

Glossary of Agency Law Terms

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actual authority

authority that is either expressed or implied by the principal

affiliated licensee

someone (e.g., associate broker, salesperson) who works on behalf of an employing broker, such as a principal broker; known in Oregon as an associated broker

affirmative duties

duties owed by the agent to the client, other principals, or principals' agents; not necessarily fiduciary

agency

legal relationship created by one acting on behalf of another or others in business or legal dealings

agent

also called a fiduciary; in a real estate transaction, an individual who acts for and with authority from another, called the principal or client

antitrust laws

statutes that prohibit businesses from engaging in practices that would create a monopoly or restrain fair trade

apparent authority

also called "ostensible authority," is authority created by estoppel, wherein the principal, by words or conduct toward other persons, has led others to believe the agent possesses, when there had been no actual authority granted

assigned agency

same brokerage agents remain single agents for the buyer and seller, respectively; in Oregon, this is referred to as disclosed limited agency

associated broker

someone who works on behalf of an employing broker, such as a principal broker; known nationally as an affiliated licensee

buyer

any potential transferee or purchaser in a real property transaction

buyer's agent

an agent employed by a buyer to find suitable property and negotiate one purchase on the buyer's behalf

client

one on whose behalf a real estate broker acts in an agency relationship

commingling

illegally combining funds being held on behalf of a client with a licensee's funds, whether in the principal's trust account or in the agent's personal account

commission

an agent's compensation for services performed in a real estate transaction, typically a percentage of the selling price or rent

comparative (or competitive) market analysis (CMA)

a professional opinion of market value to assist the seller in setting a listing price or the buyer in making an offer

confidential information

information from or concerning the principal that, if disclosed, would be to the detriment of the principal and that the principal can reasonably expect to be kept private

conversion

misuse or misappropriation of a principal's funds, whether for one's own benefit or the benefit of others

cooperating [co-op] broker

another broker or its affiliated licensee acting as a subagent in a transaction.

customer

often referred to as third parties; this term is not used in Oregon anymore, but is used nationally

designated agency

same brokerage agents remain single agents for the buyer and seller, respectively; in Oregon, this is referred to as disclosed limited agency

disclosed limited agency

same brokerage agents remain single agents for the buyer and seller, respectively; specific to Oregon

disclosed limited agency agreement

written agreement that establishes disclosed limited agency relationships, signed and dated by the parties to be bound or by their duly appointed real estate agents

dual agent

licensee in an agency relationship with both the buyer and the seller, two buyers, or owner and tenant in the same transaction; must be disclosed and consensual

employee

agent employed to perform certain services for the employer; subject to employer's close supervision and right to control employee's conduct in performing services

estoppel

an agency relationship created by court order, after a principal has denied that an agency relationship existed but has led a third party to believe that such a relationship did exist

express authority

oral or written authority given by a delegator or principal to his/her delegated authorizer or agent

express contract

oral or written agreement between the principal and the agent, for creating an agency; includes listing and buyer agency agreements

facilitator

a non-agency representation: exercises duties of good faith, honesty, and reasonable skill and care but no fiduciary duties with regard to price negotiations

fiduciary duties

duties owed by agent to a principal: loyalty, obedience, reasonable skill and care, accounting, disclosure, and confidentiality; the responsibilities of an agent to act in the highest faith and not try to obtain an advantage through misrepresentation, concealment, or pressure

fiduciary relationship

a special relationship of trust, confidence, or responsibility in certain obligations to others; obligates agent to be faithful and loyal to the principal's interest

final agency acknowledgement

acknowledgement of existing agency relationships of the buyer and seller at signing of offers to purchase

general agent

agent with authority to conduct a series of transactions of a continuing nature in a broad but specified range of business matters for a principal

implication

an agency relationship created by acting in a manner that, to another, may imply agency; for example, a seller's agent being very helpful to a buyer, without informed consent of the buyer and seller; such an implied agency relationship is illegal dual agency

implied authority

authority an agent reasonably needs to perform the duties given by express authority

imputed knowledge

a principal is considered to have the same knowledge or notice of facts known by his/her agent or subagent, and an agent is considered to have the same knowledge or notice that subagents have

independent contractor

agent contracted with a principal to deliver an agreed result or product; efforts or methods to achieve that result are not subject to close control by the principal

latent defect

in real estate, a material fault of the property that is not readily observable

law of agency

area of common law that governs agency relationships

list-back agreement

a type of financing tying arrangement in which a developer sells land to a builder, on the condition that the builder agrees to "list back" the improved property with the developer's brokerage firm; may be illegal in some states

listing price

amount expressed in dollars, specified in the listing agreement, for which the seller is willing to sell the real property through the listing agent

material fact

fact that substantially adversely affects the value of a property or a party's ability to perform his/her obligations in a transaction

misrepresentation

material communication that is contrary to fact, upon which a party relies, to his/her detriment, through either commission or omission

misrepresentation by commission

a statement (oral or written) that was material to the formation of the contract, made contrary to fact, that another person has relied upon to his/her detriment

