A DAY IN THE LIFE OF A BUYER AGENT

What you might consider doing for your buyer client

A licensee’s duty to a buyer as a buyer agent is slightly different in every state. Licensees should keep up on the laws and rules in their states. This document is meant to highlight examples of some of those duties. It is not intended to be an all-inclusive list. Terms of a brokerage agreement and company policy must also be taken into consideration.
Chapter One: Agency and the Fiduciary Relationship

Introduction:
In this chapter, we will go over the definition of the Fiduciary Relationship. We will differentiate between a customer and a client (no-agency or agency). We will then talk about different forms of agency in the scope of representing the buyer; specifically, the differences between single agency, appointed agency, disclosed dual agency, and self-representation.

Learning Objectives:
Upon completing of this section, students will be able to:

- Distinguish the difference between a customer and a client
- Understand the full scope of the fiduciary duties
- Differentiate between different types of buyer agency representation

Keywords:
Customer
Client
Real Estate Brokerage Relationship Form
Transaction Broker
Buyer Agent
Fiduciary Duties
Single Agent
Appointed Agent (or Designated Agent)
Disclosed Dual Agent
Self-Representation

The purchase of real property is often the single largest purchase a person will make in their lifetime. When assisting a buyer with this purchase, real estate licensees shoulder a tremendous responsibility, fraught with liabilities and risk. These liabilities may be civil and/or criminal, depending on the scope of the issue. Whether you are working for a client or with a customer, a minimum of professional service is always required. Licensees should remember that property purchases are among the most significant life decisions that a consumer will make. With the proper care and an eye toward professional conduct, the process of buying property can be tremendously beneficial for both buyer and licensee.

The first step in the buyer process is to go over the Real Estate Brokerage Relationship Form—normally a standardized form available from the state’s licensing office. Every consumer must have the opportunity to go over the Real Estate Brokerage Relationship Form upon first substantial contact, whether they will be a customer or a client. Traditionally, first substantial contact was in person; however email and the Internet are changing that. Many of us have substantial contact with consumers through email before ever meeting in person, so be sure to have this form available on paper and electronically. Also be aware that substantial contact may be made over the telephone, through faxes, and by other means, so faxing, mailing, or emailing of the form may be necessary.

Real estate licensees generally earn their income through commissions from sales. In this industry, the source of the commission does not necessarily come from the customers or clients that the licensee is working with/for. The source of the commission does not affect the services that licensee provides.

Customer vs Client: What is the Difference?
So… what is the difference between a customer and a client? Which services are appropriate? Can their status change?

If there is no agency agreement, the consumer is a customer. Real estate licensees work with customers all the time. Licensees who work with customers are called Transaction Brokers, Facilitators, or Non-agents. They do not represent either side, but they do assist in conducting the transaction.

A licensee works with a customer: there are no fiduciary duties owed to a customer, but there is a minimum level of service:

- Known material defects must be disclosed
- The customer must be treated fairly and honestly
- There must be an accounting of all funds received and dispersed
- Licensees must comply with all state and federal laws
Without an agency agreement, a licensee may not provide a buyer advice about market value, advocate for the buyer, or advise them in any way other than how to conduct a basic real estate transaction.

**Example:**
Betty the buyer approaches you, asking for help locating and purchasing a home. Of course, you show her the Real Estate Brokerage Relationship Form, but she doesn’t want to sign an agency agreement until she gets to know you better. As it turns out, Betty falls in love with the first property you show her and wants to put in a purchase offer. Again, you offer to represent Betty as a buyer agent, but again, she declines.

What information do you give to Betty? What research, advice, advocacy should you offer?

**Estate and Inheritance Tax Liens**
In this case, there is no agency relationship, but a minimum level of service is required.

**DO these things:**
- Disclose the known flooding issues in the basement
- Be honest and fair when dealing with Betty
- Keep careful track and account for the earnest money Betty gives to you
- Follow the law
- Handle the paperwork
- Give a list of professionals needed in the transaction (home inspectors, lenders, etc.)

**DO NOT do these things:**
- Give advice on the offer price
- Give advice if a counter offer comes back
- Advocate for Betty when talking to the sellers or their agents

If Betty would like these services, she may enter into an agency agreement. An agency agreement comes with the full suite of Fiduciary Duties.

**Fiduciary Duties**
When a Real Estate licensee enters into a contract with a consumer, that consumer becomes a **Client**. Licensees work for clients, who are owed the full range of fiduciary duties. A **Fiduciary Relationship** is one of special trust. This relationship is similar to one of a doctor or psychologist and patient, a religious minister and parishioner, or an attorney and client. What are the specific duties owed to clients when in an agency relationship? Help them not to sweat the transaction by offering **COLDD AC** (it’s so strong that they shiver enough in the coldd):

- **C** is for the skillful **Care** you offer your client.
- **O** is for lawful **Obedience** to the client.
- **L** is for **Loyalty** to the client (above even yourself).
- **D** is for **Disclosure** of material facts relevant to the transaction.
- **D** is for timely **Diligence** in handling documents, funds, and research.
- **A** is for **Accounting** of all funds.
- **C** is for **Confidentiality** of information that may potentially harm your client – now and always.

Let’s recap:

**What is the difference between a customer and a client?**
Licensees work with **customer**, providing a minimum level of service, and for **clients**, providing the full range of Fiduciary Duties.

**What services are appropriate?**

Customers should be treated fairly and honestly, material defects should be disclosed to them, all moneys must be accounted for, and the licensee must always follow the law.

Clients get the minimum level of service, plus the COLDD AC fiduciary duties (Care, Obedience, Loyalty, Disclosure, Diligence, Accounting, and Confidentiality).

**Can the customer/client status change during the course of the transaction?**

Usually yes. Your status as a transaction broker can change to agent at any time during the transaction.

Note: In many states, it is a violation of state license rules to solicit a client of another real estate licensee. However, if a buyer who is under an agency agreement approaches you, you may speak with them and even discuss entering into an agency agreement once their current agreement terminates. It is a good idea to ask all buyers if they are working with another agent before you start to work for or with them.
Once a licensee establishes an agency relationship, there are a number of things that can happen. Often the agency relationship will be a simple single agency. Often times, however, the brokerage or the licensee is representing the other side in the transaction. In other situations, the licensee may want to represent him or herself. No matter how the licensee represents the buyer, the seller is still due a minimum of service. Below is a brief summary of how to handle a number of different agency scenarios that frequently occur.

Types of Agency

Single Agency
If the brokerage represents only one side of a real estate transaction, they are in a single agency situation. In this case, the other side in the transaction is represented by another brokerage, or perhaps the other side is not under an agency agreement. The other party in the transaction is still due the minimum level of service and professionalism.

Disclosed Dual Agency
What if your buyer client is interested in one of your listings? Can you represent the buyer and the seller in a transaction?

You may be allowed to represent both sides of a transaction if your dual agency relationship is fully disclosed and authorized by both the buyer and the seller. This situation poses unique challenges because of the confidentiality responsibility. Specifically, a dual agent cannot disclose the seller’s willingness to take a price lower than the list price. Licensees may not disclose if the buyer is willing to pay a price higher than the offer price. In addition, the licensee may not disclose any negotiating strategy, or the motivation of the seller to sell the property — unless they are explicitly authorized to do so (in writing is best).

