



WASHINGTON REALTORS[®]



Teaching Tools for DBs:

Teaching the Revised Agency Law to your Brokers

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Teaching Tool: Teach Good Communication Practices

- Recognize and immediately stop/depart anti-competitive convos
 - Buzz words to recognize describing broker compensation
 - “Industry standard”, “typical”, “required”, “normal”, “what do you charge?”
 - Beware of emails, texts, social media chat rooms, industry gatherings
- How should listing brokers talk to sellers about buyer broker comp?
 - Do NOT say: “No broker will show for less than _____”
 - Consider: “You may offer no compensation to buyer broker or if you want to offer compensation, you may offer any amount you choose. Here is why you might want to offer buyer broker compensation ... “
- What do your own training materials communicate?
 - Do you set an office minimum commission rate?



Teaching tool: Discuss this conversation in an office mtg.

LA texts BA after showing asking if Buyer is interested in the property.

Buyer agent: "Since Buyer's Broker Compensation is only X.X% we have decided to scratch this one off our list. Thanks and Good Luck!"

Listing agent: "You could just write it up with a higher comp or you could have Buyer kick in. X.X% is the predominate listing fee in the area, but there are ways around it if you try."

- Problems: BA says no offer "since" comp only X; implies LB should be offering higher comp/LB describes "predominate listing fee"
- Discuss: BA conversation appropriate with buyer but anti-competitive with LB
- ?s to answer: What should BA say when LB asks this question? Was it okay for LB to suggest that BA write an offer including increased compensation?



What's going to happen in Washington?

- Washington's Agency Law is being revised (SB 5191; unanimous pass vote)
 - Takes Effect January 1, 2024
 - Increases transparency for buyers and sellers
 - Requires brokers to negotiate and enter a written contract with their client
 - Requires consumer consent to dual agency
 - Re-writes the Agency Law Pamphlet into lay terms
 - Clarifies that minimum agency duties are owed to all parties



Increased Transparency

- All brokers must enter a Brokerage Services Agreement with client
 - Before or as soon as reasonably practical after providing brokerage services
 - Equally true for buyer and seller agents
- No services agreement = no compensation
 - Exceptions:
 - BPO/MVA/CMA (so long as no other RE brokerage services provided by agent)
 - Referrals (so long as no RE brokerage services provided by referring agent)
 - Commercial (however, requires separate and additional disclosure)
- This means: Brokers must discuss compensation with buyers asap
 - Amount, who pays, when paid, what if buyer has no \$, what if seller offers no \$



Common Questions

- Who will enforce?
 - Should listing firms demand copy of buyer agency agreement? (no)
 - Will escrow demand copy of buyer agency agreement? (no)
 - DOL will audit and civil lawsuits are possible
 - Meaning: potential regulatory discipline (license suspension) and civil damages including Consumer Protection Act remedy of enhanced damages and legal fees
- Does Firm still get compensation if no BA agreement?
 - No. Without a BA Agreement, the “buyer’s agent” gets no compensation
 - Recall: the buyer’s agent = the firm



Update existing relationships

- PSA drafted in 2023 but closing in 2024
 - Does buyer broker have a 2024 buyer agency agreement?
 - If not, no compensation
- Listing agreement from 2023
 - Amend using Form 18 to include consent to limited dual agency
- Teach this AND create mechanism within office administration to ensure this is caught in every transaction that closes in 2024.



First Comes Love, Then Comes Marriage

- Brokers should consider use of a non-exclusive agreement at first
 - Checkbox provision within BA agreement (Form 41)
 - Allows broker to discuss compensation and timely enter agreement without obligating buyer and broker to work together exclusively
- If relationship evolves and broker and buyer want to work together exclusively, broker can offer amendment to BA agreement
 - Form 41A



Common Questions RE: Exclusivity

If I have a non-exclusive and I close a transaction, can I get paid?

- Yes. A non-exclusive agreement is still a brokerage services agreement.

