# INDIANA AGENCY RELATIONSHIPS

## NATURE OF THE RELATIONSHIP

### Definitions

An **agency relationship** is defined as a relationship in which a licensee represents a client in a real estate transaction. The relationship is formed when the client (also called the principal) hires a broker (also called an agent) to represent the client in a transaction. The relationship is a fiduciary relationship, meaning it is based on trust and loyalty. It is formalized by the signing of a contract so the duties, obligations, and timeframe are agreed to by both the agent and the principal.

Agency relationships include the following:

- a broker representing a property seller where the agent is accountable only to the seller and the listing agreement creates the agency relationship
- a broker representing a property buyer where the agent is accountable only to the buyer and is tasked with finding a property to purchase that meets the buyers requirements
- a broker representing a landlord where the agent is accountable only to the landlord and may market a property for rent to tenants and/or manage a property under a property management agreement
- a broker representing a tenant where the broker is accountable only to the tenant and has been employed to locate rental property that will meet the tenant's specific needs

These relationships are typically for compensation and always include fiduciary responsibilities as outlined in a signed agreement.

### Regulation

An agency relationship is regulated by statutory laws, which are laws currently on record in the country and state. The relationship is also regulated by common law, which is based on previous cases that have established precedents. Further, the relationship is regulated by contract law because it is the contract that establishes the relationship.

### Establishment

In Indiana, any contractual relationship must be established at the managing broker level, not at the broker level. Therefore, the managing broker must then designate a broker to represent the client in the agency relationship.

For example, if Sue lists her property for sale with a brokerage, the managing broker will sign the contract and designate a broker within the firm to represent Sue. It is then up to the designated broker to market Sue's property and obtain the best possible transaction possible, keeping Sue's interests in mind.

The broker is representing and has an agency relationship with the person with whom the broker is working unless there is a written agreement saying otherwise, or unless the broker is simply assisting the person as a customer without compensation.

### Compensation

An agency relationship is based on authorization and mutual consent. It is not based on compensation. Therefore, the payment of compensation does not create an agency relationship without the presence of an agreement to the relationship. The relationship does not require compensation and can exist without even defining compensation, such as in the case of a buyer's agent who is compensated from the seller, not the buyer client. An agreement could have been made between the buyer and the buyer's agent for the buyer to pay the agent for finding a property. An agreement could also have been made between the seller and the buyer for the buyer to pay part of the commission earned by the buyer's agent. Either way, compensation can be negotiated but is not required for the agency relationship to exist. The relationship is also not determined by who pays the compensation.

## PERMISSIBLE RELATIONSHIPS

### Single Agency

Single agency is an agency relationship involving the agent and only one client, such as the buyer, the seller, the landlord, or the tenant. The agent owes fiduciary duties to only the one client and can provide advice to that client. If the agent provides services to any other party to the same transaction, the agent does so to those parties as customers.

### In-House Agency

An in-house agency relationship is one involving two or more clients who are represented by different licensees within the same real estate firm. One broker would represent the buyer while another broker would represent the seller, with both brokers from the same real estate firm. This relationship is also known as a designated agency in that the managing broker designates one broker to represent the seller and designates a second broker to represent the buyer. The managing broker would technically be in a dual agency relationship with the two clients but would be protecting both clients' interest by designating a different broker for each client.

### Limited Agency

A limited agent is a licensee who has the written and informed consent of all parties to a real estate transaction to represent both the seller and buyer or both the landlord and tenant. In some states, this

is called a **dual agent**. In Indiana, an agent who is representing both the seller and the buyer or the landlord and the tenant in a consensual dual agency is a limited agent. This relationship limits the level of fiduciary duties to the clients because the agent is unable to provide undivided loyalty to both clients.

## Subagency

A subagent is a broker who acts for another broker in performing brokerage services for a client. For example, if a seller signs a listing agreement with an agent, that agent is representing the seller. However, buyers can view the property with the listing agent or with another agent. The question to be answered in this situation is who does this other agent represent. If the agent is a subagent of the listing agent, the agent represents the seller. If the agent is the buyer's broker, then he or she represents the buyer with all required duties owed to the buyer.

