**Arizona Association of REALTORS®**

**Employment, Agency and the Standard of Care**

**Risk Management Certification Core Course**

**Instructor Manual**

**Zoom activities in blue**

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# For the Instructor: Course Layout

**Format**

The black text appears in both manuals, while red text denotes answers to questions or other information contained only in the instructor version.

**Timing**

The course is timed out in segments. This should allow you to adjust the timing as needed; for instance, if you need to spend more time on one section than what is allotted, you may adjust by spending slightly less time on a subsequent section. The timing is designed to allow for answering student questions.

**Start with** asking the students to take a moment at the beginning of the course to briefly answer the following questions:

1. What is the most important thing you hope to learn in this course?
2. What risk-related areas or topics most concern you?

If you have time at the end of the course, allow the students to refer back to their answers to the above questions and verify that their concerns were addressed in the course material.

The following key factors should be a part of your delivery:

1. The material presented should have immediate usefulness to the learners.

2. The material presented should be relevant to the learners’ practice. Adult learners need to be able to see the relevancy of what they are learning

3. The environment should be where learners have an opportunity to share their experiences. Adult learners accumulate knowledge most effectively when they are active participants in their own learning process. Design activities or assignments that encourage them to explore a subject matter on their own and learn from personal experience. Pose a question or problem and then ask them to arrive at a solution on their own, or place them in groups and have them collaborate in order to discuss the issue at length and benefit from one another's experience and skill sets. DO NOT TOWN ALL THE ACTIITIES IN THIS OUTLINE.

4. The presentation should be engaging.

**Utilizing the learning activities allow the students to both assess their own experience and learn from the experiences of others making the learning more meaningful than when it is based simply on lecture delivery.**

**Live Streaming classes – ADRE requires a minimum of 5 engagement opportunities outside of town-halls**

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# Course Introduction and Learning Objectives

**Introduction**

This course addresses risk management topics and issues related to agency, employment and the standard of care. Many disputes arise as a result of the parties’ failure to understand the terms of employment agreements and what constitutes an appropriate standard of care in an agency relationship. When disputes over commissions occur, the circumstances in a transaction and the terms of the employment agreement will play a significant role in arbitration and civil litigation. This course is designed to assist brokers and salespersons in reducing the risks related to agency and employment agreements in Arizona.

Chapters 2, 3 and 4 of *Arizona Real Estate: A Professional’s Guide to Law and Practice,* by K. Michelle Lind, Esq., CEO for the Arizona Association of REALTORS® are the basis of this class with portions of this course reprinted from the text.

**Learning Objectives**

*Upon completion of this course, students will be able to:*

* Describe the general requirements of broker employment agreements.
* Explain how a commission is earned under a listing agreement.
* Explain how commission issues should and should not be addressed.
* Describe how an agency relationship is created in Arizona.
* Identify the duties of a broker as required by the ADRE Commissioner’s Rules.
* Identify the risks associated with different types of agency relationships.
* Avoid risks through the proper use of the Real Estate Agency Disclosure and Election (READE) and the Consent to Limited Representation (“Consent”) forms.
* Describe how the standard of care is established under state law, the Commissioner’s rules and common law.
* Explain the specific duties to buyers and sellers required to provide the legally required standard of care.

# Unit 1: Broker Employment Agreements

**Learning Objectives**

*Upon completion of this unit, students will be able to:*

* Describe the general requirements of broker employment agreements.
* Explain how a commission is earned under a listing agreement.
* Explain how commission issues should and should not be addressed.

## 1-1: Independent Contractor Agreements (ICAs) between an Employing Broker and Salesperson

There is a two-question ICA poll for Zoom: 1. Are you are: Broker Association/DB or Managing Broker/Licensee 2. Have you read all of your ICA? Yes/No

Three lawsuits filed in 2013: 2 in CA and 1 in MA. See http://speakingofrealestateblogs.realtor.org/2014/03/27/lawsuits-challenge-independent-contractor-status/

**Salespersons are “employees” for regulatory and civil liability purposes**

The Commissioners Rules require the broker to maintain close supervision and control over salespeople. R4-28-1103(A) provides: “An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons and others in the employ of the broker…” R4-28-1103(D) provides “An employing broker is responsible for the acts of all associate brokers, salespersons and other employees acting within the scope of their employment.”

**Statutory Non-Employees for Tax Purposes**

The Internal Revenue Code provides a statutory classification for real estate salespersons as “statutory non-employees” for federal income and employment tax purposes. To qualify for “statutory non-employee” status, the real estate salesperson must:

* Be licensed as a real estate agent;
* Receive substantially all compensation based on sales or other output, rather than the number of hours worked; and
* Have a written contract with the brokerage firm that provides that the salesperson will not be treated as an employee for federal tax purposes.

I.R.C. §3508

**Other Tax Considerations**

* Brokers in Arizona are exempt from withholding requirements.
* Salespersons are exempt from Workers’ Compensation and Employment tax.

**Civil Liability considerations**

* Civil liability considerations are determined by the objective nature of the

 relationship, as opposed to the written agreement between the parties.

