

SLIDE 1 – COVER PAGE

SLIDE 2 – TOPICS

In this section we will cover the following topics:

- I. Concept of agency
- II. Disclosure requirements
- III. Authorized Brokerage Relationships
- IV. Consent to transition from Single Agent to Transaction Broker
- V. Designated sales associate
- VI. Discipline
- VII. Record keeping and retention

SLIDE 3 – LEARNING OBJECTIVES

Upon completion of this lesson, you should be able to:

- Describe which provisions of the Brokerage Relationship Disclosure Act apply only to residential real estate sales and list types of real estate activities that are exempt from the disclosure requirements.
- Define residential transaction.
- Distinguish among nonrepresentation, single agent and transaction broker.
- List and describe the duties owed in the various authorized relationships.
- Compare and contrast the fiduciary duties owed in a single agent relationship and the duties owed in a transaction broker relationship.

SLIDE 4 – LEARNING OBJECTIVES – (continued)

- Describe the disclosure procedures for the various authorized relationships.
- Describe the required content and format of the various disclosure forms.
- Explain the procedure for transition from a single agent to a transaction broker.
- Describe the disclosure requirements for non-residential transactions where the buyer and seller have assets of \$1 million or more.
- List the events that will cause an agency relationship to be terminated.
- Distinguish between and explain the disclosure requirements and forms pursuant to Florida Statute.
- Identify information that is “Subject to Public Record”.

SLIDE 5 – KEY TERMS

Here are some key terms we’ll encounter in this lesson:

- **Agent** – The fiduciary of the principal, hired to perform the authorized work and bound to fulfill fiduciary duties. In real estate brokerage the agent must be a licensed broker.
- **Caveat emptor** – In short it means “Buyer beware”. The phrase *caveat emptor* is due to the fact that buyers typically have less information about the property they are trying to buy, while the seller knows more.
- **Consent to Transition** – A written consent to change from a single agent relationship to a transaction brokerage relationship.

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- **Customer** – The third party in a real estate transaction, for example the buyer when the agent represents the seller, or the seller when the agent represents the buyer.
- **Designated sales associate** – Two real estate licensees designated to represent the buyer and the seller as single agent in non-residential transaction. Buyer and seller must have assets of \$1 million or more.
- **Dual agent** – A broker who represents both the buyer and the seller of a transaction in a fiduciary capacity.
- **Fiduciary** – A person who acts in a position of trust and confidence for another

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- **General agent** – Agent authorized by the principal to perform only acts related to a business or to employment of a particular nature.
- **Misrepresentation** – Misstatement of fact omission or concealment of factual matter.
- **Principal** – The party employing the services of a real estate broker.
- **Residential sales** – the sale of improved or unimproved residential property of 4 or fewer units, or the sale of agricultural property of 10 or fewer acres.
- **Single agent** – One who owes full fiduciary.

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- **Subagency** – A specific client representation relationship between a property listing broker or real estate agent and another real estate broker or agent who brings the buyer to purchase the property.
- **Transaction broker** – A broker who provides limited representation to a buyer, a seller or both.

SLIDE 9 – CONCEPT OF AGENCY

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Concept of Agency

The agency theory simply means a relationship between a principal and an agent in some business transaction.

When a person (the principal) authorizes another person (the agent) to perform certain tasks on their behalf, such as find buyers for a home being sold, an agency relationship has occurred.

So an agency relationship requires three things – A principal, an Agent, and the task to be performed. The task would typically define the depth of the agency relationship and could even dictate the fees or commissions to be paid for the agent's services.

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Concept of Agency F.S. 475.272

In order to eliminate confusion and provide for a better understanding on the part of customers in real estate transactions, the Legislature finds that the intent of the Brokerage Relationship Disclosure Act is to provide that:

- 1) Disclosed dual agency as an authorized form of representation by a real estate licensee in this state is expressly revoked. Any form of dual agency is illegal in Florida.
- 2) Disclosure requirements for real estate licensees relating to authorized forms of brokerage representation are established.

