FITZPATRICK
REAL ESTATE SCHOOL

“PUT THE CLIENT FIRST”



3 Hours of Agency Continuing Education
CE.7216000-RE

Approved by the Division on Behalf of the Commission
Rev. 10/1/23

written by Joe Fitzpatrick

MEET JOE:



Joe Fitzpatrick graduated from The University of Nevada, Las Vegas in 1985 and began his career with Coldwell Banker in Margate, Florida, listing and selling real estate. Joe went on to manage the North Miami office and opened Century 21 Fitzpatrick Realty with family. The firm became the top-ranked Century 21 company in Broward County, Florida.

In 1991, Joe returned to Las Vegas where he began teaching and authoring real estate courses. He also continued on as Vice-President of Century 21 MoneyWorld, which was consistently ranked among the top 10 Century 21 firms in the world where he led the education division among other duties.

Joe has authored and published over 30 real estate licensing textbooks and courses available on Amazon.com and which have been approved for utilization in several states. He made a few stops along the way including being the Education Director at LVR. You may recognize his voice from other online sites. Living through sellers' markets and buyer's markets, Joe has experienced interest rate fluctuations of 17.5% and 2%. He knows what it takes to stay successful in the business no matter what the market conditions may be.

In 2021, Joe opened Fitzpatrick Real Estate School and continues to practice real estate in addition to his other responsibilities. We trust you will find Mr. Fitzpatrick’s courses to be informative, interesting, and entertaining too.

- **CE Agreement**
  The student participant must:
  - not miss more than 10 minutes of a 3-hour course; 15 minutes for internet connection issues.
  - direct their attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction and distracting.
  - always have their cameras on and pointed to the student while the class is in session, excluding breaks.
  - in Zoom, display the name under which they registered.
  - must always have audio muted except when speaking to the group.
  - participate and respond when asked to by the instructor.
  - conduct themselves as they would in an in-person classroom setting.
  - be appropriately dressed for a classroom setting.
  - refrain from engaging in any activity that would be distracting to the instructor or fellow attendees such as using electronic/computer devices unrelated to the instruction, cell phone use, having conversations with other people, walking around, driving/riding in a vehicle, cooking, cleaning, etc.
  - complete the course evaluation immediately upon the conclusion of the course.

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“PUT THE CLIENT FIRST”


“TERRY”

“My Dad, Terry, was a successful real estate broker who taught me the business. Some call guys like me a ‘Son-of-a-B’ – a son of a broker. Of the many things my Dad taught me, one of the most important lessons was “put the client first, and the commissions will follow.” If you truly look out for your clients’ best interests, even ahead of your own, you will be rewarded financially. It is the licensees who have that backward who end up before the Commission.

As you participate in this agency-approved CE course, keep the theme ‘Put the Client First’ at the forefront of your mind.”

– Joe Fitzpatrick

Course Overview:

I. creating, disclosing, and terminating an agency relationship
II. agency models
III. agency fiduciary and statutory duties
IV. agency disciplinary actions
V. case study

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I. **Creating, disclosing, and terminating an agency relationship**
- A. Creating an Agency Relationship
  1. In Writing
     a) Listing Agreement
     b) Buyer Brokerage Agreement
  2. Verbally
     a) not good enough in NV if exclusive
     b) hard to enforce if disagreement arises
  3. Implied
     a) "Ostensible Agency"
     b) no formal agreement
     c) understood to exist based on actions of parties
     d) when buyer's agent represented seller, many implied agency relationships existed
     e) not recognized in Nevada
  4. Compensation does not determine agency
     a) buyer's agent is often compensated by the seller
     b) could be compensated by buyer or by both seller and buyer
     c) theoretically, seller's agent could be paid by buyer

- B. Disclosing an Agency Relationship
  1. Duties Owed
     a) disclosed agency relationship to all parties
     b) prior to any other document signed
     c) does not *create* an agency
  2. Confirmed in Purchase Agreement
     a) NAC 645.637
     b) must then be confirmed in a separate provision incorporated in or attached to that document

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: _____	Agent's Name: _____
Company Name: _____	Agent's License Number: _____
Broker's License Number: _____	Office Address: _____
Phone: _____	City, State, Zip: _____
Fax: _____	Email: _____

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3. Confirmed on Special Form