If a broker accepts an offer of subagency, he or she is then working through the listing broker and, thus, becomes a subagent of the seller. The subagent has the same duties to the seller as the listing broker does. If this subagent shows the subject property to a buyer, the subagent still is representing the seller and not the buyer.

The advantage of a subagency to a seller is that more agents will be showing the property and bringing in potential buyers. Consequently, it is more likely the property will sell sooner. The advantages to the subagent are that it is an easy way for the subagent to share in the commission, and the relationship does not require a written agreement with the buyer.

The downside to subagency is that the seller is liable for the actions of all agents representing him or her, including subagents. Consequently, increasing the number of agents representing the seller also increases the seller's risk of liability. In a subagency relationship, it becomes possible for the subagent to act like the buyer's agent and risk establishing an undisclosed dual or limited agency.

When a property is listed for sale in the local MLS, the property is seen by a large number of brokers. In the 1970s, the National Association of REALTORS® (NAR) prompted the MLS to rewrite their guidelines to stipulate that any seller giving permission for his or her property to be listed in the MLS was also authorizing the broker to make a blanket unilateral offer of subagency to all other MLS member brokers.

This guideline is no longer followed, and placing a listing in MLS does not automatically create a blanket unilateral offer of subagency. Although there is still the assumption that any broker listing a property in the MLS is offering subagency, this is simply an assumption and not the actual case.

Indiana Code 25-34.1-10-17 prohibits subagency

and states that a licensee may not make an offer of subagency or even associate with a subagent in any real estate transaction. However, the code allows a licensee to cooperate with, compensate, or associate with another licensee who is not acting on behalf of a client.

## No Agency

A non-agency relationship occurs when the broker is facilitating the transaction without being an agent for either party. The broker acts as a neutral party between the involved parties. The broker must advise the consumer that he or she is not representing the customer in an agency relationship and, therefore, should not be given any confidential information. Because the broker has no fiduciary duties to the customer as a client, the broker must fulfill the duties to the customer as a customer. These duties include honesty, fair dealing, and reasonable care. The broker also owes the customer the duty of limited confidentiality and may not disclose if one party will pay more or accept less than the listed price or that one party will agree to financing terms other than those offered.

## DUTIES

### Fiduciary and Common Law

A broker's fiduciary duties to a client are set forth in Indiana code. Common law principles of agency may also outline a broker's duties to a client. However, if the common law fiduciary duties are inconsistent with the duties set forth in Indiana code, the code supersedes.

### No Agency

If the broker and the person with whom the broker is working have a written agreement that no agency relationship exists, that person is a customer and not a client. However, there are duties the broker still must perform under the agreement:

- the broker must be available to receive and present offers and counteroffers for the property being sold, leased, or purchased
- the broker must assist in negotiating, completing forms, communicating, and presenting offers and other documents related to offers and counteroffers until a purchase agreement or lease is signed and all contingencies are satisfied or waived
- the broker must respond to questions about offers, counteroffers, notices, contingencies, and other documents from the seller, buyer, landlord, or tenant related to the subject property

If the broker fails to perform the required duties but another broker performs the duties for the customer, there still is no agency relationship between either broker and the customer.

For example, let's say that Broker Margaret has no agency relationship with Property Seller Henry but is helping Henry in the sale of his property. Henry received an offer on the property and sent Margaret several questions about the offer. Margaret failed to respond in a timely manner, but Broker George responded to Henry's questions. While that was helpful of George, his actions did not establish an agency relationship with Henry.

