

58-30,106. Minimum requirements of seller's or landlord's agent. (a) A seller's agent or a landlord's agent shall be a statutory agent with the duty and obligation to:

- (1) Perform the terms of the written agreement made with the client;
- (2) promote the interests of the client with the utmost good faith, loyalty and fidelity, including:
 - (A) presenting in a timely manner all offers to and from the client, when such offer is received prior to the closing of the sale unless the seller instructs the broker in the agency agreement not to submit offers after an offer has been accepted by the seller;
 - (B) disclosing to the client all adverse material facts actually known by the licensee about the buyer or tenant; and
 - (C) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (3) account in a timely manner for all money and property received;
- (4) comply with all requirements of this act and rules and regulations adopted hereunder; and
- (5) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes and rules and regulations.

(b) If pursuant to subsection (a)(2)(C), the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters.

(c) A seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(d) (1) A seller's or landlord's agent owes no duty or obligation to a customer, except that a licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to:

- (A) Any environmental hazards affecting the property which are required by law to be disclosed;
- (B) the physical condition of the property;
- (C) any material defects in the property;
- (D) any material defects in the title to the property; or
- (E) any material limitation on the client's ability to perform under the terms of the contract.

(2) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any qualified third party.

(3) Except as provided in subsection (d)(4), a seller's or landlord's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer.

(4) A seller's or landlord's agent shall disclose to the client or customer any facts actually known by the licensee that were omitted from or contradict any information included in a written report described in subsection (d)(3).

(5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.

(e) A seller's or landlord's agent may provide assistance to the customer by performing ministerial acts. Performing ministerial acts for the customer shall not be construed as violating the brokerage firm's agency with the seller or landlord and shall not be construed as forming an agency with the customer.

(f) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(g) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer subagency and pay compensation to other brokers.

(h) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer to cooperate with a buyer's or tenant's agent or to cooperate with and pay compensation to a buyer's or tenant's agent.

(i) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer to cooperate with a transaction broker or to cooperate with and pay compensation to a transaction broker.

(j) If the seller or landlord has authorized the broker to offer cooperation with other licensees pursuant to subsection (g), (h) or (i) the broker shall not refuse permission to another licensee to show a listed property or refuse to receive and transmit to the seller or landlord a written offer or a listed property from another licensee specifically instructed by the seller in writing. The broker shall provide a copy of the written instructions to another licensee upon request.

(k) A seller's or landlord's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice.

History: L. 1995, ch. 252, § 6; Revived, L. 1997, ch. 65, § 32; L. 1997, ch. 65, § 33; Oct. 1.