Chapter 7 Summary
Real Estate Brokerage and Law of Agency: Brokerage

Texas Real Estate Principles 1

Texas real estate law sets regulations for much of the activity that goes on in a real estate brokerage.

- The **core activity** of real estate brokerage is the business of procuring a buyer, seller, tenant, or property on behalf of a client for the purpose of completing a transaction. If successful, the broker is usually paid a negotiated percentage of the purchase price.
- A transaction involving a cooperating subagent is called **co-brokerage**. In a co-brokered transaction, the listing broker splits the commission with the “co-broker,” typically on a 50-50 basis.

To generate business, as well as achieve the transactional objectives of clients, a broker must be proficient in four skill areas:

- Obtaining a client listing - prospecting and pricing
- Marketing a listing - if a more precise estimate of market value is desired, the seller should hire a licensed appraiser.
- Facilitating the closing of a transaction
- Managing market information

**Brokerage** is distinct from the practice of rendering real estate advisory services. Examples of **advisory services** include:

- Providing an estimate of value
- Performing market analysis
- Managing property

Only a broker with an **active broker's license** can hire and employ a licensed salesperson. A licensed salesperson may work only for the employing broker and may not work for or receive direct compensation from any other broker.

A broker may hire a sales agent as an **independent contractor** (IC) or as an employee. An agent employee of a broker may receive wages, salary, additional commissions, expense reimbursements, and benefit plans. An independent contractor's compensation is normally a combination of commissions and free office support.

**Listings** are the traditional source of a broker's income. The process of **marketing a listed property** occurs in three broad steps leading to the desired end of a completed sale contract:

1. **Initiating a marketing plan** - a combination of promotional and selling activities.
2. **Selling the prospect** - The offering and counter-offering process continues until a **meeting of the minds** results in a sale contract.
3. **Performing pre-closing activities** - The time period between contracting and closing is referred to as the **contingency period**, or pre-closing period. A broker must be careful to avoid two common violations of escrow regulations:
   - Commingling - mixing the broker's personal/business funds with escrow
   - Conversion - misappropriating escrow funds for the broker's business
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**Antitrust laws** are state and federal laws designed to maintain and preserve business competition. These laws are based on the belief that free enterprise and healthy competition are good for individual consumers as well as the economy.

In general, a violation of an antitrust law occurs when all three of these parameters apply to a business activity:

- There is a *monopoly, a contract, a conspiracy* or a combination of such.
- The existence of the monopoly or conspiracy creates a *restraint of trade* – which is a negative impact on an individual’s or a company’s ability to do business.
- The restraint of trade *unreasonably* restricts competition and functions against the public interest.

The **Sherman Antitrust Act** of 1890 is the principal federal statute that covers competition and is one of the most important pieces of antitrust legislation. State and federal antitrust laws prohibit brokers from:

- **Price Fixing** – Collusion between or among members of a particular trade to maintain prices at a set level.
- **Group Boycotts** – Agreements between or among members of a particular trade that would prevent other members from fair participation in the trade's activities.
- **Market Allocation** – Agreements between or among members of a trade to avoid doing business in specific market areas.
- **Tie-in Arrangements** – Arrangements that requires a buyer to purchase additional or unrelated products or services when making a product purchase.

The **Clayton Antitrust Act** of 1914 was designed to cover restraints on interstate trade or commerce that are not covered under the Sherman Act. This included preventing individuals from serving as directors at competing companies.

The **Texas Deceptive Trade Practices-Consumer Protection Act (DTPA)**, Chapter 17, Subchapter E, Business and Commerce Code, protects consumers from any false, misleading, or deceptive acts or practices by brokers and other providers of goods and services.

Interest in better consumer protection led the courts to make other changes:

- **Sellers Disclosure Notice**- documents what the sellers know about the property as well as provides a list of appliances and whether or not they are working
- **Real Estate License Act**- obligates licensees to disclose any known or latent defects in a property
- **Fraud in Real Estate and Stock Transactions Statute, Article 27.01, Business and Commerce Code**- states that anyone who stands to gain from a real estate transaction is *assumed* to have known all aspects related to the transaction. *Fraud* is the intent to deceive; *statutory fraud* includes misrepresentation as well as unfulfilled promises