The licensee in a dual agency situation also faces a challenge of being fair and balanced. There can be no preference shown for either side — no advocacy, and no advice on sales price. If any information (other than the exceptions above) is provided to one side, it should be provided to the other side as well.

In some states, dual agency exists if the buyer and seller are represented by licensees within the same firm. In this case, all licensees who hang their license within that firm may technically represent all clients. Check with your state licensing agency and principal broker for clarification on what is allowed in your state and firm.

Appointed/Designated Agency
Some states allow two sides of a transaction to be represented within a brokerage while still maintaining the full suite of fiduciary duties.

What if your buyer client is interested in one the listings within your brokerage?

If allowed, all clients must be informed on the brokerage policies regarding appointed or designated agency. Your brokerage will have the designated broker (or their designee) oversee the transaction and be available to answer questions regarding the transaction. Another licensee within the brokerage will be appointed to represent the seller. Both clients are due the full menu of fiduciary duties — including confidentiality.

It is important to note that a single licensee is appointed to represent a single client. If the licensee works in a team, they must honor confidentiality — even with their team members. Do not disclose any confidential information to anyone, other than the broker who is designated to oversee the transaction.

Self-Representation
What if you want to buy a property for yourself?

It is legal for a real estate licensee to purchase their own properties either representing themselves, or without an agency agreement. As a licensee, you must disclose the fact that you have a license to the seller in writing before presenting a purchase offer. It is also a good idea to talk to your principal broker before entering into an agency agreement with yourself — or working without an agency agreement. Alert your principal broker if you are entering into an agency agreement with another licensee as well (which many licensees do if the type of property falls outside their area of expertise). Your broker is responsible for your actions whether you represent yourself in an agency agreement, another licensee represents you, or if you make a purchase without an agency agreement. Your brokerage may have specific guidelines for self-representation.

Note that licensees should disclose this fact to buyers and sellers before entering into a sales agreement — on
either side of the transaction.

The Seller
If a licensee is not working on the seller side, they still owe the seller a minimum level of service, regardless of if the seller is being represented or not. The seller must be treated honestly and fairly. Further, the buyer’s agent may not knowingly give false information regarding the buyer’s financial ability to purchase the property. The buyer’s agent can perform ministerial acts for the seller (like handling paperwork) without violating the buyer agency agreement. In fact, they can also help with professional services necessary to complete the transaction. A good rule of thumb is to provide the seller with the same level of professionalism as you would any customer you are working with.

Here is a short example to help you determine what type of agency (if any) and what level of service to provide:

Buyer Barry contacts you and asks you to show him some homes for sale. You and Barry enter into an agency agreement that will last for 6 months. You find a beautiful home that fits everything that Barry wants in a home. Indeed, Barry sees the home and wishes to place a purchase offer on it. The seller of this home has listed it with another licensee in your office and is providing 100% of the commission that will be split between the listing agent and you.

So…. is Barry a customer or a client?

What kind of representation are you offering to Barry?

• No Agency?
• Single Agency?
• Dual Agency?
• Appointed/Designated Agency?

What kind of representation are you offering to the Seller?

• No Agency?
• Single Agency?
• Dual Agency?
• Appointed/Designated Agency?

What services do you provide to the seller?

• Nothing?
• Minimum level of service?
• Full Fiduciary Duties?

In this case, the buyer is a client. Since another agent represents the seller, you are either in a dual agency, or an appointed/designated agency situation. Even though the seller is paying the commission and represented by a licensee in your office, you still owe him or her the minimum level of service (but nothing more).

Chapter Two:
Finding the Best Properties

Chapter 2 Overview
Once you establish an agency or non-agency relationship (which may, of course change), you then determine what level of service to provide (minimal level or full fiduciary). Let’s set out a set of guidelines to follow that will help you – and ultimately the buyer – find the most suitable properties.

In this chapter, we will get to work. It is the job of the licensee to help their buyers identify the best properties for purchase. In order to identify those properties, there is much to be done prior to generating a list of appropriate properties, then locating the ones that seem like the best fit, and of course, the showings. Buyers may need guidance obtaining pre-approval for a mortgage, understanding current market conditions, identifying their most important preferences for their ideal property, and becoming aware of material defects. Once the best properties are identified, licensees need to help buyers with their offers for purchase, negotiations, and inspections.

As the real estate professional, the licensee is tasked with helping their buyers save time and headaches by narrowing in on the best properties on the market. Licensees also assist their buyers through the entire offer, negotiation and closing process. While the following chapter presents guidelines to better serve buyers, it is important to tailor a plan to the needs of the individual buyer, work within brokerage policies, and keep the principal broker aware of issues as they come up.
Learning Objectives:
Upon completing this section, students will be able to:

- Determine the Buyer’s Preferences and Timeline
- Discuss the Process and Possible Issues in Buying Property
- Locate Suitable Properties and Conducting a Professional Showing

Keywords:
Pre-qualification
Pre-approval
Market Conditions
Preferences
For Sale By Owners (FSBOs)
Multiple Listing Service (MLS)
Steering
Material Defects
Mandatory Disclosures
Due Diligence
Inspections
Deed
Deed Encumbrances
Survey

A licensee’s job starts well before the negotiations – or even the first showing. Whether dealing with a customer or a client, we need to make sure that the buyer is looking at properties that best fit their size and style goals, while reasonably falling within their ability to pay. The following guidelines are a starting point to show the buyer the knowledge, skills, and experience of a real estate licensee. Knowing these steps will save the consumer (and the licensee) time and frustration in the long run.

Determine Buyer’s Home Preferences and Timeline
A good licensee is one who is knowledgeable and competent, an effective communicator and negotiator, and one with a full understanding of how to conduct real estate sales transactions. Before licensees can display their skills, they need to start by listening. What type of property does the buyer want? When do they want to close? What special considerations do they have? Many buyers don’t have a solid idea of what they want – and that is OK too. It is most important to match the desires of the buyer with the properties that best match what they want and can afford.

A good place to start is with the search terms in the local MLS database:

- Town(s)
- Type of Property: Land, Single Family, Multi-Family, Condominium, Mobile Home, or Commercial
- Number of Bedrooms
- Number of Bathrooms
- Age of Home
- Lot size
- Square Footage of building
- Waterfront (if yes, what type: ocean, lake, river, etc)
- Garage

In addition, ask for preferences of architectural style:

- Cape Cod
- Colonial
- Bungalow
- Split Entry
- Saltbox
- Contemporary
- Ranch
- Etc.

Ask about special interests:

- First floor master bedroom
- Accessibility needs
- Are there allergy sufferers? (if so, perhaps they want to avoid forced hot air, carpet, homes with moisture issues, and so on)
- Energy Efficiency
- Etc.

Of course, one major determining factor is the price range, which leads to the next section…

Review pre-approval process and Help buyer client to determine price range
Does your buyer need financing? Most do. There is a definite difference between a buyer being pre-qualified and pre-approved for a mortgage. Pre-qualification can be done by the buyer, a real estate licensee, or a lender. It is simply evaluating the debt to income ratio and establishing a rough estimate of the buyer’s ability to obtain financing. Debt to income ratio simply looks at monthly gross income (income before taxes), and monthly debt that the buyer will pay for at least the next
10 months. Many banks and lending institutions have “mortgage calculators” on their webpages. While this is a useful tool, buyers needing financing are generally better served if they are pre-approved prior to their property search.