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Concept of Agency F.S. 475.272

In order to eliminate confusion and provide for a better understanding on the part of customers in real estate transactions, the Legislature finds that the intent of the Brokerage Relationship Disclosure Act is to provide that:

- 3) Single agents may represent either a buyer or a seller, but not both, in a real estate transaction.
- 4) Transaction brokers provide a limited form of nonfiduciary representation to a buyer, a seller, or both in a real estate transaction.

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Concept of Agency

Agency relationships are generally governed by either:

- 1) **Statutory Law** – The laws currently on record with the authority having jurisdiction. OR
- 2) **Common Law** – Procedures or regulations that have been set by legal precedence.

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Types of Agency

According to the level of authority delegated to the agent, there are three types of agency:

- 1) Universal
- 2) General
- 3) Special, or limited agency

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Types of Agency

Universal agency – The principal empowers the agent to perform any and all actions that may be legally delegated to an agency representative.

The instrument of authorization is the power of attorney.

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Types of Agency

General agency – The principal delegates to the agent ongoing tasks and duties within a particular business or enterprise.

Such delegation may include the authority to enter into contracts.

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Types of Agency

Special agency – Under a special agency agreement, the principal delegates authority to conduct a specific activity, after which the agency relationship terminates.

In most cases, the special agent may not bind the principal to a contract.

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Fiduciary Relationship

A fiduciary relationship is developed when one person places complete confidence in another in regard to a particular transaction or one's general affairs or business.

It is considered a relationship of the highest level of trust.

Over the next few slides we will discuss various aspects of the fiduciary aspects of agency relationships.

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Fiduciary Relationship

An **arm's length transaction** is one in which the buyers and sellers act independently and have no relationship to each other.

This should ensure that both parties are acting in their own self-interest and not subject to any pressure or duress from the other party.

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The traditional mindset of real estate sales which said, *Caveat Emptor*, or “Let the buyer beware,” no longer has a place in the industry.

In line with matters of ethics, agents do have a certain obligation to customers even though they do not represent them.

They owe the third party:

- Honesty and fair dealing - an agent may not deceive, defraud, or otherwise take advantage of a customer.
- Reasonable care and skill – agents are held to a core standard of knowledge, expertise, and ethics at all levels of service.
- Proper disclosure – agents are legally bound to be forthcoming in agency relationships, property condition and environmental issues.

An agent who fails to live up to prevailing standards may be held liable for negligence, fraud, or violation of state real estate license laws and regulations.

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Dual agency means representing both principal parties to a transaction. The agent represents both buyer and seller or tenant and owner.



F.S. 475.278(1)(a) ... A real estate licensee may not operate as a disclosed or nondisclosed dual agent.

In other words, dual agency is illegal and not allowed in any form in Florida.

As used in this section, the term “dual agent” means a broker who represents as a fiduciary both the prospective buyer and the prospective seller in a real estate transaction.

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In a **subagency**, a broker or licensed salesperson works as the agent of a broker who is the agent of a client.



In effect, a subagent is an agent of the broker who is agent of the client.

The subagent owes the same duties to the agent as the agent owes to the client. By extension, a subagent owes all the fiduciary duties to the client.

Subagents might include a cooperating licensed broker, that broker's licensed salespeople, and the listing broker's licensed salespeople, all of whom agree to work for the listing broker on behalf of the client.

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Customer vs. Client

A **client** is the party who hires the agent. The agent works for the client.

The **customer** is the third party in the transaction whom the agent does not represent. The agent works *with* a customer in fulfilling the client's objectives.

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Brokers typically dictate what kinds of agency relationships they will engage in with clients.

Some brokerages may choose to only be in single agent relationships where one agent works with a client.

Some brokers may assume the role of the agent. Sales associates under that broker would then be considered subagents.