If buyer has non-exclusive with another broker and enters an exclusive with me, does that void buyer's non-exclusive agreement?

- No. Both agreements will exist simultaneously.

If buyer has multiple non-exclusives with other brokers, am I doing anything wrong if I enter exclusive with buyer?

- No. If exclusive broker writes buyer's offer, no problem. However, if non-exclusive broker writes buyer's offer on property within "area" of exclusive agreement, buyer will owe 2 commissions. Exclusive broker should educate buyer to that potential outcome



Practice/Illustrative Scenarios

Broker meets buyer at an open house that broker is holding for the listing broker (broker is not the listing broker). Buyer wants to purchase the house. Prior to discussing an offer, broker should:

- Ask if buyer is working with another agent
 - If so, does buyer have an exclusive agreement with other broker?
 - If so, send buyer to buyer's broker
 - If not, is it a non-exclusive agreement?
 - If non-exclusive, broker can proceed with buyer
- Provides buyer with the pamphlet and answers questions based on the pamphlet
- Enters a buyer agency agreement with buyer



Teaching Tool: Multiple choice quiz

You meet buyer at an open house. Identify all true statements below.

- a) Before you show the home to buyer, you must enter BAA.
- b) If buyer does not want to purchase the house and does not want to work with you in the future, you do not need a BAA with this buyer.
- c) If buyer wants to view other homes with you, you must obtain a BAA before showing other homes to buyer.
- d) If buyer wants you to write offer on house, you must obtain BAA before you discuss buyer's terms of offer unless you are the LA.



Bonus Question for Prior Quiz

- If you are the listing agent
 - Do you need a BAA with buyer?
 - If buyer signs BAA, what must be true of both the listing agmt and the BAA?
 - If you do not enter a BAA, have you complied with Agency Law?
 - If so, how?
 - If you do not enter a BAA, what must you give buyer and say to buyer?



Answer Key to 2 Prior Slides

- Multiple choice quiz
 - B, C and D are all correct and should be selected
- Bonus Questions
 - Broker needs BAA only if LB intends to be a limited dual agent
 - If buyer enters BAA, both consumers must have consented to broker serving as limited dual agent
 - LB complies with Agency Law because LB entered a brokerage services agreement with LB's client (seller)
 - Whether LB enters BAA or not, LB must provide buyer with a pamphlet and if LB does not enter BAA, LB must advise buyer that buyer is unrepresented and can seek separate representation from another broker or a lawyer



Scenario 2

You receive phone call from new buyer about your listing. After discussion, buyer doesn't want to pursue the listing but wants to view other properties with you. You meet buyer in your office later that week to discuss buyer's goals and financial situation before touring homes. Broker must:

- Have asked buyer during phone call "are you working with another agent?"
- Assuming the answer from buyer was "no" or "yes, but non-exclusive only," proceed with the meeting and provide the pamphlet at the office meeting.
- Enter into a buyer agency agreement at the meeting, before touring homes.



Teaching Tool: Multiple choice quiz

You receive a phone call from a buyer regarding your listing. Buyer is not working with another agent. Buyer does not want to purchase but wants to look at other properties in coming days. You should enter an agency agreement with that buyer: (select all that are correct)

- a) By e-signature before you meet with the buyer
- b) At your first in-person meeting, before you show property
- c) At your first in-person meeting, after you show property, assuming you want to work with each other going forward
- d) Within the first few outings and definitely before writing an offer



Scenario 3

You receive a buyer referral from a trusted source. This buyer is going to buy. You talk on the phone and determine buyer is not working with another agent. You agree to meet at a listed property that buyer really likes before meeting in your office. You should:

- Email the pamphlet to the buyer before meeting at the property and invite questions by email or separate phone call.
- Execute a buyer agency agreement at the meeting in your office (after touring the first property) before you provide additional brokerage services.



