

## KEY POINT REVIEW

**Real estate agency relationships** are governed by **common law**, which is established by tradition and court decisions, and **statutory law**, which is passed by state legislatures and other governing bodies.

An **agent** is hired by a principal to act on the principal's behalf. **Agency** is the fiduciary relationship in which the agent is held in a position of special trust and confidence by the principal. In a real estate transaction, the **principal** is the **client**. A **customer** is the nonrepresented party for whom some level of service is provided and who is entitled to fairness and honesty.

A subagent is authorized to work with the agent on behalf of the client. A **nonagent** (also known as a **facilitator**, **intermediary**, **transaction broker**, **transaction coordinator**, or **contract broker**) assists one or both parties with the transaction without representing either party's interests and often is subject to specific statutory responsibilities.

The relationship between principal and agent must be **consensual**. As **express agency** is based on an express agreement between agent and principal, while an **implied agency** will be created when the actions of the parties indicate that they have mutually consented to an agency. The source of the agent's **compensation** does not determine the agency, because the agent may be compensated by someone other than the client, or the agency may exist even if no compensation is involved—a **gratuitous agency**.

An agent has a **fiduciary relationship** of trust and confidence with the principal. The six common-law fiduciary duties can be remembered as **COLD-AC**, which is an acronym for the following:

- **Care**
- **Obedience**
- **Loyalty**
- **Disclosure**
- **Accounting**
- **Confidentiality**

A **universal agent** is empowered to do anything the principal could do personally.

A **general agent** represents the principal in a broad range of matters.

A **special agent** represents the principal in one specific act or business transaction only, under detailed instruction.

A **single agency** is one in which an agent represents only one party in a transaction. A real estate broker becomes an agent of the seller by entering into a listing agreement for the seller's property. A **buyer's broker** represents a buyer as an agent to find property that meets the buyer's specifications, as set out in the **buyer representation agreement**.

A **dual agency** is one in which an agent represents two principals in the same transaction. Dual agency, where allowed by state law, requires the **informed consent** of both principals. An **undisclosed dual agency**, which may occur inadvertently, can result in rescission of the sales contract, forfeiture of a commission, a lawsuit for damages, and possibly license suspension or revocation.

A **designated agent** (or **designated representative**) is a sales associate authorized by the broker to represent one party to a transaction, while a different sales associate in the same firm represents the other party to the transaction.

**Termination of agency** may be accomplished by the

- completion, performance, or fulfillment of purpose of agency;
- destruction or condemnation of the property;
- expiration of the terms of the agency;
- mutual agreement of all parties to the contract;
- breach by one of the parties, who may be liable for damages; or
- operation of law, as in the bankruptcy of the principal.

An **agency coupled with an interest** cannot be revoked by the principal or terminated upon the principal's death.

Statements to clients and customers should be clearly identified as **opinion** or **fact**. **Puffing** is legal exaggeration of a property's benefits, while **fraud** is the intentional misrepresentation of a material fact to harm or take advantage of another person.

A **negligent misrepresentation** occurs when a real estate professional **should have known** that a statement about a material fact was false and the real estate professional's misrepresentation was due to culpable (careless) negligence rather than simple (accidental) negligence.

The **seller** of residential property may have the duty to disclose any known **latent** (i.e., hidden) **defects** that threaten a building's structural soundness or an occupant's personal safety. In some states, an agent has an independent duty to conduct a **reasonably competent and diligent inspection** of the property and to disclose defects to prospective buyers. Disclosure of environmental hazards may be required.

**Stigmatized properties** may require an agent to consult an attorney. **Megan's Law** requires states to make available to the public information about how they can determine where persons convicted of sexual offenses live in the community.