

Unit 8: Real Estate Brokerage

LECTURE OUTLINE

- I. Brokerage and Real Estate License Laws
 - A. Purpose of license laws—each state has a licensing authority with power to issue licenses, make information available to licensees and the public, and enforce the real estate law, which:
 - 1. Establishes basic requirements for licensing and continuing education
 - 2. Defines activities requiring licensing
 - 3. Describes acceptable standards of conduct and practice
 - 4. Establishes disciplinary system
 - B. Real Estate Brokerage
 - 1. Real estate broker—one who is licensed to buy, sell, exchange, or lease real property for others and charge a fee for services.
 - 2. Licensed brokerage may take the form of a:
 - a. Sole proprietorship
 - b. Corporation
 - c. Partnership
 - d. Independent
 - e. Franchise
 - 3. Real estate broker must
 - a. Manage the business
 - b. Set effective office policies
 - c. Maintain space and equipment
 - d. Hire sales associates and unlicensed staff and determine compensation
 - e. Direct staff
 - f. Implement procedures in accordance with real estate license laws and regulations
 - C. Relationship of broker and sales associate
 - 1. The employing broker is directly responsible for supervising all real estate activities of sales associates.
 - 2. The sales associate is responsible only to the employing broker. All activities must be performed in the name of the employing broker.

3. Sales associate cannot receive compensation from anyone other than the employing broker.
 4. Independent contractor versus employee status
 - a. Broker *controls* employee; may specify *what* an independent contractor does but *not how* or *require* specific actions
 - b. IRS has three requirements to be met for independent contractor status as a "qualified real estate agent."
 - i. The sales associate must have a current real estate license.
 - ii. The sales associate must have a written contract with the broker stating that the sales associate will not be treated as an employee for federal tax purposes.
 - iii. A substantial portion of the sales associate's income as a licensee must be based on sales production and not on the number of hours worked.
- D. Real estate assistant
1. Combination office manager, marketer, organizer, facilitator
 2. May/may not be licensed (depending on state law)
- E. Broker's compensation
1. Must be negotiated with the client
 2. May be a percentage of the total amount of money involved (sales price or rent); may be a flat fee; may be an hourly rate
 3. Most commissions are payable on delivery of the seller's deed
 4. The broker is entitled to a commission if the broker was
 - a. licensed when the event occurred.
 - b. employed under a (written) contract by the principal.
 - c. the procuring cause of the transaction—the one who started a chain of events resulting in a sale—in many cases, even if the transaction is not consummated.
- F. Sales associate's compensation
1. Must be contained in an agreement between the broker and the sales associate
 2. May be fixed salary, a share of the broker's commission, a draw on future commissions, or graduated commission splits
 3. May be incorporated into a 100 percent commission program
 4. Math Concept: Sharing commissions

G. Services offered

1. Services offered to a seller can include:
 - a. Helping the seller prepare property for sale
 - b. Performing a comparative market analysis (CMA)
 - c. Assisting with marketing using MLS and websites
 - d. Locating and screening a buyer
 - e. Assisting with negotiations
 - f. Being available to assist with closing
2. Services offered to a buyer can include:
 - a. Working out the economics of renting versus owning
 - b. Helping with mortgage preapproval
 - c. Consulting on a buyer's desired location
 - d. Visiting properties with a buyer and checking property information
 - e. Helping to fill in the blanks of an offer to purchase
 - f. Assisting with negotiations
 - g. Being available to assist with closing
3. Limiting services offered—unbundling of services
 - a. Brokerage may offer a limited-service listing agreement that includes only listing a property in the MLS.
 - b. Some states require a minimum level of services that must be offered, such as
 - i. Accepting delivery of and presenting offers and counteroffers to the client;
 - ii. Assisting the client in developing, negotiating, and presenting offers and counteroffers; and
 - iii. Answering the client's questions about offers, counteroffers, and contingencies.
4. Fees
 - a. Instead of a commission on the sale, real estate professional's fee could be an hourly rate or a flat fee for particular services.
 - b. Fee-for-service concept means that clients can choose from a menu of services, such as preparing a property for sale.
 - c. Specific services may be offered to FSBOs (for sale by owners), if permitted by state law.

II. Antitrust Laws

- A. Price fixing—brokers must not conspire to "fix prices"—rates must be independently determined by broker for that firm based on the broker's business judgment and revenue requirements; must avoid even the *impression* that rates are standard.
- B. Group boycott—business must not conspire against other businesses or agree to withhold their patronage to reduce competition—known as group boycotting.
- C. Allocation of customers or markets—brokers must not allocate customers or markets by dividing their markets and refraining from competing.
- D. Tie-in agreements—A broker may not “tie” the sale of first product to required purchase of a second.
- E. Penalties for violating anti-trust laws
 - 1. Individuals: A maximum \$1 million fine and ten years in prison
 - 2. Corporations subject to \$100 million in penalties

III. Professional Organizations and Ethics

- A. National Association of REALTORS® (NAR)
Largest trade organization, comprises state, regional, and local associations
- B. NAR Affiliates
 - Counselors of Real Estate (CRE)
 - CCIM (Certified Commercial Investment Member)
 - Institute of Real Estate Management (IREM)
 - REALTORS® Land Institute (RLI)
 - Real Estate Business Institute (Certified Real Estate Brokerage Manager)
 - Graduate, REALTOR® Institute (GRI)
 - Council of Residential Specialists (CRS)
 - Society of Industrial and Office REALTORS® (SIOR)
 - Women’s Council of REALTORS® (WCR)
- C. Professional Ethics: Establish standards within industry and define code of conduct for professionals
 - NAR Code of Ethics
 - National Association of Real Estate Brokers (NAREB)

IV. Technology in Real Estate Practice

- A. The Internet and Web sites—brought sweeping changes to the real estate industry; Internet Data Exchange (IDX) policy

- B. Communication in a digital age
 - 1. Smartphones
 - 2. Email/texting
 - 3. Social media
- C. Internet advertising—state laws commonly include the following provisions:
 - 1. Electronic communication by a licensee must include the licensee's name, office address, and broker affiliation.
 - 2. Real estate professionals must disclose their status as brokers or agents on each page of a Web site that contains an ad.
 - 3. Listing only a sales associate's name without the sponsoring broker's name in an ad is prohibited.
 - 4. Ads must be true representations and not misleading.
- D. Electronic contracting—conducting transactions through e-mail and fax that result in enforceable contracts. Governing laws are:
 - 1. Uniform Electronic Transactions Act (UETA) and
 - 2. Electronic Signatures in Global and National Commerce Act ("E-Sign")
- E. Prohibited communications
 - 1. National Do Not Call Registry applies to any plan, program or campaign to sell goods or services through interstate phone calls.
 - a. Real estate professional may call a consumer with whom there is an established business relationship for up to 18 months after the consumer's last purchase, even if listed in the Registry.
 - b. May also call a consumer for up to three months after the consumer makes an inquiry or submits an application unless the consumer specifically asks not to be called.
 - c. Telemarketers must search the national registry at least once every 31 days and drop registered consumer phone numbers from their lists.
 - d. State laws may also apply.

2. Most unsolicited fax advertisements are prohibited by
 - a. Telephone Consumer Protection Act
 - b. Junk Fax Prevention Act
 - c. Federal Communications Commission (FCC) rules
3. CAN-SPAM Act requires “unsubscribe” feature on messages.
4. Children’s Online Privacy Protection Act (COPPA) requires posting of a privacy policy and limits personal information that can be collected from children younger than 13.