Teaching Tool: Multiple choice quiz

You receive and accept a buyer referral. You and buyer talk on the phone and buyer provides extensive information regarding goals and financial abilities/limitations. You agree to meet and view one of your listings. You should deliver the pamphlet and enter an agency agreement with buyer: (select all that are correct)

- a) During phone interview, by e-signature.
- b) Deliver pamphlet during interview but no BAA required. I'm already a dual agent.
- c) Deliver pamphlet during phone interview and enter BAA only after buyer chooses not to pursue my listing.



Bonus Questions for Prior Quiz

- If you selected (a), who do you represent when you show the listing?
- Why is (b) not correct?
- If you selected (c), what was your goal in waiting to enter the BAA?

Answer Key

A or C could be correct answers to the quiz so long as broker recognizes, in bonus questions, that (a) makes broker dual agent at showing and (c) preserves LB as seller's exclusive agent. (B) can never be correct because LB cannot be a dual agent without a written BAA.



Scenario 4

You have a long-term client relationship with a buyer who contacts you to discuss another purchase.

- If you do not have an active 2024 BAA with buyer, you should provide the pamphlet to buyer before providing additional brokerage services to buyer.
- If you do not have an active 2024 BAA with buyer, you must enter an agency agreement with buyer before providing additional brokerage services to buyer.

In this scenario, it is possible that broker enters a 2024 BAA with an enduring client and sets the term for a period long enough that broker would not have to continue entering new agreements every time the buyer is ready to make a new purchase.



Teaching Tool: Multiple choice quiz

You have a long-term client relationship with buyer who wants to discuss another purchase. You've entered an agency agreement with him in prior transactions. You should enter an agency agreement with buyer: (select all that are correct)

- a) Before discussing buyer's new purchase objectives.
- b) After buyer finds what he wants but before writing an offer.
- c) No need for a new agency agreement because I have a standing agreement with this former client.



Scenario 5

You are contacted by former client who wants to sell, in 6 months, but wants to meet now to discuss market value, suggestions for improvements and staging, advice regarding timing the market and the like.

- You should provide the pamphlet to seller now.
- If your MLS rules allow execution of the listing agreement now, execute the listing agmt.
- If your MLS rules do not allow execution now and entry into the MLS 6 months from now, then you need an interim agreement (“consulting agreement”) that you/your firm will have to prepare.



Consulting Agreement?

- NWMLS members cannot enter a listing agreement more than 30 days prior to putting the listing in the computer.
 - That time period may expand – pay attention to NWMLS rules.
 - Not likely to expand to 6 or more months.
- Other MLS? Consult your MLS rules for information.
- If MLS rules prohibit execution of listing agreement, DB will likely need to create an agreement for use by firm members to bridge the gap from seller consultation to seller listing.



Teaching Tool: Multiple choice quiz

You are contacted by former client who wants to sell, in 6 months, but wants to meet now to discuss market value, suggestions for improvements and staging, advice regarding timing the market and the like. What should you do to comply with the Agency Law? : (select all that are correct)

- a) At first meeting, present pamphlet and get listing signed.
- b) Present pamphlet now, sign listing when seller decides its time.
- c) Present pamphlet now and enter brokerage services agreement with seller. Ultimately, execute listing agreement with seller.



Does the pamphlet provide actual education?

- A real estate firm and broker must enter into a written services agreement with a seller to establish an agency relationship. The firm will then appoint one or more brokers to be agents of the seller. The firm's designated broker and any managing broker responsible for the supervision of those brokers _____ agents of the seller
 - “are” or “are not”
- An agency relationship may be terminated by notice from either party
 - True or false
- A limited dual agent ____ advocate terms favorable to one principal to the detriment of the other principal.
 - “may” or “may not”



Teaching Tool

The questions on the prior slide are basic but it could be fun to craft a game around asking questions that can be answered by reference to the pamphlet. Ask the questions but don't tell the brokers that all the answers can be found in the pamphlet. After answers are submitted, give them an opportunity to correct their prior answers, as necessary. Give awards based on broker(s) who answered correctly first time and broker(s) who were able to correct all wrong answers after searching the pamphlet.