**Pre-approval** involves the buyer selecting a lender, completing paperwork and usually providing documentation, such as a couple years of tax returns, a few months of paystubs and bank statements, as well as official records of any investments they may hold. Being pre-approved for a mortgage provides many benefits to the buyer:

- It tells them exactly how much financing they are eligible to receive, and thus their price limits for purchase. Many buyers may start with an unrealistic price range if not pre-approved.
- It makes their purchase offer(s) much stronger. In fact, many sellers will ask for a “commitment letter” from a lender upon receiving a purchase offer. It shows a level of seriousness that buyer who are not pre-approved do not possess.
- It saves precious time in the transaction if the lender has the necessary documentation and forms.
- Getting pre-approved may introduce your buyer to special financing programs that they may otherwise not know about. This can change the criteria in their property search.
- It may give you an opportunity to show your value in recommending a few lenders with good reputations.

**Tip:** If you are suggesting lenders, home inspectors, attorneys, or any other service provider, it is a good idea to recommend at least 3. It is a violation of most state and federal law to require contracts or combinations in real estate because it restricts the free-flow of trade. The buyer must be able to choose their own service provider, and by giving them choices, this is made clear. Offering choice also protects you, the licensee because the buyer is selecting the service provider. If your favorite lender has an off day and does a terrible job, you may become liable if you recommended only that lender. Offering choice in service providers is good for everyone.

A good way to begin the conversation about financing is by asking, “Which lender has pre-approved you?” In asking this way, it sends a message that the buyer should be pre-approved before they begin to look at properties. If they are not pre-approved, it is the job of the licensee to explain how it is in the buyer’s best interest to get pre-approved before searching for suitable properties in earnest.

**Example:**
Buyer Bert wants a 5 bedroom home, with at least 3,500 square feet in a prime waterfront area. He is confident that he can find what he wants with his $50,000 a year income.

He calls you one Saturday morning, asking to see a $2,000,000 listing that afternoon. Bert knows that it is a buyer’s market right now, so he expects you to negotiate hard and get him a deal.

Think about how to approach this buyer and his goals.
- Start by going over different types of agency representation.
- What are the required attributes in a property?
- Does Bert need financing?
- If so, has he been pre-approved?
- What is a realistic price range for Bert?
- When would Bert like to close?
- Look at comparable and set realistic expectations
- Go over the buying process

With this basic information, licensees can demonstrate the usefulness of their training, skills and experience. Buyers will be better informed on what to expect, making for a smoother transaction.

**Give buyer client an overview of current market conditions**
This section refers to buyer clients only. Licensees should not give advice on market values after the initial solicitation of agency services, if the licensee acts as a transaction broker, facilitator, or non-agent (i.e. no agency agreement).

Buyers frequently make poor decisions because they hear misleading information about market conditions. They may hear that it is a “buyer’s market”, which makes them think that making purchase offers significantly lower than list price is an ideal strategy. While that strategy may work in some cases, it may also lead to insulted sellers who will then refuse to negotiate, or will not counter-offer with their lowest acceptable price – both of which could ultimately harm your buyer’s chances of purchasing a property.
at the best possible price. On the other hand, if a buyer hears they are in a “seller’s market”, then they may feel unnecessary pressure to offer more than market value for a property.

As a real estate licensee, you have the best tools to assist your buyer clients (remember, you should not give price recommendations to customers). What are the best tools to assist your buyer clients, you may ask? Facts!

- Show your buyer client examples of recent sales that are comparable to their ideal property.
- Calculate the ratio of sale price to list price of recent sales in their target market: is it 90%? 95%? 102%?
- When looking at these facts, also note the Days on Market, Original List Price, and any special circumstances (like being a short-sale or foreclosure) of the recent sales.

Arm your buyer client with facts so they know what the current market conditions are, and what they can expect in their search for the best property.

**Example:**
Here is a common example that many of us are far too familiar with:

You are working for a newly married, young couple as their buyer agent. They are looking for their first home. Of course, they want their dream home, but after many, many (many!) showings, they get a sense of the market and find a solid home that is priced fairly and suits their needs.

What happens next?? You guessed it!

Both sets of parents want to see the home. The parents notice many items that aren’t brand new and want to get the best deal possible for their children.

They pressure the young couple to make an offer 25% below list price. They also want the sellers to pay a few thousand dollars in closing costs, replace the roof, install a new furnace, and repave the driveway. These terms fall well below the average for the target market.

What should you do?

Hopefully, you have already talked to your buyer clients about the market conditions. They know that the average home in their target area sells for 93% of list price (much higher than 75%). Be sensitive to the buyers’ needs.

It may be tempting to go over the situation with the buyers’ parents, but do be aware of your fiduciary duty of confidentiality! Even if the parents are providing some money toward the purchase of the property, you signed an agency agreement with the young couple. If the parents are not named in the agency agreement, then you must be careful not breach your duty of confidentiality. Also be aware of your duty to obey your clients.

It is your job to make your buyers aware of market conditions. Make them aware that the seller may become offended with the offer and may not wish to negotiate any further. Equip your buyers with the facts, and advise them as best as you can.

Once you show the facts and give your advice, the ultimate decision is up to your buyers. “Agents advise, clients decide”. Some clients will heed your advice; others may have to lose a home or two before they trust in your expertise (and who knows – maybe the sellers are motivated enough to negotiate or accept the offer!)

We have covered some basic topics that will help in the search for a suitable property. So far, we have covered **listening** to the buyer to find their **preferences** and **timeline**, the importance of getting buyers **pre-approved** if they need financing, and determining their **price range**, going over current **market conditions**, so buyers know what to expect. Now that the buyers have been armed with the facts, let’s prepare the buyers for the process of buying and some common issues that occur.

**Discuss the Process and Possible Issues in Buying Property**

If buying a property were as simple as buying a bag of groceries, then there would be no need for real estate licensees. As a licensee, you have gotten specialized training, and have the experience and/or support to direct your buyer with the complex process of purchasing real property. Explaining the process of buying property should be shared with both clients and customers. It is considered part of the minimum level of service.
What should you tell your buyers?

- What is a reasonable timeline from purchase offer to closing?
- How should they handle the negotiating process?
- What actions should the buyers be doing – and when?
- What if there are issues uncovered in the home inspection?
- Are there any expenses they should be prepared to pay outside of closing?

Familiarize buyer with the process of buying a property

You and/or your principal broker have likely seen many, many transactions. How long does it take for an average transaction of this type? Keep in mind things like inspections, appraisals, and financing. If the property is land, be sure to work in plenty of time to get appropriate approvals from the town or city (and sometimes state too!). If the property is a short-sale or a foreclosure, be sure to prepare your buyer for an undetermined timeline. Don’t be afraid to ask your broker, the lender, and/or town officials.

Purchasing property, especially a home, can be a very emotional experience. Negotiations can be emotionally taxing and it is the job of the licensee to be the voice of reason, the buffer, and sometimes the peacemaker. Many transactions are completed with a minimum of negotiations. Others are fraught with haggling over price, repairs, timelines, etc. The licensee has the power to set expectations and to take all the back and forth negotiation in stride. A few reassuring words can mean the difference between a smooth transaction and a traumatizing one. Prepare your buyer for the possible scenarios so they do not come as a surprise.