### Seller/Landlord's Agent

A broker who is representing a seller or landlord in an agency relationship has the following duties:

- the broker must fulfill the terms of the agency relationship agreement
- the broker must disclose the nature of the agency relationship with the client and redefine and disclose if the relationship changes
- the broker must promote the interests of the client by seeking a selling price or lease rate and contract terms that are satisfactory to the client
- the broker must present all purchase or lease offers to and from the client immediately even if another offer has been accepted
- the broker must disclose any adverse material facts or risks to the client that are actually known by the broker
- the broker must advise the client to seek expert advice regarding the material matters if those matters are beyond the broker's expertise
- the broker must timely account for all money and property he or she has received from the client
- the broker must exercise reasonable care and skill and comply with all applicable local, state, and federal laws, rules, and regulations
- without written consent of the client, the broker must not disclose that the client will accept a lower price or lease rate, what motivates the client to sell or lease the property, or any material or confidential information about the client unless required by law or to avoid fraud or dishonest dealing

The broker has no duty to seek additional purchase or lease offers after an offer has been accepted by the client.

The broker in an agency relationship with a seller or landlord also:

- must treat the buyer or tenant honestly
- must disclose to the buyer or tenant any adverse material facts related to the property if these facts are known to the broker

- must not disclose that the seller or landlord will accept a sale or lease price that is lower than listed
- must not disclose why the client is selling or leasing the property or disclose any confidential information about the client unless legally required to do so or unless avoiding fraud or dishonest dealing
- has no duty to have an inspection of the property performed for the buyer or tenant
- has no duty to verify the accuracy of any statement made by the seller, landlord, or a third party
- may legally show alternative properties not owned by the client to a buyer or tenant and may list competing properties for sale or lease. Doing so does not breach any duty the broker has to his or her client.

### Buyer/Tenant's Agent

A broker who is representing a buyer or tenant in an agency relationship has the following duties:

- the broker must fulfill the terms of the agency relationship agreement
- the broker must disclose the nature of the agency relationship with the client and redefine and disclose if the relationship changes
- the broker must promote the interests of the client by seeking a selling price or lease rate and contract terms that are satisfactory to the client
- the broker must present all purchase or lease offers to and from the client immediately even if the client is already under contract to buy or lease another property
- the broker must disclose any adverse material facts or risks to the client that are actually known by the broker
- the broker must advise the client to seek expert advice regarding the material matters if those matters are beyond the broker's expertise
- the broker must timely account for all money and property he or she has received from the client
- the broker must exercise reasonable care and skill and comply with all applicable local, state, and federal laws, rules, and regulations
- without written consent of the client, the broker must not disclose that the client will pay a higher price or lease rate, what motivates the client to buy or lease the property, or any material or confidential information about the client unless required by law or to avoid fraud or dishonest dealing

**Duties not imposed.** The broker has no duty to locate other properties to purchase or lease if the client is under contract to buy or lease a property.

In addition, the broker in an agency relationship with a buyer or tenant:

- has no duty to the seller or landlord except to treat them honestly
- has no duty to perform an investigation of the client's financial ability to pay the seller or landlord
- has no duty to verify the accuracy of any statement made by his or her client or by a third party
- must not disclose that the buyer or tenant will pay more than the offered sale or lease price
- must not disclose why the client wants to buy or lease the property
- must not disclose any confidential information about the client to the seller or landlord unless required by law or to avoid fraud or dishonest dealing
- may legally show properties of interest to the client to other buyers or tenants and assist other buyers or tenants in obtaining the property. Doing so does not breach any duty the broker has to his or her client

### Limited agent

A broker who is acting as a limited agent in a dual agency relationship has the following duties:

- the broker must obtain the written consent of all parties to a real estate transaction
- the broker must include in the written consent a description of the transaction for which the broker will act as limited agent
- the broker must include a statement that, as limited agent, the broker represents parties whose interests are different or even adverse to the other parties being represented
- the broker must include a statement that a limited agent may not disclose confidential information about the property that is known to the agent unless such information is adverse material facts or must legally be disclosed and could not be discovered in a reasonable inspection of the property
- the broker must not disclose that a buyer or tenant will pay more than offered or that the seller or landlord will accept less than what is listed
- the broker must not disclose what motivates one party to buy, sell, or lease the property or disclose other terms that would create an advantage for one party over another