Compensation terms Must be Disclosed on PSA

- Any terms of compensation offered by a party or a RE firm to a RE firm representing another party must be disclosed in the PSA
- This is not part of services agreement
 - Necessarily contemplates communication across the parties; not between broker and client
 - Legislates requirement to disclose compensation offered by seller to buyer broker firm
 - Already covered by final provision on face of statewide PSA
 - “Buyer Brokerage Firm Compensation Offered in Listing: \$ or % _____;
 Pay as Offered Other - See Addendum”



Teaching Tool: Hotline Question

The “Amount offered in the listing” auto-fills from the listing (or is inserted by buyer's broker) but some brokers do not check the appropriate box after that, whether it is “Pay as Offered” or “Other – See Addendum”. If the contract is written with no box checked, is it sufficient to conclude that it is “Pay as Offered”?



Answer

Form 21, paragraph "u" says:

"Seller and Buyer shall pay compensation in accordance with any listing or compensation agreement to which they are a party. ... The Buyer Brokerage Firm's compensation offered in the listing shall be paid by Seller as set forth in this Agreement or any Addendum hereto. If there is any inconsistency between the Buyer Brokerage Firm's compensation offered in the listing and the description of the offered compensation stated in Specific Term No. 17, the terms of the listing shall supersede and control."

Seller is obligated to pay compensation to buyer broker "as set forth in this Agreement". If buyer broker fails to direct payment to broker's firm by failing to mark a box on line 17, then it is unclear what a court will do. Broker is held to the standard of care of a lawyer in completing the PSA. If broker fails to mark a box directing payment of compensation to broker, should a judge protect that broker's interests? This is a preventable mistake. It is a mistake made through carelessness or worse, an effort to be clandestine or even deceptive.



Teaching Tool: What if line 17 is ignored?

A contract is believed to be fully signed by both parties and mutual acceptance achieved. The property is listed in the MLS and compensation is offered. On Form 21, Section 17, the only thing that has been filled out is the box is checked for “Pay as Offered”. Do we have mutual acceptance? Does a number need to be written on the line above “Amount Offered in Listing”?



Answer

A court may or may not obligate seller to pay. Unquestionably, broker violated the revised Agency Law.

Minimum Agency Law duties include:

“To disclose in writing before the broker's principal signs an offer, or as soon as reasonably practical, but before the parties reach mutual agreement: ... Any terms of compensation offered by a party or a real estate firm to a real estate firm representing another party.” RCW 18.86.030(1)(g).



Common Question

- If I am sharing my compensation with another broker, such as a referral source or a team member, must I disclose that to my client or the other party?
 - No. Recall the actual requirement: “Any terms of compensation offered by a party or a RE firm to a RE firm representing another party must be disclosed in the PSA.”
 - Such as: seller or listing firm paying buyer broker firm –or- buyer or buyer broker firm paying listing firm
 - When broker shares with team member, that is not payment to another firm
 - When broker shares with referral source, the referral source does not represent the other party
- Simple answer: disclose where you get your compensation but not who you give it to (unless you are giving it to the other party’s firm)



Help Your Brokers Create Their Pitch For A Written Agreement And Practice

- Ideas only ...
 - Everything in RE is done in writing, including our relationship/agreement
 - Now required by law
 - We both know, we can count on each other through the process
 - You should have the terms of our agreement written out
 - You and I should both know what to expect of each other
 - Once compensation is established, I can negotiate payment by seller
 - You will instruct me whether you want to see listings with less SOC/BAC
 - If so, you can direct me to negotiate with seller for seller to pay your obligation
 - If not, I will reach out to those LB and advise why you are not looking at their home
 - They may increase their offer of compensation