It is a good idea to show your buyer a copy of the Binder or Purchase and Sale Agreement used by your brokerage. Perhaps it is a standardized form available from your state’s Association of REALTORS®. It could also be a form specially designed for the brokerage, or one drawn up by attorneys for the transaction in question. In any event, it is important to go over the terms of a typical Purchase and Sales Agreement ahead of time so that the buyer is aware of the terms and conditions, timelines, contingencies, etc.

The licensee also is responsible to keep the buyer on track. How many days should the buyer have for inspections? (note: it is a federal law that 10 days must be allowed for lead paint inspections). Should there be a buffer for more experts to come in, or for contractors to give estimates? When should all documentation for financing be in? When will the appraisal, title search, and other applicable work be done? The licensee must keep track of all these things for their buyer clients. In addition, be sure to remind them to have utilities switched over on or soon after the closing. Many utility companies will charge more if utilities are turned off, then turned on, rather than a simple name change.

What if everything is going smoothly, until a significant undisclosed material defect is uncovered in the home inspection? Depending on the purchase and sales agreement, buyer may have three choices, but MUST execute their choice BEFORE the last day specified for that particular inspection, or they waive their right for a remedy. A buyer may wish to consult the advice of a real estate attorney to design or better understand a legal contract.

Here are the three choices in a typical purchase and sales:

1) Buyer can declare the purchase contract to be null and void and receive his or her earnest money deposit back.
2) Buyer can ask the seller to remedy the defect, by repairing it, reducing the purchase price, or receiving cash back at closing.
3) Buyer can accept the property “as-is” and execute the contract as planned.

The licensee should stay aware of the terms and any Purchase and Sales Agreement. In some states, it is common to allow the seller to declare the contract Null and Void if the buyer requests a remedy to a defect. It is important to be cognizant of the terms of the agreement when making recommendations to buyer clients.

Finally, buyers should be aware of the expenses involved with closing a real estate transaction. Federal legislation included in RESPA (Real Estate Settlement Procedures Act) requires lenders to estimate closing costs for buyers. Costs not included in these estimates can come as a shock to buyers if not explained.
The first cost not outlined in lender estimates is the real estate sales commission. It is customary that the seller pays commission for both sides of the transaction, but that is not always the case. Is the buyer liable for commission if the seller does not pay (or does not pay enough)? What if the property is a *For Sale by Owner (FSBO)*, and not listed in the *Multiple Listing Service (MLS)*?

The Multiple Listing Service is a data clearinghouse that posts property for sale and specifies compensation to brokerages that assist in the transaction. While there is no single MLS provider, the most common providers are owned or affiliated with the state’s Association of REALTORS®.

**Example:**
You are working with a set of buyer clients who are relocating from out of state. They are flying in for the weekend and want to see 50 listings in the area. 50 listings is a very ambitious goal for one weekend, so you ask them to narrow down their list. They buyers are unable to choose, so they leave it up to you to decide which listings to show.

Looking through the listings, you see one that offers a generous selling agent bonus. The commission rates among the listings vary widely. Some listings you are quite familiar with (in fact, one is your listing). Some listings are turn-key condition; others may be priced to sell.

Which properties do you show?

*Suggested Answer:* while it is often difficult to narrow down a list of potential properties, your fiduciary duties direct you to be loyal to the client above yourself. Use your skill to care for your client and choose the properties you think will match their wishes as closely as possible. You may show your own listing(s) if both sides consent in writing to dual agency. Let your loyalty to your client dictate the listings you show. Selling bonuses and commissions should not enter into your decisions.

**Mandatory Property Disclosures**
A variety of different hazards are common in different parts of the country. Each state has its own list of mandatory property disclosures. These disclosures may include things such as:

- **Water Supply System** (type, location, any malfunctions, date of water test, problems)
- **Insulation**
- **Heating System** (type, age, company that serviced, date of service, annual fuel consumption, malfunctions)
- **Waste Water Disposal System** (type, size, location, malfunctions, date of installlation, date of service, name of servicer, more info needed for systems within shoreland zones)
- **Hazardous Materials**
  - Asbestos
  - Lead-based Paint
  - Radon
  - Underground Oil Storage Tanks
- **Other Material Defects**

**Hazards of Special Interest: Lead and Radon**
According to Colorado State University (Fact Sheet number 9.538), more than 75% of homes built before 1978 contain lead paint. According to UL, that figure jumps to 87% for homes built before 1940. Lead paint can contribute to nervous system and kidney damage, learning disabilities, diminished bone and muscle growth, behavioral issues and even death. It is especially dangerous for children 6 years and younger.

Lead paint is the only federally mandated property disclosure. Sellers, landlords and real estate licensees must ensure that buyers and renters receive a lead paint disclosure AND the lead paint pamphlet from EPA/HUD ([http://www.epa.gov/lead/pubs/leadpdfe.pdf](http://www.epa.gov/lead/pubs/leadpdfe.pdf)) if the property is for sale or rent as housing and was built before 1978.

It is vitally important to inform you buyers of the hazards of lead paint! Email the above PDF file and ask for confirmation of receipt and/or obtain paper copies from EPA, HUD, or your local Board of REALTORS®.

Radon is another deadly hazard that is prevalent in much of the country (to see if radon is common in your area, see this map: [http://www.epa.gov/radon/zonemap.html](http://www.epa.gov/radon/zonemap.html)). Radon is a natural gas that results from the breakdown of radioactive materials commonly found in the soil and rocks. It is invisible, and odorless. It tends to accumulate in basements and lower levels over time and can also be present in water. It is estimated that radon is the second only to cigarette smoking as a contributor to lung cancer in the United States.
The Environmental Protection Agency recommends taking action if Radon exceeds 4 pCi/L in the air. They have proposed guidelines for areas with radon in the water, which range from 300 pCi/L to 4,000 pCi/L, depending on the source of water.

It is important to warn your buyers of the dangers of radon, recommend that they test for it, and also let them know that radon can be mitigated in most situations.

**Design a purchase strategy based on the specific needs and wants of buyer**

Every buyer is different, and each one has their own priorities. It is important to discover the top priorities of the buyer so that the search process is as efficient as it can be. Top priorities may be the price, the condition of the home (fixer-upper or turn-key), specific amenities, location, time of closing, energy efficiency, etc.

When assisting a buyer in finding their ideal property, be sure to treat everyone with the same level of respect and professionalism. Even if a licensee believes they are helping, steering is illegal. Steering is the act of directing a buyer (or renter) to specific neighborhoods based on certain characteristics. These characteristics or “protected classes” include: race, color, national origin, religion, sex, familial status or handicap. In addition to steering to or away from neighborhoods, the Fair Housing Act prohibits the following actions:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

So what if a buyer who is clearly part of an ethnic group wants to live in an ethnic area? The licensee may NOT steer them, or treat the any differently, however, if the buyer requests to see housing in that neighborhood, by all means – honor their request!

If the licensee gets a clear idea of the buyer’s top priorities, he or she can better help make an informed decision. Buyers often purchase property based on their emotional response. Things like furniture, clutter, and general cosmetics of a home can influence buyers to make poor decisions. Sometimes telling a buyer to walk away from a property is the best thing a buyer’s agent can do!