- the broker must include a statement in the written consent that he or she will not share information with any other party or broker. In the role of limited agent, the broker may obtain information that could harm the bargaining position of one party if the information is disclosed
- the broker must also include a statement that no party is required to consent to the limited agency and that each party has given consent voluntarily and has understood the limited agency disclosure
- the broker who represents principals must make every reasonable effort to remain impartial. The broker may not represent the interests of one party to the detriment of the other party
- the broker must inform each party of facts the broker knows that likely could affect either party's decision to allow the broker to represent both parties

A limited agent may provide property information to both the seller and the buyer that includes listed and sold properties available through a multiple listing service or other source.

Legally disclosing or failing to disclose information does not breach or terminate the limited agency relationship.

It is extremely important that both parties completely understand the role of a limited agent and what constitutes a dual agency. Without this understanding, a buyer customer may assume the broker he or she is working with is representing the buyer. Because of this common confusion, it is extremely important for brokers to clarify their role and responsibilities as the seller's broker. If both the seller and the buyer understand the role of a limited agent, they may both decide to consent to the dual agency.

### In-House Agent

In an in-house agency relationship, an individual broker who is affiliated with a managing broker represents only the client with whom the broker is working. The client is represented only by that one broker and no other brokers within the firm. The managing broker does not represent any party in the in-house agency relationship.

In the in-house agency relationship, one broker represents the seller or landlord while another broker represents the buyer or tenant. Although both brokers are from the same real estate firm, each has the same duties to his or her client as brokers do in all agency relationships. In addition to those duties, the following must be observed:

- the broker may not disclose material or confidential information about his or her client to other brokers
- the broker may disclose information to the managing broker if advice or assistance is needed for the client's benefit

- the managing broker must take reasonable and necessary care to protect any confidential or material information disclosed by a client to his or her in-house agent

If the firm's records of prior transactions contain any adverse material facts regarding the subject property, the broker may not be held responsible for those facts unless the broker had actual knowledge of the facts.

If a broker makes misrepresentations in connection with the agency relationship, the client is not liable unless he or she knew or should have known about the misrepresentation. The broker is not liable for misrepresentations made by another broker unless the first broker knew or should have known about the misrepresentation.

## DISCLOSURES

### Purposes of Disclosure

One of the most important duties of a real estate broker is that of disclosure. As outlined in the duties of brokers in different types of agency relationships, disclosure to a client is more comprehensive than disclosure to a customer. A broker may obtain information about a customer that the broker may share with the client. However, confidential information the broker obtains about his or her client may not be shared with a customer. For example, a buyer customer who spends time looking at a property with the seller's broker may inadvertently give the broker information about how high a price the customer would be willing to pay. The broker may then pass that information on to his or her client and provide negotiating strategies with the client. On the other hand, the broker would never be permitted to pass information on to a customer that the broker's client would be willing to accept less than the listed price for the property.

Overall, the goals of agency disclosures are to

- clarify who the broker represents
- outline fiduciary duties and standards of care the broker owes to clients and customers
- present the choice clients and customers have in how they are represented
- acknowledge the parties' receipt and acceptance of the disclosure

The broker must inform the client of all information that may affect the client's interests in the transaction or in the agency relationship. Both information the broker knows and that the broker should have known must be disclosed. It is the broker's responsibility to discover any information that may be important to the client in making a decision, whether or not the information is favorable to the client's position. Failure to disclose such

information could result in the broker being held liable for damages.

Indiana law requires a managing broker to develop and enforce a written policy that details the agency relationships any affiliated broker may have with a seller, landlord, buyer, or tenant. The written policy must specifically allow or reject disclosed limited agency relationships.

Any broker in an agency relationship must disclose the managing broker's policy to the client in writing before the client provides the broker with any confidential information.

The broker must disclose any existing agency relationships in writing to all parties for whom the broker is providing brokerage services. The disclosure should be made at the first substantive contact with the party but must be made prior to either party signing an offer to purchase. The disclosure is required regardless of which party the broker represents.