Broker must establish Broker's Value

- You Should Be Able To Spontaneously Identify Your Value
 - When you hire me, I am liberated to put all of my experience, training and the resources of my firm to work for you
 - I will search for properties that meet your needs and send you information on them
 - I will show homes on your schedule (even if you find a FSBO on a weekend/evening)
 - When you select a neighborhood, I will research what winning offers are including locally
 - I will provide you with a MVA so you know the price/range to offer
 - I have/will cultivate good working relationships with brokers (LB) to smooth negotiations
 - I will refer you to capable industry professionals who want us to succeed
 - I will help you through the inspection process and contract renegotiations
 - I will help you problem solve inevitable, un-anticipatable challenges



Develop and practice your actual pitch

- Get to know the person across from you; genuinely listen to them
 - Set aside time for a meeting
 - If this person is a stranger ... is your best friend ... a former client
 - What are they looking for – take notes
 - What are their goals?
 - Can you help them?
 - FYI: You can't help every buyer. Some are unrealistic. Educate and move on as necessary.
- Sell yourself ... and the experience you will create for your client!
 - Who are you, what will you do for them?
 - Why is it important for them to commit to you?
 - What are you and your services worth?



Why should a client hire you? What is your value?

- Explain Market Knowledge
 - Local community
 - Seasonal impacts, types of properties selling, time on market, negotiability
 - Broader market – state and nationally
 - Interest rates, lender requirements, transactional trends
 - Help client understand that your job is to be the expert who empowers them with knowledge so that the client can make good personal decisions
- Expert Service
 - For sellers: effective marketing, property showings, staging
 - For buyers: available properties, inside information on properties, expanding search based on buyer criteria



Your Value ...

- Community Intel
 - What are sellers in this specific neighborhood experiencing and hearing
 - Development of relationships with brokers working this community
 - Conversations with brokers involved in recently closed transactions
 - For buyers – are there off-market properties you can present?
- Provide CMAs
 - For buyer and seller – your client will never have to guess at property value because your expertise will give them hard data and information
 - For buyer: compare your ability to give CMA versus what listing broker can say about the value of seller's property



Your value ...

- Creating offer terms
 - How should you structure an offer/counteroffer
 - Prioritizing deal points: price, closing date, payment of broker compensation, etc.
 - How important are contingencies?
 - Pros and cons
 - Amount of earnest money
 - Forfeiture or election of seller remedies?
 - How to write an offer so that buyer broker's compensation can be paid
 - Be prepared with response to buyer who says: "I can't pay you"
 - What if buyer is a VA buyer?



Your Value ...

- Negotiating
 - Relationships with other brokers
 - Do other brokers respect/like you and want to see you and your client succeed?
 - How do you interact with other brokers?
 - What has your client learned about your negotiation skills during their negotiation with you?
- Handling low appraisals
 - What are the options?
 - What forms should be in the transaction anticipating potential appraisal outcomes?
 - Additional buyer funds? Seller price reductions? Alternate appraisals?
 - Providing comps to appraiser in advance to avoid low appraisals



Your Value ...

- Working with Inspectors and Contractors
 - Duty to advise client to seek advice of experts in areas exceeding expertise
 - Because of your/firm's relationship with contractors, you will help client gain access
 - FYI: build those relationships! Take care of your contractors.
- Problem solving with third party professionals
 - Title, escrow, lenders, attorneys
 - Crisis resolution: lender solutions, escrow officer favors, title workarounds
- Managing Communications
 - Does client have time to field scheduling calls from escrow, from the other broker, status updates from lender, etc?



Your Value ...

- Showing up
 - Opening the property for third parties who need access
- Knowledge of customs and industry practices
 - You are part of the “club” but client is not so you know the lingo and the customs that will make the transaction smoother
- What else is on your list? What do you do for your clients?