If the buyer is most interested in price, signing them up for an Internet Data Exchange (IDX) feed. This can be accomplished through internet service providers, or by the licensee checking the property listings every day for the buyer. Even in a falling market, buyers may need to act fast if a below-value property comes on the market.

They key to a good purchase strategy is to really listen to the buyer and discover their most important priorities.

**Example:**

The Bernardo family have just moved from Italy and wish to buy a house and start their new life in the US. They are learning English quickly, but still struggle sometimes. You know that there is a part of town known as “Little Italy” and immediately think they would be happiest in that neighborhood. The family asks about a house in a neighborhood known as Little Switzerland, but you tell them they would be happier elsewhere. You insist that they see the houses in Little Italy first (and maybe you tell them that the Little Switzerland house is under contract, just to save their feelings).

*Is this OK?*

Comments: NO, this is not OK! Maybe the family wanted to immerse themselves in a new culture. It is not legal to steer the family to one neighborhood, or tell them that a home is not available, when in fact it is. If the family specifically asks to see housing in Little Italy, then definitely take them there. Otherwise, do not treat them differently than any other buyer.

**Determine Communication Method and Schedule**

Communication goes hand in hand with the purchasing strategy. How do the buyers want to hear from their agent (email; text; phone; fax; personal contact)? When do the buyers want to hear from the licensee (anytime; after 6:00 PM; weekends only)? Will the licensee be unavailable at any time? Setting expectations is
important for professional service. Purchasing property is a significant life event for many buyers. Regular communication and setting expectations can help to ease concerns, make the buyers feel more comfortable, and help the transaction move more smoothly.

Knowing what the buyer wants is only part of the process of getting buyers ready to purchase a property. After listening to their wants, the licensee should then do the talking and inform the buyer about the process and possible issues. In this section, we covered the buying process, the purchase and sales agreement, as well as stigmatized properties and mandatory disclosures. We finished up by designing a purchasing strategies and setting expectations for communication. After all this work, we are now ready to start the search for suitable properties!

**Locating Suitable Properties and Conducting a Professional Showing**

Locating properties that match buyer’s criteria

This part is easy – right? Just check the MLS! That tactic may be appropriate for customers who have not entered into an agency agreement. Customers are due a minimum level of service, which does not involve significant research.

Buyer clients, on the other hand warrant more. The MLS may be an excellent place to look for suitable property, but the search should not end there. Classified ads in newspapers and on websites, such as www.craigslist.com may be examined. There may be For Sale By Owner signs posted in target neighborhoods. For buyers with very specific preferences, the real estate licensee may approach owners who do not currently have their property for sale. Other sources may yield good results, such as foreclosure notices and upcoming tax sales. Finally, licensees should use their sphere of influence to keep an ear out for appropriate properties which may come from unexpected sources.

**Determine if desired properties are still available**

Just because a property is posted for sale, does not mean it is still available. Most MLS systems have guidelines or rules about changing the listing status. Still, there may be listings that state they are current, when in fact they are under agreement for purchase. The same is true of other properties that appear to be available for sale. Discovering the actual status of a property that is for sale can be found through a quick phone call or email. If the listing agent of seller has not responded to an inquiry within a reasonable period of time, it is important to follow up. The licensee must work in the best interest of their buyers. In extreme cases, a call to the listing agent’s principal broker may be appropriate (for example if 3 messages left over the course of 3 days have not been returned, and no alternative information on showings is available).

If the property is indeed still available for sale, ask to set up a showing during a time convenient for the buyer. Confirm the appointment with the buyer. Also confirm the appointment with the listing agent or seller if appropriate.

A listing packet should be made available to the buyer before or during the first showing of the property. A good listing packet will include: the MLS descriptions (or similar if not in the MLS), the required property disclosures (state mandated and federally mandated lead paint). Other documents may or may not appear in the listing packet, such as the Deed, the Tax Assessment Card, the Tax Map (and/or survey if available), and any related documents such as Condominium Documents, Neighborhood Covenants, or other Encumbrances referred to in the Deed. If any of these documents are missing, request at least the mandatory ones from the listing agent or seller. For buyer clients, it is useful to obtain the optional document if there is expressed interest in the property. For buyer customers, it is appropriate to inform them about the documents and where to get them (do not conduct research for buyer customers).

**The Showing**

The showing is often the most fun part of a property search. It is an opportunity to learn more about the buyers’ preferences, and it helps the licensee to become more familiar with their target market. There is almost always something positive to come out of a showing, even if the buyer does not wish to pursue the property.

As a real estate professional, there are a few important principles to showing property. First, attend the showings with your buyers – whether they are customers or clients. Picking up on verbal and non-verbal cues is important to finding the best property.
Respect the buyer by allowing them to enter a room before you. Respect the property being shown. If the listing agent or seller is not present, but sure everyone wipes their feet before entering (it may be a good idea to remove shoes upon entering a building). Leave the property as you found it: turn off lights, close closet doors and cabinets, and do not let the buyer damage the property. It may be tempting to pull up carpeting to see if there is hardwood underneath, or pull off molding to see if it is rotting. It is never appropriate to damage a property that you have been entrusted with. Finally, make sure doors and windows are locked when you leave.

If the first property isn’t a good fit for the buyer, keep trying. According to the Office of Housing and Urban Development, the average homebuyer looks at 15 homes before making a purchase offer (http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/buying/buyhm). This number is likely to be higher for first time homebuyers, or markets with large inventories, or buyers who are new to the area. The key is to continue viewing properties until buyer selects one.

When a Buyer Expresses Interest in a Property
As mentioned before, purchasing a property – especially a home -- is an important and emotional decision. If the buyer has selected a property to purchase, licensees need to make sure they have the information needed to make an informed choice.

If the buyer is interested in making an offer, develop a list of questions and concerns to be investigated (don’t simply rely on the buyer client to ask a question, i.e. the buyer may not have owned a property with a septic system or well; zoning or other property restriction information). Due Diligence is important!

Here is a partial list of items that help to inform good decisions:
• Property disclosure
• Deed/Deed restrictions
• Plan Book
• Boundary Survey (if disclosure indicates a boundary survey has been completed, obtain copy of survey- not all “surveys” are boundary surveys.)
• Market analysis
• How long property on the market/price reductions
• Association Rules/Other restrictions

• Road Type (public, private, association)
• Zoning
• Taxes
• Proposed development/changes in the neighborhood

Inform buyers about available websites – local information
• Schools
• Crime
• Demographics of Town

Consider Inspections

Finally, there will be much information that is not available through public domains. Now is the time to remind buyers of some basic inspections to consider, such as the home inspection; septic inspection, water and air quality testing, title insurance, etc. These inspections could be costly, so buyers need to be informed about them before making an offer. More on this topic will be covered in the next chapter.

Chapter Three: Conducting the Real Estate Transaction

Congratulations! After much time and effort, we are ready to make an offer!

In this chapter, we will go over approaches to constructing an offer, dealing with competing offers, negotiating, what to do when under contract and what to expect at closing.