### Substantive Contact

Substantive contact between a broker and a customer occurs when the broker is:

- showing the customer a property to purchase
- gathering confidential information from the customer regarding the customer's needs, motivation, or financial qualifications
- executing a contractual offer to sell or lease real property

An interaction between a broker and a customer may not be substantive and therefore may be exempted from the disclosure requirement if

- the interaction takes place during an open house with none of the above taking place
- the interaction is primarily 'small talk' with no confidential information exchanged
- the broker is simply answering questions regarding advertised properties
- the broker is answering general questions regarding the qualifications, background, and service of the broker or the broker's firm
- the broker knows the customer is represented by another broker

If the substantive contact occurs during a phone call where it is not possible for the broker to provide the written disclosure, the broker must make the disclosure orally and then provide the written disclosure during the first face-to-face meeting with the customer.

## Limited agency

Limited agency relationships must be disclosed and agreed to by all parties to the transaction. When the relationship is disclosed and agreed to by all parties, it is regarded as a consensual dual relationship. When the relationship has not been disclosed and/or agreed to by all parties, it is regarded as an undisclosed dual agency and is a violation of Indiana license law. Such a violation can result in penalties such as reprimand, fines, and license suspension or revocation.

While certain disclosures are required by law, other disclosures are actually prohibited unless expressly approved by the relevant party. For example, a limited agent cannot disclose to one party that the other party will pay more or accept less for the subject property. The agent also may not disclose one party's motivation for selling or purchasing to the other party.

## No Agency

If a broker is acting as a transaction broker, a non-agency relationship exists and must be disclosed in writing to all parties during the first substantive contact or upon the broker first becoming the transaction broker for the subject transaction.

## In-House Agency

In Indiana, a broker must also disclose the following in writing to a consumer

- that an in-house designated agency relationship exists unless there is a written agreement for a different type of relationship
- the name of the client's designated agent

The written disclosure regarding the designation can be included in a brokerage agreement or in a separate document. A copy of the disclosure is to be retained by the managing broker.

## Shared Compensation

The broker must also disclose to all parties to a transaction if compensation will be shared with other managing brokers representing other parties to the transaction whose interests may be different or even adverse.

## Interest in a Listed Property

If a broker wants to buy, sell, or obtain an interest in a property for which he or she is the listing broker or for which he or she is associated with the listing broker, the interested broker must make his or her intentions clearly known to the property owner.

If a broker owns an interest in a property, the broker must disclose that interest in writing to all parties to the transaction. The broker must also disclose that he or she

holds a valid real estate license. Both disclosures must be made prior to the broker directly or indirectly buying, selling, or receiving compensation for the property.

## TERMINATION OF AGENCY RELATIONSHIP

All duties required under an agency relationship begin immediately when the broker enters into the relationship with a party to a real estate transaction. The duties continue until the relationship terminates.

When the relationship ends, the broker must

- account for all money and property received during the relationship
- keep all information received during the relationship confidential as requested by the client, unless disclosure is required by law, the client gives written permission to disclose, or the information becomes public through the client or a third party

Unless provisions to the contrary have been made in writing, the broker has no further duties to the client when the relationship terminates, expires, or is fulfilled.

## Voluntary

Typically, the agency relationship terminates when the transaction is completed. However, if the relationship is not fulfilled or completed for any reason, the relationship ends when either of the following occurs:

- the date of expiration that the parties agreed on arrives, or
- the parties agree to terminate the relationship

The relationship may be voluntarily terminated by mutual agreement of the parties involved or by one party if that party provides notice to the other party of the termination.

## Involuntary

The relationship may also be involuntarily terminated if

- either of the parties dies or becomes incapacitated
- an agent abandons the client
- the property is condemned or destroyed
- the listing agreement is breached
- either of the parties become bankrupt
- the agent's license is revoked

If the agency relationship is terminated involuntarily, the defaulting or terminating party may face legal or financial consequences as a result. For example, if a seller

breaches a listing agreement, the seller may be held liable for the listing broker's expenses incurred while marketing the property.