Discussing Actual Compensation

- Ideas only ...
 - Compensation paid only on a closed transaction
 - If you terminate prior to closing, no compensation
 - If you look for three months without finding your home, no compensation
 - All of that is great, because finding the home you want is most important
 - You won't lose me through all of that because we'll be partners in this process
 - I and my firm charge __% or \$_____ per transaction
 - When you see the SOC/BAC on the MLS, I get part of that and my firm gets the balance
 - Often, seller will offer compensation sufficient to pay me and you need do nothing more than agree to seller's payment of my compensation
 - If seller offers less, then you would need to make up the balance
 - We'll talk about how that can happen
 - If seller offers more, that gives options as well



Revisions to the Buyer Agency Agreement

- Default expiration of 60 days, based on statute
 - Notice of right to terminate has been removed
- Option to select exclusive or non-exclusive with explanation of each
 - Defaults to non-exclusive unless box for exclusive is checked
- Offers limited dual agency with buyer initial spaces
- Paragraph 5 identifies amount of buyer broker compensation
- Paragraph 6 = agreement if seller offered compensation is different
- Paragraph 7 = terms: due/exclusive vs non-exclusive/tail provision
- Parties negotiate what happens if seller offers no compensation



Buyer Agency Agreement, para 6

- Parties agree to the amount of compensation in paragraph 5
 - Percentage, flat fee or other
- 6(a) - If seller offers that compensation, buyer must accept on PSA
- 6(b) - If seller compensation is greater, buyer and broker direct:
 - Difference is paid to buyer brokerage firm, or
 - Difference is paid to buyer, if allowed by lender, and if not, to firm or
 - Difference is paid to seller
- 6(c) - If seller compensation is less, buyer and broker direct:
 - Buyer makes up the difference at closing (deliver Form 40A to escrow)
 - Buyer instructs broker to negotiate for seller payment



Buyer Agency Agreement, para 7

- Compensation is owing when buyer purchases property in “Area”
 - “Area” is defined in introductory paragraph
- If relationship is exclusive, compensation is due at closing
- If relationship is non-exclusive, compensation is due at closing **IF** the purchase agreement identifies the firm as buyer’s agent
- If agency agreement expires, buyer liable for compensation
 - Exclusive: if broker brought the property to attention of buyer
 - Non-exclusive: if firm presented an offer from buyer to seller



Teaching Tool: Hotline Question

How should I complete Line 17 of Form 21 if the agency Disclosure is Dual Agent and I agreed with buyer or seller that the amount of compensation to “buyer broker” would be different than published SOC if I am a dual agent?

What if I reached a different agreement with seller than I did with buyer?



Teaching Tool: Hotline Question

Form 21, paragraph 17 is filled in with \$5,000 and “pay as offered” is checked. But the listing agreement says that seller will pay \$7,500 to buyer broker. Which prevails?



Teaching Tool: Hotline Question

Seller offered compensation of \$2500 in the MLS. Buyer's broker has a buyer agency agreement for \$3,000. On Form 21 line 17, the buyer's agent checked the box "\$" and wrote in 3,000. Also included is a form 41c stating that the sellers are paying total compensation to buyer broker of \$3,000. Is this correct?



Writing the offer (DBs: You should frequently train/offer practice sessions writing offers based on different scenarios and fact patterns.)

- You are BB and agreed to total compensation of \$10,000
- List price is \$500,000, compensation offered to BB is \$5,000
 - You need seller to contribute an additional \$5000 or 1% of the purchase price
- VA buyer wants zero down/zero closing costs
 - Assume buyer closing costs are roughly 3% of purchase price
- Which forms will you use in offer regarding buyer's financing contingency, seller payment of buyer cc and extra compensation?



Writing the offer: seller paying buyer cc

- You will use Form 21 to write the offer
 - Line 17: seller offered compensation = \$5,000
 - Mark “other – see addendum”
- Which form will you use to obligate seller to pay buyer closing costs of at least 3%?



Writing the offer: seller paying increased comp

Which form will you use to obligate seller to pay/increase buyer broker compensation to include the total compensation to you?



Absolutely Critical ...

... If you write the commission obligation on the wrong form, you may create a transaction that lender cannot fund, based on lender's guidelines.

Seller obligations written on Form 22A as buyer closing costs will appear in buyer's column on the settlement statement. Buyer broker compensation written on Form 41C will appear in seller's column on the settlement statement.





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