Learning Objectives:
Upon completing this chapter, student will know:

• How to Construct an Offer
• Submitting the Offer
• Under Contract to Closing

Keywords:
Comparable Properties
Days on Market
Offer
Inspections
Counter Offer
Acceptance
Competing Offers
Maybe the buyer just started looking, or they may have been looking for a long, long time. Once the ideal property is found, licensees can really show their worth. Many buyers (and sellers) who try to go through a transaction without the assistance of a licensed real estate professional find themselves lost in the complications of contracts, inspections, legal procedures, and needed services. The licensee is their tour guide through this complicated trip fraught with time limits, risk, and liabilities. When dealing with high valued assets like real estate, it is often worth the time and expense of getting and expert’s advice!

**Constructing An Offer**

Remember the difference between a customer and a client?

The difference stands out in this section and it is worth repeating here.

**Buyer customers** (those without an agency agreement)
- Receive the minimum standard of service.
- Do treat them fairly and honestly
- Do perform ministerial acts, such as handling paperwork and explaining the process of purchasing real property
- Do provide a list of service providers needed in the transaction (lenders, home inspectors, attorneys, title companies, etc).
- Do Not give advice on property value
- Do Not advocate for the customer

**Buyer clients** (with an agency agreement)
- Receive the full suite of fiduciary duties (Care, Obedience, Loyalty, Disclosure, Diligence, Accounting, and Confidentiality)
- Do give advice on property value
- Do advocate for the client

Hopefully both types of buyers are familiar with the buying process before constructing an offer. The following is a detailed description for helping buyer clients.

**Helping Buyer Clients Design an Offer**

Remember: the agent advises, the client decides. Constructing an offer is an art. It is a careful balance between price, terms, contingencies and timeframe. The real estate licensee needs to make the buyer aware of the market and the most important factors when constructing an offer in order to reach an acceptable agreement with the most favorable terms. Licensees should go over a number of factors with their buyers, such as **comparable properties**, number of days on market, closing dates, requests to sellers to pay closing costs, and timeliness and types of inspections, financing, property insurance, and repairs (if any). For land that the buyer wishes to build upon, there may be a whole assortment of time sensitive plans, applications, and approvals (be sure to work closely with your principal broker if you don’t have experience with building lots).

**Comparable Properties**

Before putting an offer together, it is useful to pull a set of recent sales of **comparable properties** to the property your buyers wish to purchase. Also look at properties that are currently on the market. These will help give a sense of fair market value. Since no two properties are exactly alike, allowances need to be made in order to come up with a good price in each specific case. Some things to think about when comparing properties are:

- Is the neighborhood more or less ideal than the comparable properties?
- What are the structural conditions?
- What are the cosmetic conditions?
- Is there a size difference in the building or land?
- How many bedrooms and bathrooms are in the comparable properties?
- Are there different amenities?
- Were any of the comparable properties distressed? (short sales, foreclosures, estate sales)

Also look at the number of **Days on Market** of the property your buyer wishes to purchase; is that number significantly different than the comparable properties?

Next, comes the careful weighing of factors that go into the offer price. The offer should be low enough to win the buyers a good deal, but high enough that the
sellers will not be insulted. It is also important to look at the inventory on the market and the interest that has been shown in the property. How much competition does your buyer face from other buyers?

All of these items must be carefully considered in order to deliver a reasonable offer price.

**Example:**
Many buyers think that giving a “low-ball” offer will result in the lowest sales price. Let’s try to see this from a possible seller’s point of view.

Seller Stuart has lived in his home for many years. He has spent most of his weekends improving, updating and caring for his home, which is also full of memories. It was difficult for Stuart to put his home on the market, he loves it so much. After much discussion and research, Stuart instructs his agent to list the property at $280,000, a fair price.

Along comes buyer Pinchpenny, who wants a deal. Pinchpenny’s buyer agent informs him that the average home sells for 97% of list price in this market. Despite the advice, Pinchpenny offers $225,000 and says, “What does it hurt to ask?”

This offer is about 20% below list price. How does that make Seller Stuart feel? Would he want to negotiate with someone who clearly does not see the value of this cherished home?

What do you think the likely response would be from Seller Stuart?

What have you seen in practice?

Pinchpenny runs the risk of:
- Stuart rejecting the offer and refusing to negotiate, or
- Stuart coming back with very little taken off of the list price

From Stuart’s point of view, Pinchpenny may not look like a reasonable negotiator.
Let’s say Stuart counter offers with $278,000 ($2,000 off list price).

Pinchpenny may come back with $227,000 ($2,000 above original offer price). They are still quite far apart in price.

In comes Reasonable Ronny, another buyer. After conferring with his buyer’s agent, Ronny offers $265,000 (about 5% off list price).

Seller Stuart can only negotiate with one buyer at a time. However, when a counter offer is presented, it in effect rejects the previous offer, thus releasing the previous offer or from their obligation. More on that later in the chapter…

Legal considerations aside (for a moment), who is more likely to end up with a lower ultimate sales price? Remember: property sales can be emotional – for the buyer AND the seller. A little sensitivity can result in big gains for your client.

**Timing**
Price isn’t the only key term in the purchase and sales agreement. The closing date is often significant as well. Is the buyer flexible with the closing date? That can work in the buyer’s favor and it may be worth asking the seller or their agent about their most desirable closing timeframe.

It is a good idea to ask the listing agent or seller about their ideal closing date. Treat this question carefully, however. Some properties become more desirable to buyers if there is serious interest. It may be best to ask this question very close to the time of presenting an offer. Try not to let your buyer’s interest motivate other buyers to act on the same property!

Timing is a vital component to other considerations too. When should all documentation be submitted to the lender? How long should the buyer have to inspect the deed, deed restrictions, and association documents, obtain property insurance, and conduct inspections? (more on inspections later) If the property is a building lot, a foreclosure, or a short sale, timing may not be as clear. Ask questions, speak with your principal broker and solicit advice from experts!

**Other Financial Considerations**
Do the buyers want the sellers to pay some of their closing costs? Be sure to check with the buyer’s lender to make sure the request does not exceed the allowable amount.
Are there any obvious defects that the buyer wishes to have corrected – rather than taking it into account with the purchase price?
Example:
Sally the seller was offered a job out of state. She moved and quickly placed her home on the market. Unfortunately, a storm caused a large tree branch to fall on the garage, causing some serious damage. Your buyer wishes to make a purchase offer on the house, but asks for your advice on how to deal with the garage damage.

Should the buyer ask that the garage be fixed prior to closing?

Should the buyer adjust the offer price to account for the repair?

Should the buyer ask for cash back at closing to repair the garage?

Should the buyer include an inspection contingency to investigate the issue further?

Should the buyer simply go forward with the transaction just as she otherwise would?

Any of the above options could be the best for your buyer. Have a talk with her and recommend inspections and perhaps a few contractors who could quickly give estimates to repair the damage.

Speaking of inspections, when asked if they are worthwhile, what is a good response?

YES!

Inspections may not uncover all potential defects, but they frequently uncover major issues and/or give the buyer peace of mind.

Inspections
Inspections are a vital part of making a good purchase decision. Requesting inspections may make the offer less attractive to a seller, but the tradeoff is often worthwhile because the risk and expense of unknown material defects can be devastating. Even if a property is new, a basic home inspection offers valuable information to the buyer wanting to make an informed purchase.

As with other service providers, the buyer should always have choice in order to provide for the free flow of trade and to find a good fit for the buyer’s needs.
offers confidential.