## LISTING AGREEMENTS

### Seller Agreements

A listing agreement is a legally binding contract that creates an agency relationship between a broker and a seller of real estate. It authorizes the broker to serve as the agent for the seller in a real estate transaction in which the agent is to sell or lease the subject property or to obtain a buyer or lessee for the property. The listing agreement is a promise that the broker will find a buyer for the subject property and the seller will compensate the broker for doing so.

According to Indiana law, a broker company or one of its associated brokers may not accept a listing agreement that includes a net return for the seller unless the agreement also includes a maximum commission the seller will pay to the broker company.

Indiana recognizes three types of real estate listing agreements, as follows.

**Open listing.** This type of listing agreement allows the owner to list the subject property with more than one broker. Thus, an open listing is a non-exclusive contract. The owner may pay a lower commission only to the broker who actually sells the property. The owner also retains the right to sell the property him or herself and pay no commission at all.

On the other hand, the broker is permitted to serve as agent for either the sale or purchase of the property. Therefore, with open listings, the broker does not have the same obligations as with other types of listing agreements.

Consequently, the broker may not extend as much time or effort into selling the property. Open listings also leave the door open for two brokers to approach the same potential buyer and for the brokers to dispute which of them actually brought in the buyer. Thus, there would be a dispute over the commission.

**Exclusive agency listing.** This type of listing agreement gives the broker the right to sell the property. The property is listed with only one broker, so the agreement is exclusive. As with all listing agreements, there must be an expiration date listed in the agreement.

The seller pays a commission to the broker only if that broker or one of the broker's authorized agents sells the property. The property owner retains the right to sell the property him or herself and pay no commission to the broker.

As with open listings, exclusive agency listings open the door for a dispute over the commission if the broker and

the seller do not agree on who actually sold the property.

**Exclusive right to sell.** This type of listing agreement is the most commonly used of the three types. The property is listed with one broker who retains the exclusive right to market and sell the property. The agreement must include an expiration date.

If the property sells during the agreement timeframe, the listing broker collects the commission even if the broker did not find the buyer. The property owner retains the right to find the buyer, but he or she must pay the commission to the broker anyway.

This type of agreement provides the broker with the most assurance that he or she will receive compensation for any efforts to market and sell the property. Consequently, brokers are typically eager to spend time, energy, and money to market the property. With exclusive right to sell agreements, sellers usually see a faster and more profitable sale.

Exclusive right to sell agreements also limit any conflict between the seller and the broker over who brought in the buyer. It doesn't matter who brought in the buyer; the broker still collects the commission.

**Net listing.** This type of listing is illegal in Indiana and in most states. It is considered unprofessional and allows unscrupulous brokers to take advantage of a property owner who may not know what his or her property is worth.

With a net listing, the owner decides how much he or she wants to net from the sale of the subject property. The owner agrees to allow the broker to sell the property for any amount above the owner's minimum price. As compensation, the broker then keeps the difference between the minimum price and the actual selling price.

For example, Owner Marie thinks her property is worth \$200,000 and sets that amount as the minimum price she will accept. Unknown to Marie, her property is actually worth \$300,000. Marie agrees to have Broker Chad sell her property. Unfortunately, Chad isn't the most honest guy and jumps at the chance to take advantage of Marie. He sells the property for \$310,000, gives Marie her \$200,000, and walks away with \$110,000 as compensation for selling the property. That amounts to a 55% commission for Chad, more than any broker would receive under a legitimate listing agreement.

With a net listing, while the seller is getting what he or she wants for the property, a conflict of interest has been created for the broker. Law dictates that the broker has a fiduciary duty to promote the interest of the client and to deal honestly with the client. However, a net listing potentially promotes the interest of the broker and encourages dishonesty with some brokers.

## Buyer Agreements

Another agency relationship established by an agreement is a **buyer's agency agreement**. Like other listing agreements, this agreement includes the duration of the agreement with an expiration date, the commission or other compensation the broker will receive, and the rights and obligations of the broker and the buyer.