misrepresentation by omission

when a person does NOT state a fact to prevent another person from acting to his/her detriment

multiple listing service

composed of listings of local brokers who circulate property listings among themselves

necessity

a method of creating agency authority in which an agent has expanded authority in an emergency

non-agency

a relationship of licensee to parties, wherein the licensee does not advocate for interests of parties to any transaction (see "facilitator") and whose fiduciary duties include all except (1) negotiating for a higher price for the seller or for a lower price for the buyer; (2) advice to the buyer as to the price or terms s/he should offer or advice to the seller as to the price or terms to accept

offer

written proposal executed by a buyer for the sale or lease of real property

offering price

amount expressed in dollars specified in an offer to purchase

power of attorney

an authorization that allows a person to act as an attorney in fact and sign contracts on behalf of the principal

price-fixing

an antitrust violation that occurs when real estate brokers conspire to agree directly or through their trade associations to fix or stabilize their fees or commission rates, whether formally, informally, or even innocently

principal

see "client": an entity who employs a real estate broker to negotiate a purchase, sale, exchange, management, or lease of real estate

puffing

an exaggerated opinion: for example, an agent showing a house to a prospective buyer says, "This has the best view in the neighborhood"; such a statement is considered "puffing the goods" and is generally understood to be nothing more than an exaggeration or rhetorical statement and, at best, an opinion not to be taken as necessarily factual

ratification

authority given after an act has already been performed: if a principal, with full knowledge of what a heretofore unauthorized agent has done, later accepts the benefits of the agent's acts and agrees to be bound by those acts and accept what is now an agency relationship, the principal is said to have ratified those acts

real estate agency disclosure pamphlet

explains the legal relationship between the broker and consumer; a copy must be provided by a real estate agent to each party to the real property transaction that the broker represents at first contact with the party

real property

defined by Oregon Revised Statutes, Chapter 696 as: any estate in any real property (residential, commercial, industrial), including a condominium, a timeshare property, and the granting of an option or right of first refusal; includes a mobile home or manufactured dwelling owned by the person that owns the land on which the manufactured dwelling is situated

real property transaction

a transaction regarding real property in which the agent is employed by one or more of the clients to act on their behalf in that transaction, to include but not limited to listing agreements, buyers' service agreements, exclusive representation contracts, and offers to purchase

Sherman Antitrust Act

an act passed by the U.S. Congress and signed into law by president Benjamin Harrison in July 1890 that prohibits anticompetitive conduct, whether by two or more separate entities participating in a common scheme or by a plan intended to unreasonably restrain trade or by a single entity attempting to create a monopoly (26 Stat. 209, 15 U.S.C., sections 1 through 7)

seller

any potential transferor in a real property transaction, to include an owner that enters into a listing agreement with a principal real estate broker, whether or not a transfer results, or that receives an offer from an agent acting on behalf of a buyer to purchase real property of which the entity owns

seller's agent

an agent who has entered into an agency relationship with only the seller in a real estate transaction

single agency

the practice of representing only one principal in any transaction

special agent

an agent that has limited authority to conduct a single transaction for a principal; authority confined to a particular, specific task

split agency

a form of dual agency: when agents of the same brokerage remain single agents for the buyer and seller, respectively

subagency

an agent who is authorized by another agent---for example, affiliated licensees who work on behalf of a principal broker are agents of the principal broker; subagency is no longer a common practice in Oregon, however, other states may still use this practice

subagent

literally an agent of an agent; a person to whom a buyer's or seller's agent has delegated authority and whose hiring has been authorized by the buyer or seller; has the same responsibilities to the buyer or seller as the buyer's or seller's agent; can also be an affiliated licensee working on behalf of a principal broker

third party

in an agency relationship, a person (or entity) with whom the agent deals as a representative of the client; can be involved in the transaction but not as one of the principals; referred to nationally as a customer; examples: when an agent is employed to find a purchaser for a property, potential buyers are customers of the agent; when employed to find property for a buyer, potential sellers are the customers; when employed to lease and manage property for an owner, the tenants are the customers

transaction broker

representative of a non-agency relationship; a licensee who acts as a facilitator in a transaction, rather than as an agent, and does not owe fiduciary duties to any party in the transaction

tying arrangements or tie-ins

agreements to sell one product only on the condition that the buyer also purchases a different or tied(-in) product; illegal if (1) two or more separate products or services are tied together either by contract or by a course of dealing between the parties; (2) the market power of one party in the tying product or service market is sufficient to restrain competition in that market; (3) the restraint on commerce in that market is substantial

universal agent

an agent who has the broadest authority that can be lawfully delegated to a representative; s/he is authorized to perform all acts that can legally be delegated, including signing contracts related to all personal and business matters of the principal

vicarious liability

liability for the actions of another; in real estate, a supervising agent or principal broker is held liable for the acts of agents and/or subagents who buy or sell real property on behalf of the supervising agent or principal broker