CONFIRMATION REGARDING REAL ESTATE AGENT RELATIONSHIP

This form does not constitute a contract for services

Property Address	
I/We confirm the duties of a real estate licensee of which has been presented and explained to me/us. My/Our representative's relationship is:	
_____ is the AGENT of	_____ is the AGENT of
❑ Seller/Landlord Exclusively② ❑ Buyer/Tenant Exclusively③ ❑ Both Buyer/Tenant & Seller/Landlord①	❑ Seller/Landlord Exclusively③ ❑ Buyer/Tenant Exclusively② ❑ Both Buyer/Tenant & Seller/Landlord①

① IF LICENSEE IS ACTING FOR MORE THAN ONE PARTY IN THIS TRANSACTION, you will be provided a **Consent to Act form for your review, consideration and approval or rejection. A licensee can legally represent both the Seller/Landlord and Buyer/Tenant in a transaction, but ONLY with the knowledge and written consent of BOTH the Seller/Landlord and Buyer/Tenant.**

② A licensee who is acting for the Seller/Landlord exclusively, is not representing the Buyer/Tenant and has no duty to advocate or negotiate for the Buyer/Tenant.

③ A licensee who is acting for the Buyer/Tenant exclusively, is not representing the Seller/Landlord and has no duty to advocate or negotiate for the Seller/Landlord.

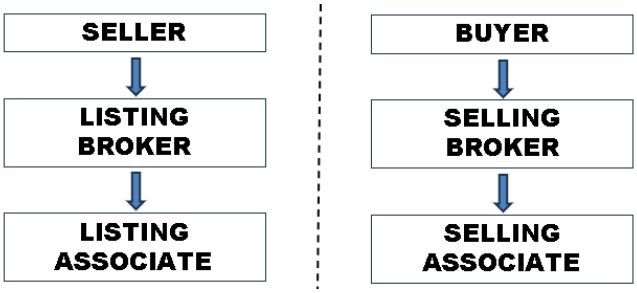
Seller's/Landlord's Company	*Buyer's/Tenant's Company*
by _____ *Licensed Real Estate Agent*	by _____ *Licensed Real Estate Agent*
_____ *Date* _____ *Time*	_____ *Date* _____ *Time*

C. Terminating an Agency Relationship
   1. Performance
   2. Expiration
   3. Mutual Agreement
   4. Breach
   5. Death or Client or Broker
   6. Operation of Law
   7. Impossibility

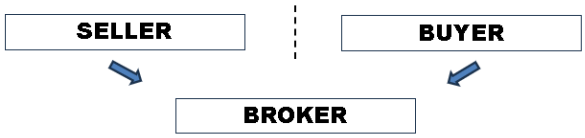
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II. Agency Models

A. Single Agency
1. licensee acting for one party
2. most common form of agency relationship
3. broker represents either the buyer or the seller, but not both



B. Multiple Representation
1. licensee acting for both parties in the same transaction
2. some states refer to this as "Dual Agency;" Nevada abrogates this term.
3. inherent conflicts of interest
4. illegal in 8 states
5. allowed with informed, written consent: *Consent to Act*



6. Consent to Act Question:

   Would you initial "May" or "May Not" if you were the Seller being asked to Sign the Duties Owed? Why would a seller insist on "May Not?"

Licensee Acting for Both Parties:
The Licensee
MAY [_____/_____] **OR** **MAY NOT** [_____/_____]
in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

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7. Nevada’s Position on Mutual Representation/Dual Agency
    - “Multiple Representations in Real Estate Transactions in Nevada”
        - No Common Law Now / Instead Statutory Obligations NRS 645 252-.254
        - “Dual Agency” purposely omitted from NRS/NAC
        - Essentially Not Allowed in Education Courses
8. Nevada Law and Reference Guide
        - “The Real Estate Division specifically rejects the use of the term “dual agency.”
        - Some licensees loosely use the term "dual agency” when they should not

STATE OF NEVADA

JIM GIBBONS
Governor

MENDY K. ELLIOTT
Director

ANN M. McDERMOTT
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.state.nv.us

MULTIPLE REPRESENTATION IN REAL ESTATE TRANSACTIONS IN NEVADA

This statement concerns any and all reference to dual agency in courses approved for continuing education credits by the Nevada Real Estate Commission or the Education Sub-Committee of the Nevada Real Estate Commission.

Dual agency is a common law term. In 1995 NRS 645.251 abrogated the common law setting forth that “a licensee is not required to comply with any principles of common law that may otherwise apply to any of the duties of a licensee as set forth in NRS 645.252, 645.253, and 645.254 and the regulations adopted to carry out those sections.”