There are three common types of buyer agency agreements:

- **Exclusive buyer agency agreement or exclusive right to represent** – legally binds the buyer to pay the broker if and when the buyer purchases a property that meets the terms of the agency agreement. The broker is paid the commission even if someone else, including the buyer, finds the property.
- **Exclusive-agency buyer agency agreement** – the broker will be paid commission only if the broker finds the property. If the buyer or anyone else finds the property, the broker does not get paid.
- **Open buyer agency agreement** – nonexclusive; allows the buyer to have similar agreements with other brokers. The buyer then pays only the broker who actually finds the property the buyer purchases.

## INDIANA AGENCY RELATIONSHIPS SNAPSHOT REVIEW

### NATURE OF THE RELATIONSHIP

#### Definitions

- agency relationship created between broker and client by written consent, not by compensation
- relationships can include broker and seller, buyer, landlord, or tenant

#### Regulation

- regulated by statutory, common, and contract laws

#### Establishment

- relationship must be established at managing broker level

#### Compensation

- does not create or determine agency relationship
- not required for agency

### PERMISSIBLE RELATIONSHIPS

#### Single Agency

- only one client

#### In-House Agency

- two clients represented by two different agents within same brokerage

#### Limited Agency

- written consent of all parties for broker to represent both seller and buyer; dual agency

#### Subagency

- one broker acting for another broker– prohibited in Indiana

#### No Agency

- broker facilitating transaction and representing neither party

### DUTIES

#### Fiduciary and Common Law

- duties set forth in code; common law principles may also apply if not in conflict with code

#### No Agency

- receive and present offers; assist in negotiating and completing forms; respond to questions about offers and contingencies; treat customer honestly; disclose adverse material facts; do not disclose client will accept lower price, why the client is selling, or other confidential information about client; no duty to inspect property or verify accuracy of client's statements

#### Seller/Landlord's Agent

- fulfill agency agreement; disclose nature of relationship; promote interests of client; present purchase offers; disclose adverse material facts; advise client to seek expert advice; account for moneys received; exercise reasonable care and skill; do not disclose client willing to accept lower price

#### Buyer/Tenant's Agent

- fulfill agency agreement; disclose nature of relationship; promote interests of client; present purchase offers; disclose adverse material facts; advise client to seek expert advice; account for moneys received; exercise reasonable care and skill; do not disclose client willing to pay higher price; no duty to investigate client's finances or verify accuracy of client's statements

#### Limited Agent

- obtain written consent of all parties; include required statements in written consent; disclosure of client's willingness to pay more or accept less; no disclosure of clients' motivation; must remain

impartial to all parties; inform parties of facts that could impact decisions

### **In-House Agent**

- same duties as single agency; no disclosure of confidential information about client; may disclose to managing broker for advice; managing broker must protect confidential information

### **DISCLOSURES**

#### **Purposes of disclosure**

- disclosure to client more complete than to customer
- clarify duties; present choices; acknowledge disclosure
- managing broker required to enforce written policy regarding allowed agency relationships; policy must allow or reject limited agency; must disclose managing broker's policy prior to exchange of confidential information
- must disclose information that would affect client's interest in transaction or relationship; must disclose existing relationships

#### **Substantive Contact**

- yes: showing customer property to purchase; gathering confidential information from customer; executing contract to sell
- no: during an open house with no confidential information exchanged or contracts offered; when engaging in small talk; when answering questions about advertised property; when answering questions about brokerage; when broker knows customer is represented by another broker

#### **Limited Agency**

- limited agency must be disclosed and agreed to by all parties

#### **No Agency**

- must disclose non-agency to all parties during first substantive contact

#### **In-House Agency**

- must disclose in-house agency and name of designated agent

#### **Shared Compensation**

- must disclose any compensation to be shared with others whose interests may be different

#### **Interest in a Listed Property**

- broker must disclose own interest or intentions regarding property for which broker is listing broker
- broker must disclose ownership in property to all parties prior to buying or selling or receiving compensation