- Real estate licensees are not attorneys. Have a list of respected real estate attorneys handy in case your buyer has legal questions. Do not engage in the unauthorized practice of law!

As with all other documents, once the buyer has signed the purchase and sales agreement, give them a copy of it right away! It doesn’t matter that the seller has not signed or countered on the offer. The buyer should have a copy of everything they sign – right when they sign it.

It is also a good idea to have the buyer sign multiple copies of the purchase and sales agreement. This sends a signal that the offer is strong and it affords the opportunity to let all parties have original signatures.

Next, whether you are working for a buyer customer or client, the licensee must submit the offer in a timely manner. While there may or may not be a definitive time limit in each state (such as 24 hours), it is in everyone’s best interest to submit the offer as soon as possible.

Original copies may not be possible, or may delay or complicate the offer process. Most states have adopted a version of the Uniform Electronic Transaction Act, which upholds the validity of electronic contracts IF both parties agree to conduct the transaction through electronic means. For a complete list of states that have adopted this law, see http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx. Conducting a transaction through electronic means such as emails and faxes may seem like a good idea, but be aware that the legal implications become complicated when diverging from the purchase and sales agreement. What if there is a counter offer contained in a simple email, and not on a formal purchase and sales agreement? It is best to avoid confusion and stick to the formal documents.

**Things a Buyer can do to Make their Offer Stronger**

Obviously, price, contingencies, and flexibility on closing dates are quintessential components of a purchase offer. There are however, other elements that can make an offer strong. These things can help the chances of an offer being accepted:

- Ask the listing agent to present the offer directly to the seller. If there is no listing agent, then the licensee should try to present the offer directly.
- Include the earnest money deposit check with the offer.
- Include a commitment letter from the lender to show that financing is in place.
- In many parts of the country, a personal letter from the buyer is included. This may make a difference if there are competing offers.

**What if There are Competing Offers?**

Competing offers can make for an exciting, stressful, and anxious time for the buyer. Make buyers aware of the possibility of a competing offer. Note that the seller does not have to disclose the existence of another offer. If they do make known the existence of another offer, sellers do not have to reveal the price, terms or conditions of the other offer. What is a buyer to do?

If the buyer becomes aware of a competing offer, ask them to think about the value of this property to them. They may want to revise their offer to be their highest and best offer. They should keep in mind that price is only one factor in the seller’s decision. Other terms, such as closing dates and concessions may play powerful roles in the strengths of the competing offers.

Regardless of the strengths and weaknesses of the competing offers, the seller can only negotiate ONE offer at a time until there is a binding contract.

**Example:**
The Smiths are sellers in the historic section of town. They listed their home for $500,000, which is a fair market price.

Buyer Aiden puts in an offer for $475,000, and wishes to close in 3 weeks.

Buyer Beatrice puts in a full price offer, but has a contingency that her home must sell first. Her home is under contract, contingent upon a satisfactory home inspection. Beatrice has a closing date in 60 days and specifies that the contract is contingent upon the sale of her home.

Which offer will the Smiths pursue? Regardless of the Smiths preferences, they can only negotiate with one buyer at a time.
Let’s say you are in an agency agreement with buyer Aiden. What should you tell him?

Maybe you should tell him to make his offer full price or forget it!

Maybe not. Remember – agents advise, clients decide. Aiden’s ability to close quickly may make his lower offer the most attractive!

Let Aiden know that he can:
• Make a better offer
• Withdraw his offer in order to avoid competitive bidding
• Withdraw his offer in order to pursue another property
• Do nothing; he can keep his offer the same and hope for the best

If Aiden decides to withdraw his offer, he should do so in writing.

What if another buyer client is interested in the same property?
It is entirely possible that two buyer clients of the same licensee may be interested in the same property. This places the licensee in a difficult position. While both clients are due fiduciary duties, the licensee may not give preference to one client over another. In this case, they may not give price or strategy advice, and they may not advocate for either client. Information must be kept confidential, and it should be disclosed to both buyers that the licensee is representing two buyers interested in the same property. If the licensee does not feel comfortable in this role, he or she may ask a buyer if they would like to be referred to another agent.

Negotiating The Offer
All offers must be in writing to be enforceable (Statute of Frauds). All counter-offers must be in writing to be enforceable. Everything in real estate should be in writing to best protect the consumers.

It is nice when a seller accepts an offer as presented from a buyer. That is not always the case, so a licensee should prepare their buyer for the possibility of a counter offer.

What are common reasons for a seller to submit a counter offer?

The seller may think:
• The price in the offer was too low
• The closing date was not ideal
• The earnest money was not enough
• Too many inspections were requested
• Too many closing costs were requested
• Too much money was ask for at closing
• Too many repairs were requested
• The timeline for a response was too soon
• …among others.

The buyers may be surprised by a counter offer, however at that point they can choose to:
• Accept the counter offer
• Counter the counter offer
• Reject the counter offer and walk away from the property

If the buyers decide to write up another offer (the second counter offer in this case), they are rejecting the seller’s counter offer. This means the seller then has an opportunity to:
• Accept the counter offer
• Counter the counter offer
• Reject the counter offer and walk away from the buyers.

This can be confusing, but it is essential to know which party is obligated to the purchase and sales agreement, when. Sellers can only negotiate with one buyer at a time. Buyers can only negotiate with one seller at a time (unless they wish to own more than one property!)

Example:
Seller Sarah has her house listed for $329,000.

Buyer Bonnie views the home, and wishes to make an offer. Bonnie and her buyer’s agent write up a purchase and sales agreement for $319,000, closing in 45 days, and asking the seller to pay $8,000 of Bonnie’s closing costs.

Bonnie submitted an offer to Sarah. Bonnie is bound to the terms this offer, unless Sarah rejects it. Bonnie also may withdraw the contract before Sarah responds (but should do so in writing to protect herself). Sarah is not yet bound to a contract.

Sarah counter offers a price of $322,000, closing in 30
days, and does not wish to pay any of Bonnie’s closing costs.

Sarah has submitted a counter offer to Bonnie. Sarah is bound to the terms of this counter offer unless Bonnie rejects it, or she withdraws the contract before Bonnie responds. Bonnie is no longer bound to a contract.

Bonnie counter offers with a price of $327,000, closing in 30 days, and asks again for Sarah to pay $8,000 toward closing costs.

Bonnie has submitted a counter offer to Sarah. Bonnie is bound to the terms of this counter offer unless Sarah rejects it, or Bonnie withdraws the contract before Sarah responds. Sarah is no longer bound to a contract.

Sarah accepts the counter offer from Bonnie.

Both Sarah and Bonnies are now bound to the terms of the purchase and sales agreement.

Knowing who is bound to the contract at what point is imperative if one party wishes to cease negotiations and entertain another option. Keeping everything in writing, on proper forms is important to keep the negotiating positions clear.

Under Contract to Closing

Whew! Acceptance! Finally under contract. Does that mean the licensee’s work is done???

Nope. The licensee needs to make sure the buyer is on track. They must work to keep the following time sensitive tasks in order:

- Financing
- Inspections
- Availability of Property Insurance
- Appraisal
- Title Search

Hopefully by now, the buyer has been pre-approved for a mortgage and the lender is working on securing all the necessary approvals and underwriting. If the buyer has not yet applied for financing, and they need it, there is a likely short deadline for them to obtain approvals. Remind them to set up an appointment with a lender. Provide them with a list of reputable lenders if it is helpful.

