

Unit 10: Client Representation Agreements

LECTURE OUTLINE

- I. Representing the Seller—listing agreement is an employment contract between a broker and seller.
 - A. Types of listing agreements (see Figure 10.1)—all states require an exclusive listing agreement to be in writing to be enforceable in court.
 - 1. Exclusive right-to-sell listing: One broker is employed as the sole agent for the seller and is entitled to a commission regardless of who procures the buyer, including the seller.
 - 2. Exclusive agency listing: One broker is employed as the sole agent for the seller and is entitled to a commission regardless of who procures the buyer, unless it is the seller.
 - 3. Open (nonexclusive) listing: Any number of brokers as well as the seller can procure the buyer, with only the procuring broker, if any, being entitled to a commission.
 - 4. Net listing: Broker receives set amount above seller's proceeds—illegal in many states and discouraged in others
 - B. Listings Involving Cooperating Brokers
 - 1. Multiple listing service (MLS): An organization of brokers who market listings to MLS members, with the commission on a sale shared with a cooperating broker.
 - 2. In Practice: Technology has enhanced benefits of MLSs and made property listings available to consumers, who can use the database of properties available on the Internet to narrow a search even before contacting a real estate licensee.
 - C. Termination of Seller Representation—a broker's agreement to represent a seller may be terminated for any of the following reasons.
 - 1. Fulfillment of the purpose of the listing
 - 2. Expiration of the time period stated in the agreement
 - 3. Destruction of the property
 - 4. A change in property use by outside forces (such as a change in zoning or condemnation under eminent domain)
 - 5. Transfer of the title to the property by operation of law (such as a bankruptcy)

6. Mutual consent
7. Death or incapacity of either party
8. Breach or cancellation by one of the parties (although that party may later be liable for damages)

D. Expiration of listing period

1. Contract must state definite termination date.
2. Automatic extension clauses are specifically prohibited by licensing authorities in some jurisdictions; the wording of some contracts also prohibits such extensions.
3. Some contracts contain a broker protection clause; this protects a broker who was the procuring cause of a sale from losing a commission because the transaction was completed after the listing expired.

II. The Listing Presentation—often includes a comparative market analysis (CMA), which is a valuation of the property based on sales and listings of similar properties in the market area

A. Information needed for listing agreement:

1. Names and relationship, if any, of the owners
2. Street address and legal description of the property
3. Size and type of the improvements (residence, garage, etc.)
4. Age of the improvements and their type of construction
5. Number and size of the rooms
6. Size of the lot, including its dimensions
7. Possibility of seller financing or lease option
8. Amount of any outstanding special assessments and who will pay them
9. Zoning classification of the property
10. Current (or most recent year's) property taxes
11. Neighborhood amenities (schools, parks and recreation areas, places of worship, public transportation)
12. Any real property to be removed from the premises by the seller and any personal property to be included in the sale for the buyer
13. Any additional information that would make the property more appealing and marketable
14. Required disclosures concerning property condition.

B. Disclosures—state laws specify disclosures regarding agency relationship and property condition

III. The Listing Contract (See Figure 10.2)

A. Provisions of the listing agreement

1. Names of all parties to the contract
2. Brokerage firm
3. Description of premises
4. Listing price
5. Broker's authority and responsibilities
6. Broker's compensation
7. Real property and personal property included in or excluded from the sale
8. Leased equipment
9. Proposed dates for closing and buyer's possession
10. Closing
11. Evidence of ownership
12. Encumbrances
13. Home warranty program
14. Termination of the contract
15. Broker protection clause
16. Warranties by the owner
17. Indemnification (hold harmless) wording
18. Nondiscrimination (equal opportunity) wording
19. Antitrust wording
20. Signatures of the parties
21. Date the contract is signed

IV. Representing the Buyer

A. Buyer representation provisions (See Figure 10.3)

1. Determine type of representation
2. Parties' rights and responsibilities
3. Compensation
 - a. Flat fee, hourly rate, or percentage
 - b. Retainer
 - c. Source should be specified
 - d. Always negotiable
4. Broker working for buyer has obligations to buyer, but broker working for seller also has obligations to buyer (See Figure 10.4)

B. Termination of Buyer Representation

1. Purpose fulfilled
2. Term expires
3. Mutual agreement
4. Breach of agreement
5. One party dies or becomes incapacitated