### **TERMINATION OF AGENCY RELATIONSHIP**

- after termination, broker must account for all moneys received and keep all information confidential unless required by law to disclose

#### **Voluntary**

- voluntarily terminates when transaction complete, on expiration, when parties agree

#### **Involuntary**

- involuntarily terminates when: either party dies or becomes incapacitated; agent abandons; property condemned or destroyed; listing agreement is breached; either party becomes bankrupt; broker's license is revoked

### **LISTING AGREEMENTS**

#### **Seller Agreements**

- legally binding contract that creates agency relationship
- must be in writing or in electronic format
- must include expiration date
- **open listing:** owner may list with multiple brokers; owner retains right to sell property and pay no commission
- **exclusive agency:** owner lists with only one broker and pays broker commission only if that broker sells property; owner retains rights to sell property and pay no commission
- **exclusive right to sell:** most common; owner lists with one broker who has exclusive right to sell the property; listing broker is paid commission regardless of who sells the property
- **net listing:** owner asks one price with broker selling property for a higher price and keeping the difference; illegal in Indiana

#### **Buyer Agreements**

- buyer's agency agreement contents: : list price, expiration date, commission rates, included property items, broker duties, seller obligations, exceptions
- three common types, like seller agreements: Exclusive, exclusive agency, open

## Maintaining an Indiana License Review Questions

- The post-licensing education required of new licensees is**
  - two 30-hour courses.
  - 30 hours in one course or multiple courses.
  - two 15-hour courses.
  - three 5-hour courses.
- An expired license can be renewed if the licensee, among other things,**
  - completes all required continuing education.
  - appeals to the Commission for a hearing.
  - pays double the normal renewal fee.
  - obtains a letter of recommendation from the managing broker.
- Bill terminates his association with Topflite Realty at 5:00 p.m. on Friday. How long does he have to submit a reassignment application to the Commission?**
  - Until the following Monday
  - Until the following Wednesday
  - Until the following Friday
  - Two weeks
- Which of the following is TRUE about a licensee who holds an inactive license?**
  - The licensee does not have to pay any fees.
  - The licensee is not subject to any renewal requirements.
  - The licensee cannot work in a real estate office.
  - The licensee does not have to meet continuing education requirements.
- If a broker falsely states to the Commission that he has completed all necessary continuing education for license renewal,**
  - the licensee's license is automatically revoked.
  - the Commission may impose a fine and other penalties.
  - the licensee's license is converted to inactive status until the education is properly completed.
  - the licensee is prosecuted for fraud in civil court.

Review Question Answers: 1. b 2. a 3. c 4. d 5. b

## Indiana Agency Relationships Review Questions

- In Indiana, if an associate broker signs a listing agreement with a client,**
  - the associate broker is guaranteed a commission.
  - the agreement is invalid.
  - the associate broker becomes a designated broker.
  - the agreement must be counter-signed by the managing broker.
- Bob represents both seller Sara and buyer Beulah in the sale/purchase of Sara's house. In Indiana, this kind of agency relationship is**
  - illegal.
  - a double subagency.
  - a limited agency.
  - no agency.
- A limited agent must**
  - inform each party of the other party's financial motivations and expectations.
  - keep confidential any material facts the agent feels might be detrimental to the transaction.
  - obtain written consent to the agency from all parties.
  - disclose that he does not represent the interests of either party to the transaction.
- What is the importance of knowing when "substantive contact" has occurred?**
  - It is when a broker should ask a customer for a listing.
  - It is when an agency relationship is established.
  - It is when a potential buyer shows interest in a broker's listed properties.
  - It is when a broker should make agency disclosures to a customer
- When an agency relationship ends, the broker must provide an accounting of all property received and**
  - continue to promote the former client's interests as far as possible.
  - provide expert advice to the former client if requested.
  - exercise the highest standard of care and skill in dealing with the former client.
  - protect all confidential information of the former client.

Review Question Answers: 1. b 2. c 3. c 4. d 5. d