Thus, the prevailing law in Nevada regarding agency duties of a licensee is STATUTORY. The term “dual agency” is not used anywhere in NRS 645.

NRS 645.252.1.(d) requires that the representation of more than one party in a real estate transaction may only be undertaken upon licensee’s full disclosure to each party that he/she is acting for more than one party in that transaction and with each party’s subsequent consent to the multiple representation in writing.

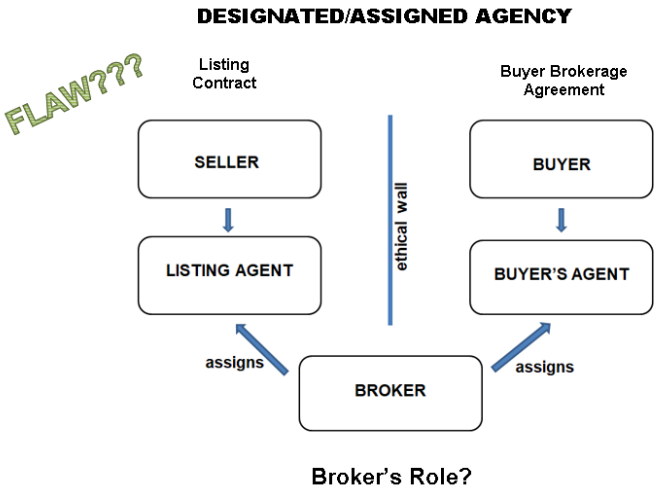
Education Section
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C. Assigned Agency / Designated Agency
   1. the broker assigns one agent from the firm to represent the buyer and one agent to represent the seller
   2. created in an attempt to shield the broker from the liabilities created under a "dual agency" as described above
   3. often used in an in-house sale
   4. licensees are not required to obtain the written consent
   5. licensees shall not disclose, except to the real estate broker, confidential information relating to a client



How do you declare an in-house sale will be handled as a designated agency?

D. Transaction Brokerage
   1. broker represents no one
   2. no fiduciary duties
   3. facilitates the transaction
   4. remains legally neutral, and assists buyer and seller in a transaction
   5. assists with closing the sale
   6. not allowed in Nevada

Ministerial Acts: acts that a licensee may perform for a consumer which are informative or clerical in nature and do not rise to the level of agency representation

- responding to phone inquiries by consumers as to the availability and pricing of brokerage services
- responding to phone inquiries from a consumer concerning the price or location of property
- attending an open house and responding to questions about the property from a consumer
- setting an appointment to view property
- responding to questions of consumers walking into a licensee's office concerning brokerage services offered or particular properties
- accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property
- describing a property or the property's condition
- completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client
- showing a prospect through a property being sold by an owner (FSBO)
- referral to another broker or service provider

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III. Fiduciary, Statutory, and Other Duties

A. Fiduciary Duties: obligations to do the utmost for another person or entity

1. can be remembered with acronym "COLDAC"
2. commonly accepted:
   - Care
   - Obedience
   - Loyalty
   - Disclosure
   - Accountability
   - Confidentiality



3. in detail:

Care
   a) exercise sound judgment
   b) protect a client's interests
   c) consideration of options
   d) sensible decision-making
   e) how would you treat your Mom?

Obedience
   a) obey legal instructions
   b) or terminate agency
   c) "Put the Client First"

Loyalty
   a) acting in client's best interests at all times
   b) deliver service at highest standards
   c) avoid conflicts of interest

Disclosure
   a) deliver information that is significant for the client to know
   b) inform of all material and relevant facts
   c) Includes *duty of further inquiry*

Accountability
   a) account for money or property entrusted to you
   b) held responsible for actions and non-actions

Confidentiality
   a) must keep confidential all information about the client
   b) motivation to buy or sell
   c) 1 year after termination of agency

B. Statutory Duties

1. NRS 645.252 A licensee who acts as an agent in a real estate transaction:
   - Shall disclose to each party as soon as is practicable:
     - material and relevant facts which the licensee knows, or which by the exercise of reasonable care and diligence should have known
     - each source from which the licensee will receive compensation
     - that the licensee is a principal to the transaction or has an interest in a principal

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- if acting for more than one party to the transaction, the licensee must obtain the written consent of each party
- Must use the Duties Owed by a Nevada Real Estate Licensee and Consent to Act accordingly

2. NRS 645.253 Licensees affiliated with same brokerage
   - In-house sale
     - if Broker elects Assigned Agency/Designated Agency
     - licensees are not required to obtain the written consent
     - no Consent to Act form needed
     - each licensee shall not disclose, except to the real estate broker, confidential information

