

“Compensation in a Changed Industry”

A Real Estate CE course

Challenges:

Post-DOJ, what are the challenges you are encountering?

Where Are We?

Some things have changed—many things have not!

Duties:

Representation:

Compensation:

Case Studies:

1. You are the listing agent. Buyers contact you about the listing, stating that they do not wish to be represented, but simply want to view the house. When you have buyers of your own, or when the buyer is represented by another agent, you typically ask if they have been pre-approved or pre-qualified. Do you have a duty to inquire about their financial ability to purchase? If so, why?
2. You are a buyer agent. You contact the seller asking to show the property, and requesting compensation if your buyer buys the property. The seller agrees to allow you to show the property but refuses to pay a fee. Your buyer agrees to purchase it and will pay your brokerage directly. Does this constitute a conflict of interest? Why or why not?
3. Same scenario as above, but you are now within 2 weeks of closing. When checking in with the title company despite the sellers saying, ‘we’ve sold lots of houses before, we know what we are doing’, the title company has not yet received a copy of the proposed deed, and in fact, cannot get the sellers to return their calls regarding who is preparing the deed, what their social security numbers are, what their forwarding address is, etc. Do you have a duty to reach out to the sellers? Why?
4. The buyer does not want to be represented. They are ready to write an offer and want to: go in with an offer substantially less than the asking price; request a seller concession

for closings costs; include personal property not included per MLS; and have every inspection contingency possible. They state that they 'know they probably won't get everything' but that's okay, because 'we really love this place, and we'll compromise'. Do you have any duty to advise them about this proposed contract? Why or why not?

5. You are a listing agent, and a buyer-client of yours is interested in a listing you have. You also get contacted by a buyer who does not wish to be represented. Both buyers decide to write contracts on the same listing. What obligations do you owe to both buyers *as consumers*? What obligations do you owe to the *clients* in the transaction?

Client or Customer?

Dual Agency:

Undisclosed Dual Agency:

In a group, review the following scenarios and determine if the agent may be either practicing undisclosed dual agency, or is headed to an undisclosed dual agency. Decide what the agent should do in each scenario.

1. You have a buyer client who wants to see a FSBO. You approach the FSBO, and give them the required consumer agency notice, and a broker fee agreement. The buyer wants to make an offer and you go to present it to the seller. The seller asks you: "What do you think of this price? Is it fair?" "What do you think about their terms?"
2. A buyer contacts you and states they do not want to be represented, but instead just want to see an office listing. You show the listing to them, and they are not interested in the property. The buyer says: "You have a good idea of what we are looking for, please let us know about any properties that come up that we should look at." How would you respond to that?
3. An unrepresented buyer contacts you and wants to see your listing. The buyer makes an offer, which is accepted by the seller. The appraisal comes in lower than the negotiated contract price. The seller is adamant that the buyer should ask for a reconsideration of value. The buyer asks if they have to do that, or should they just hold firm. They also ask what their other options are. What do you say?
4. You like buyers, and have two buyers who are essentially looking for the same property in terms of price, location, style, size, etc. Both buyers want to see the same property, which is listed by another company. Both buyers want to write offers on the property. Are you a dual agent? What kind of disclosure should you provide to the buyers? What other options do you have?

Conversations with Buyers, Sellers, and Consumers

All consumers get an agency disclosure

Sellers

Sellers *anticipate signing a contract.*

Sellers *anticipate paying a commission, at least to the listing agent.*

What do we do for sellers?

Negotiable: Price and Terms: In your groups, answer these questions.

- Does 'negotiable' mean you must negotiate to their requested commission?
- Is a broker violating Sherman Anti-Trust if they set fees for their company?
- Can brokers base fees on a variety of things that will affect the marketing of the property? What are they?
- Can a broker make a business decision to charge more commission for a transaction with an unrepresented buyer?
- Can a broker state that their policy is to *always* offer cooperative compensation?
- Can a broker state that their policy is to *never* offer cooperative compensation?

What are the conversations we should have with sellers regarding compensation?

Buyers: What do we do for them?

How should we talk to them?

What can we anticipate from them?

Concessions vs. Compensation