Chapter 13 Summary
Creation and Termination of Agency
Texas Law of Agency

Agency is a relationship in which a person from the public now has a licensed broker and the broker’s salespeople to assist the client in accomplishing either selling a property, buying a property, or leasing a property.

Up to the point of creating an agency, the licensee was working with a customer and now the customer becomes a client.

The responsibility of taking care of the needs of the client fall upon the broker even though a salesperson in the office may be the one in direct communication with the client. If the salesperson falters, the broker needs to pick up the slack. If the salesperson needs assistance, it should be provided by the broker.

The best way to create agency is in writing, rather than implying agency.

An exclusive right to sell is the most desirable listing to have. Under this agreement, it does not matter who sells the property. As long as the property sells during the time that the broker had the listing, the seller should pay the broker the commission.

Exclusive Agency is usually used when the seller wants to reserve certain names to sell the property to without the help of the broker.

The only difference between exclusive right to sell and exclusive agency is that in exclusive agency, the seller has reserved the ability to sell the property without the assistance of the broker.

The seller can give an open listing to as many brokers as they can get to take it.

This type of listing is not very desirable and some brokers have a policy against taking these types of listings. The Multiple Listing Service (MLS) does not allow open listings to be entered because a conflict might arise as to who is the procuring cause of a transaction.

The buyer’s representation agreement is written in such a way that the buyer is exclusively represented by one broker and is not to enter into another agreement with another broker.

A buyer that would rather remain a customer rather than become a client would do so to be able to leave one broker and go to another without having any relationship created between them.

There should never be undisclosed agency. Each licensee should always know who he or she is representing and be comfortable telling licensees and customers about that representation.

There are three disclosures that should take place when creating agency with a client whether that client is a seller or a buyer.

- The licensee should explain what the company policy is concerning cooperating with other brokers
- The client should also know where the commission is coming from
- Each client should have it explained to them that the broker could wind up representing both the buyer and the seller
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Most people would like to end agency in a way where the needs of both the client and the licensee are satisfied.

It's always the goal of the licensee to meet the needs of the client, but the agent does not have full control over all situations. Because of the market, the asking price, the condition of the property, problems with title, survey issues, financial commitments, and a lot more possible difficulties, not every property can be sold and not every buyer can purchase.

**The best way to end agency is to close the deal.** This would be done by getting a suitable price and terms for the seller and by finding a suitable property for the buyer. If the agent lets the listing expire, there is no hope of getting a commission on that property.

Another one of the ways agency can end is for the **time limitation to expire.** Since all of the listing and buyer representation agreements have an expiration date, the only way a "reasonable time" decision would have to be made is when the agreement is **an oral agreement.** There is no reason for this situation to ever occur as long as the licensee creates agency in writing.

**Rescission** is when both the client and the broker agree to end the relationship that they are in.

Some sellers will not be happy with the lack of progress in showing and selling their home. The client can request the listing be revoked. This is termed **Revocation by the Client.**

There will be times when the client may want to continue, but the broker does not. The broker can cancel the agency agreement, but must have good cause to do so.

**Agency can terminate** by the death of the client or the broker. TREC will require a broker to be assigned to the office to complete transactions that are in trust.

Other ways for agency to terminate include the following:

- Broker Failure
- Bankruptcy of the Seller
- Foreclosure of the Property
- Property is Destroyed
- Broker's Breach of Fiduciary Duties
- Incompetence of Broker or Client

There is no real reason not to begin agency in writing. The same thing applies to ending agency relationships. There are forms from the Texas Association of REALTORS® that are to be used to terminate agency with sellers and buyers. Even if the relationship has been a verbal agreement between the broker and the client, there is no reason why the agency should not be terminated **in writing.**

The one **fiduciary duty** that continues beyond the agency relationship is confidentiality. **The only exception to this would be if the client gave the salesperson permission to share that information with others.**

In some cases where the commission is earned only if the contract closes, the broker's fiduciary duties continue through the closing and do not stop when the buyer is located and the contract is agreed to.
Chapter 13 Summary  
Creation and Termination of Agency

Texas Law of Agency

The broker's disclosure duties continue throughout the closing or until the purpose of the agency ends, such as a tenant representation agreement in which the property the tenant wants is located and negotiated to a conclusion.

A client has the power to end agency at any time, except in the case in which an agency is coupled with some ownership claim of the broker in the property.

There are some ways that agency does not terminate. For example, since the clients all belong to the broker, agency does not end when a salesperson leaves one broker to be sponsored by another broker.

Another example that would not terminate agency is if the client should get married.

There is no form to end the relationship that a salesperson has with the broker. The normal way that the independent contractor relationship ends is that the licensee lets the broker know to send his or her license back to the Texas Real Estate Commission.

One of the problems with the city changing zoning for an area is that the broker's company policy may not allow the salesperson to re-list the property under its new status.