3. NRS 645.254 Additional duties of licensee entering into brokerage agreement
   - shall exercise reasonable skill and care
   - shall not disclose confidential information for 1 year after the revocation or termination of the brokerage
   - shall seek a transaction at the price and terms stated in the brokerage agreement or at a price acceptable to the client
   - shall present all offers as soon as is practicable
   - shall disclose to the client material facts of which the licensee has knowledge
   - shall advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee
   - shall account for all money and property the licensee receives

4. NAC 645.637 Disclosure of relationship as agent or status as principal.
   - In each real estate transaction… the licensee shall clearly disclose, in writing, to his or her client and to any party not represented by a licensee,
   - the relationship of the licensee as the agent of his or her client
   - or the status of the licensee [acting] as a principal.
   - The disclosure must be made as soon as practicable, but not later than the date and time on which any written document is signed …
   - The prior disclosure must then be confirmed in a separate provision incorporated in or attached to that document and must be maintained by the real estate broker in his or her files…

5. NRS 645.257 Action to recover damages suffered as result of licensee's failure to perform certain duties; standard of care.
   - A person who has suffered damages as the proximate result of a licensee's failure to perform any duties … may bring an action against the licensee for the recovery of the person's actual damages.

6. NRS 645.3205 Dealing with party to real estate transaction in manner which is deceitful, fraudulent or dishonest prohibited.
   - A licensee shall not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest

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7. NAC 645.605 Considerations in determining certain misconduct by licensee.
   - In determining whether a licensee has been guilty of gross negligence or incompetence… or conduct which constitutes deceitful, fraudulent or dishonest dealing… the Commission will consider, among other things, whether the licensee:
     1. Has done his or her utmost to protect the public against fraud, misrepresentation or unethical practices related to real estate or time shares.
     2. Has ascertained all pertinent facts concerning any time share or property for which the licensee accepts an agency.
     3. Has attempted to provide specialized professional services concerning a type of property or service that is outside the licensee’s field of experience or competence…
     4. Has disclosed, in writing, his or her interest or contemplated interest in any property or time share with which the licensee is dealing. The disclosure must include… a statement of:
        (a) Whether the licensee expects to receive any direct or indirect compensation… from any person or company that will perform services related to the property…
        (b) The licensee’s affiliation with or financial interest in any person or company that furnishes services related to the property
        (c) If the licensee is managing the property, his or her interest in or financial arrangement with any person or company that provides maintenance or other services to the property;
        (d) If the licensee refers one of his or her clients or customers to another person or company, such as a contractor, title company, attorney, engineer or mortgage banker, the licensee’s expectation of a referral fee from that person or company; and
        (e) If the licensee receives compensation from more than one party in a real estate transaction, full disclosure to and consent from each party to the real estate transaction. A licensee shall not accept compensation from more than one party in a real estate transaction, even if otherwise permitted by law, without full disclosure to all parties.
     5. Has kept informed of current statutes and regulations governing real estate, time shares and related fields in which he or she attempts to provide guidance.
     6. Has breached his or her obligation of absolute fidelity to his or her principal’s interest or his or her obligation to deal fairly with all parties to a real estate transaction.
     7. Has ensured that each agreement for the sale, lease or management of property or time shares is contained in a written agreement that has been signed by all parties and that his or her real estate broker and each party to the real estate transaction has a copy of the written agreement.
     8. Has obtained all changes of contractual terms in writing and whether such changes are signed or initialed by the parties concerned.
     9. Understands and properly applies federal and state statutes relating to the protection of consumers.
     10. Has acquired knowledge of all material facts that are reasonably ascertainable and are of customary or express concern and has conveyed that knowledge to the parties to the real estate transaction.
     11. Has impeded or attempted to impede any investigation of the Division by:
        (a) Failing to comply or delaying his or her compliance with a request by the Division to provide documents;
        (b) Failing to supply a written response, including supporting documentation, if available;
        (c) Supplying false information to an investigator, auditor or any other officer of the Division;
        (d) Providing false, forged or altered documents; or
        (e) Attempting to conceal any documents or facts relating to a real estate transaction.

