Advanced Real Estate Practices
Required Curriculum and Learning Objectives
30 Clock Hours
Effective 03-18-2009

Instructions to Education Providers:

- ***This curriculum covers many of same topics as pre-license course, but this course should emphasize complications that can arise and gray areas.***
- ***Recommend this course should utilize practice cases (real and hypothetical) with more complexity and more detail where applicable.***

Brokerage

Upon completion of this section, the student should be able to:

1. Describe the structure of the real estate brokerage firm and relationship between broker, managing broker, and designated broker/firm.

2. Describe the duties and obligations of the licensee to the firm and vice versa. Be able to summarize the managing broker's supervisory duties towards licensees.

3. Describe what to do when problems or conflicts arise between broker and managing broker or the firm itself.

Agency

Upon completion of this section, the student should be able to:

1. Describe the disciplinary procedures for licensees who fail to comply with Agency Law and list possible consequences.

2. Given a situation, explain how (why and when) an agency relationship is created. Indicate how broker might fail to comply with Agency restrictions, what type of agency problem exists, the consequences of such a problem, and how to remedy the problem.

3. Explain the law as it pertains to agency disclosure including the forms involved and/or alternate methods.

4. Be able to address the following issues pertaining to agency:
    - Describe the services that you can provide to a customer without unintentionally creating an agency relationship (e.g., presenting offer directly to seller when FSBO property is advertised on MLS).
    - Discuss how the timing of disclosure may be important in creating or avoiding agency relationships.
    - Differentiate between agency responsibility vs. the right to compensation (i.e., the source of compensation, by itself, does not establish an agency relationship).
    - Describe when compensation items need to be disclosed and to whom (e.g., offering buyer agency compensation, receiving listing broker or seller is offering a bonus, etc.) Discuss how the timing of disclosure may be important in creating or avoiding agency relationships.
    - If a buyer wants to purchase one of your listings, distinguish between treating the buyer as a customer (just represent the seller) and acting as a dual agent. Describe how this is related to implied agency and the concept of implied buyer's agency.
    - Explain the caution needed to be exercised in verbal communication with clients and potential clients. (e.g., is it possible to have implied agency based upon a verbal agreement? Can you legally agree to represent a seller or buyer verbally?)
    - Be able to explain the agency problems associated with providing "comps" to a potential buyer. (e.g., does this practice create buyer's agency or violate seller's agency? What if you selectively provide comps that support the listing price?)

Contracts

Upon completion of this section, the student should be able to:

Listing/Representation Agreements

1. Describe typical buyer's concerns that may make them reluctant to enter into representation agreement. Indicate how these concerns should be addressed in a professional manner.

2. Discuss various listing agreement addendum that may be used and when you would need to use them. Be able to explain what information should be included.

3. Describe what happens when a listing agreement is terminated (e.g., what if the seller backs out, what if the listing agent wants out?)

4. Explain what happens to current listing agreements under the following situations:
    - Death of the designated broker
    - Firm goes out of business
    - Designated broker loses license in a disciplinary action and listing broker transfers to a different real estate firm

Purchase & Sales Agreements

5. Identify potential situations where the principal (i.e., buyer or seller) would default on a purchase and sale contract? Describe some legitimate reasons for termination of a contract by the client.

6. Describe when the licensee is liable or potentially liable from a poorly constructed/crafted contract and explain what possible disciplinary procedures may result.

7. Explain how a properly constructed purchase and sale agreement with appropriate addenda [to address needed contingencies] can reduce the risk of a default.

8. In the event of a default or termination, describe what obligations the licensee has toward the client. Describe how to protect the client in case of default.

9. Discuss various listing agreement addendum that may be used and when you would need to use them. Be able to explain what information should be included.

10. Discuss what is the appropriate level of detail to include in a financing contingency clause?

Leases and Rental Agreements

11. Discuss the typical elements of a property management agreement and discuss the responsibilities and powers of the property manager versus what must be approved/authorized by the property owner (e.g., fees, commissions, maintenance, and repair).

12. Identify the unique fiscal responsibilities associated with property management (e.g., duty to collect rents, firm has appropriate accounts for funds management, accounting, and monthly income statements).

13. Describe the typical provisions of (1) an apartment lease and (2) residential lease (e.g., including repairs and maintenance, parking, conditions of property, alterations to property, utilities, subletting, identifying occupants, rents, deposits, and fees, etc.)

Other Types of Contracts

14. Explain the appropriate precautions and procedures when using unfamiliar or non-standardized forms of contracts (e.g., agreements provided by a third-party such as bank contract for purchase of foreclosed property [REO], contract provided by developer for new home purchase, etc.).

Marketing/Negotiation/Closing

Upon completion of this section, the student should be able to:

1. Explain the process of preparing a CMA. Be able to describe what types of data should you maintain in-house; what external date you would need and where you would obtain it.

2. Be able to explain each and every component of a CMA to the client, and justify numbers/data used.

3. Be able to explain why the subject property's listing price does not match other "opinions" of value (e.g., Assessor's valuation, client's expectation of price based upon what paid in neighborhood, etc.)

4. Describe how current market conditions will affect pricing and marketability of real estate including time on market.

5. Discuss how zoning may affect the valuation of a property. Know when it is necessary or appropriate to refer client to outside experts and be able to direct clients to sources of information about zoning.

6. Understand how regulatory issues involving environmental problems or land use restrictions might affect the marketing or value of property.

7. Be able to clearly describe and explain what ownership interest and rights a client is purchasing in various situations. Including but not limited to:
    - Vacant land
    - Condominiums/cooperatives
    - Timeshares

8. Describe attributes of good marketing material, plus describe any laws and regulations (including fair housing laws) pertaining to marketing material. Include coverage of issues related to "team concept"; marketing must clearly state the firm one works for.