It is important that the buyer (and sometimes the buyer’s agent) keep in regular contact with the lender to make sure they are on time and have all the necessary documentation.

Inspections

A number of inspections may have been outlined in the purchase and sales agreement. Buyers may or may not choose to conduct those inspections (cost is often a factor). It is your job to keep your buyer on time, or they risk losing their right to remedy issues they may uncover. They may even lose the right to inspect if the time limit expires.

As soon as an offer has been accepted by both buyer and seller, the buyer should be reminded of the inspection deadline and given a list of inspectors that fit the investigations they wish to undertake. Unless otherwise specified in the purchase and sales agreement, the buyer is responsible for their own due diligence, and thus is responsible for hiring and paying the inspectors.

When keeping an eye on the time limits for inspections, remember that inspections AND estimates, AND the requests for remedy must be concluded prior to the deadline in order for the buyer to have a choice of remedy in the case of a significant issue. The buyer is responsible for completing the inspections and bringing in whichever contractors they wish to generate estimates. If this work is accomplished before the inspection deadline(s), then the buyer has three choices when dealing with significant undisclosed material defects:

1) They can declare the purchase and sales agreement Null and Void and receive their earnest money deposit back.
2) They can request remedy by the seller either fixing the defect, reducing the sales price, or providing cash back at closing (within the allowed limits of the lender), or
3) They can accept the defect and continue with the contract as planned.

If the buyer chooses the first or second option, they need to inform the seller in writing. It is often a nice courtesy to release the inspection contingency in writing if the buyer wishes to follow option 3).

Note: read the purchase and sales agreement carefully. Does the seller have the opportunity to back out of the contract if a buyer requests remedy for a defect? Know
your contracts to protect your buyer!

Once the inspection contingency is released, then it is a good idea to check with the lender and make sure the appraiser is scheduled (if not already done). Also check to make sure the buyer has selected a property insurance company.

**Note – all amendments to the contract must be in writing and signed by both parties.**

**Insurance**

The buyer or lender may require an investigation into the insurability of a property before closing. There are many reasons why properties may be difficult to insure. Common issues are:

- Outdated knob and tube wiring
- Outdated fuse boxes
- Derelict structures
- Uncovered wells
- Lead paint in rental properties
- Swimming pools
- Flood zones
- Non-functioning heating, plumbing, or appliances
- Homes that are vacant

**Appraisal, Title Search, Etc.**

After the appraisal, the next common step is a title search. The licensee can either check with the title company, or encourage the buyer to do so.

Keep checking with lender, appraiser, title company and buyer to make sure everyone is on time and has all the information they need. Pitch in and help if you can – you may need to retrieve information from the town (tax bill, water and sewer bill, etc.), or provide contracts and deeds to the lender, appraiser and/or title company.

**Moving Conveniences**

The licensee can use his or her experience and connections to provide a list of potential vendors the buyer may want to use:

- House cleaners
- Movers
- Carpenters
- Painters
- Plumbers
- Accountants

Also make sure the buyers contact utility companies prior to closing. It is often less expensive to simply change the billing name, rather than have utilities shut off, then turned back on.

**Closing**

Closing can be the most joyful part of the real estate transaction for both buyer and seller. It is still important to make sure everything is moving along on time.

- Confirm closing date with all parties
- Remind buyer to notify utilities of impending ownership
- Review HUD Settlement Statement with buyer
- Inform buyer what he may need to bring to closing
  - Photo ID
  - Bank check
  - Insurance policy/Paid receipt – first year’s premium
  - Checkbook
- Schedule and attend buyer’s final walk-through (verify contingencies met)
- Attend closing
  - Review final HUD Settlement Statement for any changes and request copy
  - Review deed/promissory note
  - Keys

Buyer’s agents may wish to provide a modest “housewarming gift” to the buyer at closing. Some states have a limit on the value of a housewarming gift (for example, New Hampshire has a $100 limit). Whether there is a limit or not, a modest, but thoughtful gift works best. Here are a few ideas. Be sure to speak with your principal broker for further guidance:

- Houseplant
- Bottle of Sparkling wine (if buyers are over 21 years of age)
- Toolbox with basic tools
- Cheese and cracker basket
- Local craft or work of art
- Personalized house number, or door knocker
- Gift certificate for house cleaning services

**Follow Up**

While the transaction may have been closed and commissions paid, it is a nice idea to check with the...
buyers a day or two after closing. Don’t forget them around the holidays and tax time! Mail a copy of the HUD Settlement Statement just before tax time – there may be some substantial tax deductions itemized on the settlement statement and your buyers will appreciate your thoughtfulness if they cannot locate their copy for the HUD Settlement Statement.

Greeting cards are a special touch around the holidays or New Year. It lets the buyers know that their agent still cares. Buyers may also remember to share the contact information of their favorite agent if a friend is in the market!

Course Summary:
Real estate licensees work with customers. In this situation, there is no agency agreement, but a minimum level of service is required. On the other hand, licensees work for clients. A client is a consumer with an agency agreement. They enjoy the full fiduciary relationship with the licensee.

Fiduciary duties are COLDD AC: Care, Obedience, Loyalty, Disclosure, Diligence, Accounting, and Confidentiality.

Buyers’ agents can be single agents if the brokerage only represents the buyer side of the transaction.

Occasionally, a licensee may have a buyer client who is interested in one of their listings (in which the seller is also a client of this licensee). Dual agency is allowed if it is properly disclosed and consent has been given from both sides in writing.

In some states, if the buyer and seller in a transaction are each represented by different licensees within a brokerage, an appointing broker can appoint one licensee to each client. This is known as appointed/designated agency.

Self-representation can be tricky. The licensee’s designated broker is liable for actions taken by the real estate licensee – even if the licensee is not in an agency agreement with their brokerage.

The seller is due a minimum level of service, even if they are on the opposite side of the transaction.

An informed buyer comes from a position of strength and is more likely to make good decisions. Real estate professionals help to build that strength.

Things that can help to determine the buyer’s preferences and timeline include listening to their preferences, helping them get pre-approved for financing, and going over market conditions.

After listening to the buyer we discuss the process and possible issues in buying property, including going over the purchasing process, talking about things that may be issues, such as items that may appear in the mandatory disclosures. Suggested purchase strategies and communication expectations were also covered.

Remember how to locate suitable properties and conducting a professional showing. We started with suggestions on how to locate properties, making sure the properties are available, how to conduct a showing, what further steps to take when a buyer expresses interest, and finally, which inspections to consider (and their costs) before making an offer.

Construct and submitting an offer to purchase real property is something every licensee should know. Price is not the only influential factor when crafting an offer. Sellers may also be interested in closing dates, closing costs, contingencies, and financing approvals.

Certain things can be done to make the offer stronger. Dealing with multiple offers can be tricky, and so can a situation where two buyer clients of the same licensee are interested in the same property.

During closing, keeping track of time and making sure buyers and service providers complete their tasks by the deadlines specified in the purchase and sales agreement is one of the most important things a real estate licensee can do for the consumer. When a transaction goes smoothly, everyone wins.