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C. Other Duties
- reasonable skill and care
- honesty and fair dealing
- adherence to local, state, and federal laws and regulations
- abide by ethical standards as imposed by professional organizations (NAR®)
- disclosure of all material facts
- disclosure of known environmental hazards
- clarity between opinion versus fact
- avoidance of misrepresentation or fraud
- did not disclose to all parties as soon as practicable
- did not disclose materials facts known or that should have been known
- did not disclose each source of the licensee’s compensation
- did not disclose license status when acting as a principal in the transaction
- did not obtain informed consent when a dual agency: Consent to Act
- did not exercise reasonable skill and care
- did not maintain obligations of confidentiality
- did not present all offers as soon as practicable
- did not advise the client to obtain advice from an expert when matters are beyond the licensee’s expertise
- did not account for all money and property

The Commission may require a licensee… to pay an administrative fine of not more than $10,000 for each violation he or she commits or suspend, revoke, deny the renewal of or place conditions upon his or her license, permit or registration, or impose any combination of those actions…

IV. Disciplinary Cases Regarding Agency Violations

A. “Gavin,” broker, violated NRS 645.633(1)(h) and/or (i), pursuant to NAC 645.525, by participating in the naming of a false consideration in the Purchase Agreement; NRS 645.633(1)(h) and/or (i), pursuant to NAC 645.605(6), by breaching his obligation to deal fairly with all parties to a real estate transaction; and NRS 645.633(1)(h) and or (i), pursuant to NAC 645.605(1), by failing to do his utmost to protect the public against misrepresentation or unethical practices related to real estate.

$30,000 fine; Brokers License downgraded to a Broker-Sales license; Cannot manage any licensees for a period of two (2) years; Agency: 3 Hours; Ethics: 3 Hours

B. “Tod,” Broker/Property Manager, violated NRS 645.633(1)(h) by acting with gross negligence or incompetence and/or NRS 645.633(1)(i) by conduct which constituted deceitful or dishonest dealing in performing any act for which Respondent is required to hold a license, pursuant to NAC 645.605(1) by not doing his utmost to protect the public against fraud, misrepresentation or unethical practices related to real estate. Respondent violated NRS 645.633(1)(h) on four (4) occasions by acting with gross negligence or incompetence and/or NRS 645.633(1)(i) by conduct which constituted deceitful or dishonest dealing in performing any act for which Respondent is required to hold a license, pursuant to NAC 645.605(6) by breaching his obligation of absolute fidelity to his principal’s interest. Respondent violated NRS 645.252(1)(a) and (2) by failing to disclose as soon as practicable any material and relevant facts or information which the licensee knows, or which by the exercise of reasonable diligence should have known.

$7,500 fine; Broker Mgmt: 6 hours; Ethics: 6 hours; Property Mgmt: 6 hours

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C. “Dennis,” Broker-salesperson, violated NRS 645.254(5) by failing to disclose to the Complainant material facts of which the Respondent had knowledge concerning the transaction. Respondent violated NRS 645.254(6) by failing to advise the Complainant to obtain advice from an expert relating to matters which are beyond the expertise of the licensee. Respondent violated NRS 645.633(1)(h), pursuant to NAC 645.905(9), by failing to properly apply federal and state statuses relating to protection of consumers.

   $30,000 fine; Respondent shall refrain from engaging in any transactions involving self-directed IRA accounts for a period of 24 months

D. “Elsie,” Salesperson, failed to do her utmost to protect the public against fraud, misrepresentation or unethical practices related to real estate, converting money to her own use from a general account once and a security deposit account 14 times.

   Salesperson license revoked. $160,000 fine

E. “George,” Broker and Property Manager, violated NRS 645.310(3) by comingling and/or permitting the comingling of money of a client on multiple occasions… violated NRS 645.630(1)(f) by failing, within a reasonable time, to account for or to remit any money which comes into his possession which belongs to others; Violated NRS 645.630(1)(e) by failing to maintain for review and audit by the Division, each brokerage agreement and property management agreement; Violated NRS 645.630(1)(g) by failing to balance the trust account at least monthly and by failing to submit to the Division an annual accounting of the trust accounts; Violated NRS 645.633(1)(h) pursuant to NAC 645.605(6) by breaching his obligation of absolute fidelity to his principal's interest; Violated NAC 645.655(2) by failing to produce documents which a broker is required to keep complete real estate transaction and property management records for; Violated NAC 645.806(1) by failing to turn his annual trust account reconciliations into the Division on multiple occasions…

   Violated NRS 645.630(1)(f) by failing, within a reasonable time, to account for or remit money in his possession belonging to others, by failing to timely transfer the entirety of the tenant deposits… Violated NRS 645.633(1)(h) pursuant to NAC 645.605(11)(a) and NAC 645.605(11) (b) by impeding or attempting to impede the Division's investigation by failing to provide the Division with the Requested Documents.