9. Describe what practices would be considered ethical[1] or appropriate in negotiations.

10. Identify various ways in which to advise clients to respond to offers or counteroffers.

11. Describe typical problems that may arise between contract and closing (and thereby threaten to delay or prevent closing). Discuss the broker's/licensee's responsibility in resolving conflicts that may arise.

12. Discuss what steps should be taken if the transaction falls apart at closing, and there are recriminations between the parties involved.

Problem Management/When Things Go Wrong

Upon completion of this section, the student should be able to:

1. Discuss when you should alert your supervisor (i.e., managing broker, designated broker or branch manager) to potential problems and/or liability issues.

2. Be able to discern negligent practice or unprofessional conduct when presented with various situations (e.g., based upon hypothetical cases and/or recent disciplinary action by the DOL). **May include common types of claims against real estate licensees which involve negligence, fraud, fraudulent concealment, or the Consumer Protection Act.**

3. Describe the appropriate procedure to follow if you become aware of possible misconduct or negligence by another licensee, including potential violations of URBP [RCW 18.235], Unprofessional Behavior [RCW 18.235.130], or Grounds for Disciplinary Action [RCW 18.85.361].

[1]The use of the terms "ethics" and "ethical" is meant in a general sense, and is not referring to any particular code of ethics. The word professional might be substituted.

4. Be able to describe the multiple levels of responsibility created based on different supervisory and business structures in the industry. Contrast the broker's own roles and responsibilities with the managing broker's and/or firm's roles or responsibilities in the practice of real estate.

5. Describe how these roles would change in the event of disputes:
    - Between licensee and client
    - Between buyer and seller
    - With third party (financial institution, escrow/closing agent)
    - Over disposition of escrow funds.

6. In which situations should the licensee either:
    - Stay out of the dispute,
    - Inform their managing broker, or
    - Seek legal counsel?

7. Discuss appropriate practices in regards to communication and documentation to help avoid miscommunication and prevent incurring liability.

8. Identify the common or typical errors/omissions in seller's disclosure forms. Identify those items you might look for in a property walk-through and discuss with seller (if omitted from form).

9. Describe potential disciplinary actions for erroneous disclosures. Be able to discuss the limits of broker's obligations to correct errors. Explain obligation of broker to verify 3rd party information that contradicts seller's disclosure. Explain what to do when client lies in disclosure (including lie by omission i.e., zoning changes, new feedlot next door to home, etc.)

10. Describe the common title issues that may disrupt a real estate transaction, and describe the typical process used to resolve them. Demonstrate an understanding of what a broker's (vs. client's) duty is in resolving such issues (i.e., clouds on title, sewers, easements, etc.)

11. Describe how to handle a discrepancy between:
    - Various documents (i.e., legal descriptions in deed, title, tax documents, etc.)
    - Physical features (i.e., location of fences, high-water lines, gaps between parcels, encroachments, undedicated roads, etc.) and legal documents.

12. Be able to describe Mechanics and Materialmans (M&M) liens and when they might arise (new homes, kitchen remodel, etc.). Demonstrate the ability to knowledgably discuss this issue with potential clients as a seller's agent.

13. Discuss how to handle issues such as when inspection or "repairs" become a deal breaker, e.g., inspector says roof needed to be replaced but seller disagrees. Describe how this would be handled differently when acting as a seller's agent or as a buyer's agent.

14. Describe what happens to earnest money when a transaction fails to close. Explain the necessary procedure for a client to recover money, and to initiate an interpleader action.

Business Practice

Upon completion of this section, the student should be able to:

1. Discuss the possible negative consequences of operating outside one's area of expertise (e.g., dealing with transactions outside local market area, dealing with property transactions outside your specialty).

2. What are the possible consequences of an inadvertent omission or misstatement of facts?

3. Understand what documents need to go into a transaction file and how long they must be kept. Describe how these files should be set-up to meet any audit requirements or legal challenges. Describe what information needs to be shared with you managing broker and/or firm.

4. When dealing with client funds, explain how money is considered to be "trust funds" when it is received.

5. Describe the requirements for funds management including:
    - Licensee requirements to submit funds to the firm in a timely manner, and
    - Firm's requirements for appropriate (bank) accounts and requirements for record-keeping (including account reconciliation).

6. Describe how these procedures might differ for various types of funds including escrow accounts, trust accounts, income from leased property, etc.

7. Describe what records a broker needs to maintain in order to be prepared for a potential education audit.

8. Explain how you as Washington licensed broker would deal with an out-of-state transaction if approached by a client with whom you have a working-relationship (i.e., client desires to make a land purchase in Idaho, vacation cabin out of state, etc.)

Property Management

Upon completion of this section, the student should be able to:

1. Explain why it is necessary for a licensee to disclose to his/her managing broker any and all activities related to property management.

2. Understand rules and regulations for funds management of deposits, rents, etc. and what trust accounts are required.

3. List and describe common violations of landlord tenant law and how to remedy situation.

4. Describe acceptable and unacceptable practices allowed under Federal Fair Housing Laws and the Washington Law Against Discrimination when dealing with leasing, advertising, and other aspects of property management. Describe the acceptable procedure for vetting a potential tenant including credit checks, references, etc.

5. Demonstrate how to correctly complete a lease agreement.

6. Describe typical accommodations to be provided to tenants under the American with Disabilities Act (ADA). Describe the appropriate procedure to follow when a tenant complains about a potential ADA violation.

Current Topics