   $16,000 fines, $18,758 in Division fees; all licenses and permits revoked

F. Salesperson “Emigdio” Violated NRS 645.633(1)(i), by engaging in conduct which constitutes deceitful, fraudulent or dishonest dealing… by breaching his obligation of absolute fidelity to his client's interest, by fraudulently alleging he has an interest in his client's Property in court proceedings; Violated NRS 645.633(1) (i), by engaging in conduct which constitutes deceitful, fraudulent or dishonest dealing through NAC 645.605(6), by breaching his obligation of absolute fidelity to his client's interest…by engaging in conduct which constitutes deceitful, fraudulent or dishonest dealing…[did not] provide his client with the Duties Owed form… by failing to protect the public against fraud, misrepresentation or unethical practices related to real estate, by engaging in gross negligence or incompetence.. by misspelling his client's name on the Commercial Purchase Agreement, and thereby causing the deed to be recorded under the wrong name; Violated NRS 645.252(3), by failing to provide his client with the Duties Owed form prepared pursuant to NRS 645.193.

$70,000 fine $12,296.70 in Division costs and fees. All licenses and permits revoked.

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V. Case Study

Ed Keys is a Henderson-based real estate agent working for XYZ Realty. He is in search of properties that would make for good investments for his limited partnership, Deal Makers, of which he is one of three partners.

Ed locates a property on Drake Drive in Henderson he feels would be an optimum property for the partnership’s portfolio. He previews the property and in so doing, notices a ceiling stain in the upstairs guest room. Ed doesn’t feel the potential for a roof leak is minimal and does not share this information with his partners.

After a conference call with his two other partners, Deal Makers submits an offer through Ed to the listing agent. There is no mention of Ed’s interest in the partnership to the listing agent.

The sellers counter the offer for $5,000 more and sign the RPA indicating there is an attached counter-offer at the higher price.

In the first 30 days of the investigation started by the Division, Ed ignored three phone calls from Chief Investigator of the Nevada Real Estate Division, Jan Holle, and did not return his calls. When the two men did communicate, Ed could not produce a Duties Owed form or the signed counter-offer. Mr. Holle discovers in conversation that Ed Keys receives a 1% commission from the limited partnership as a finder’s fee on any property purchased.

What statutory or regulatory duties owed under Nevada’s agency laws were violated, if any?

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10-QUESTION QUIZ

1. Which of the following statements regarding an agent representing both parties to the transaction is FALSE?

   a. A Duties Owed form is required.
   b. A Consent to Act form is required.
   c. Informed, written consent is required.
   d. It is legal in all 50 states.

2. With a designated agency relationship:

   a. one agent of the firm is assigned to represent the seller exclusively and one to represent the buyer exclusively.
   b. the broker’s role is clearly a dual agent.
   c. a Consent to Act form is required.
   d. the firm cannot utilize this relationship on an in-house sale.

3. The Commission may impose a financial penalty of what amount per violation of the licensing law?

   a. $5,000
   b. $10,000
   c. $25,000
   d. Any amount the Commission deems appropriate.

4. An in-house sale MUST be treated as a:

   a. single agency.
   b. dual agency.
   c. assigned agency.
   d. It depends on the broker’s policies.

5. A duty owed to the client, that is not owed to the customer is:

   a. to not deal in a deceitful, fraudulent, or dishonest manner.
   b. to exercise reasonable skill and care.
   c. maintain confidential information for at least one year.
   d. disclose any known material facts.

6. An agent’s fiduciary duties include all of the following EXCEPT:

   a. accountability.
   b. confidentiality.
   c. consideration.
   d. loyalty.

7. Which type of agency is often used to shield the broker from the liabilities associated with a dual agency relationship?

   a. single agency
   b. multiple representation
   c. transactional brokerage
   d. designated agency

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8. Which agency relationship is not permitted in Nevada?

    a. single agency
    b. multiple representation
    c. designated agency
    d. transaction brokerage

9. In disclosing the agency relationship, the agent:

    a. must disclose to his or her client and to any party not represented by a licensee, the relationship of the licensee as the agent.
    b. must disclose the relationship as soon as practicable, but not later than the date and time on which any written document is signed.
    c. must confirm the disclosure in a separate provision incorporated in or attached to that document.
    d. All of the above

10. After the termination of a Nevada agency relationship, the duty of confidentiality lasts:

    a. forever.
    b. 1 year.
    c. 5 years.
    d. None of the above

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