* The Arizona Supreme Court held that the contract language between two people
* does not determine the relationship of the parties, rather the “objective nature of
* the relationship is determined upon analysis of the totality of the facts and
* circumstances of each case.” Santiago v. Phoenix Newspapers, Inc. 164 Ariz
* 505, 794 P.2d 138 (1990)

***What provisions should be considered in an ICA?***

* The ICA generally governs the payment of commissions from the broker to the salesperson.
* The ICA generally addresses the obligations of the sales person to the broker and the broker to the salesperson.
* The ICA may also address the payment of commissions on pending transactions upon the departure of a salesperson.

*Excerpt from Michelle Lind June 2014 Arizona REALTOR magazine article:*

Although terms of Independent Contractor Agreements vary with the broker, common provisions include the following:

**Obligations of the Salesperson to:**

* Remain licensed
* Maintain REALTOR membership
* Abide by all laws and rules
* Abide by brokers policies and procedures
* Pay any amounts due to the broker
* Work Diligently

**Obligations of the Broker to:**

* Remain licensed
* Compensate the salesperson
* Provide office space
* Independent contractor status
* Errors and Omissions insurance
* Allocation of expenses
* Payment of commissions on pending transactions upon departure of the salesperson
* The files and documents that the salesperson may take upon departure
* Dispute resolution between broker and salesperson as well as between two salespersons within the brokerage
* Liability and indemnification

Tips to Manage Independent Contractor Relationship with Sales Agents (excerpt from article on [www.realtor.org](http://www.realtor.org))

* Written independent contractor agreements
* Avoid paying for any job-related training or continuing education
* Pay on a commission-only basis
* Allow salespeople to work where, when and how they deem best
* Make attendance at monthly staff or training meetings voluntary
* Issue your salespeople 1099’s rather than W-2’s. Do not withhold any federal or state income taxes
* (Instructor should consider discussing independent contractor status as it relates to real estate assistants)

## 1-2: General Requirements of Broker-Client Employment Agreements

*Suggested Poll: What are risks associated with failing to understand general requirements of employment agreements? True/False*

*A. Failure to understand the terms of the employment agreement*

*B. Failure to collect a commission if dispute*

*C. Failure to establish agency (incorrect answer)*

***What risks are associated with failing to understand the general requirements of employment agreements?***

* Failure to understand when a commission is earned
* Failure to collect a commission if disputed
* Others…

***What are the statutory requirements for employment agreements?***

* All real estate employment agreements must: (1) be written in clear and
* unambiguous language; (2) fully set forth all material terms, including the terms
* of broker compensation; (3) have a definite duration or expiration date, showing
* dates of inception and expiration; and (4) be signed by all parties to the
* agreement. A.R.S. §32-2151.02(A).

***Other employment agreement limitations & requirements***

* Not assignable without the express written consent of both parties.
* Cannot be executed when the party is still subject to an existing exclusive

agreement with another broker (unless they have acknowledged in writing that

they may be liable for both brokers’ commissions).

* A copy must be provided to the client upon execution.

***Is a written employment agreement required for representation?***

No.

***Gibson v. Parker Trust*, 22 Ariz. 342, 527 P.2d 301 (App. 1974)**

**Case Facts:**

* The seller discussed selling his ranch with a broker but did not sign a listing agreement.
* The broker proceeded to advertise the property, making the seller aware of these activities.
* Gibson, another licensee, contacted the broker after seeing the ads and an agreement was reached that the two would split the commission if Gibson produced a ready, willing and able buyer.
* The broker claimed he told Gibson he only had an oral listing agreement, while Gibson argued the broker claimed to have an exclusive written listing.
* The ranch was ultimately sold with Gibson’s assistance for $1,600,000, after which the seller refused to pay real estate commissions.

**Discuss:**

***In your opinion, is commission owed to either broker? Why or why not?***

**Decision:**

* The court found that in the absence of a written agreement, the seller was not

obligated to pay the commission.

* Although Gibson argued the broker was guilty of misrepresentation for alleging a
* written listing agreement, the court rejected this argument. Their reasoning was
* based, in part, on the privileges granted by Article 26 of the Arizona Constitution.

They noted that those privileges imply a responsibility to be aware of the

* application of the Statute of Frauds.

***Is a written employment agreement required for a broker to collect a disputed commission?***

Yes – under the Statute of Frauds (A.R.S. §44-101(7))

**The Statute of Frauds**

**1-3: Listing Agreements**

***What risks are associated with listing agreements?***

* Ambiguous terms
* Failure to understand duties of broker and seller
* Disputes over commission
* Disputes regarding cooperation
* Others…

(Discuss agreements containing an owner right to sell clause.)

Zoom Poll #2: What is the most common type of listing agreement: Exclusive agency Exclusive right to sell Open list Net listing

Types of Listing Agreements

Types of Listing Agreements:

Optional activity: Match the terms

* **Exclusive Right to Sell** – used most often, a commission is paid to the broker if the property is sold during the listing period, regardless of whether the listing agent actually secures the sale.
* **Exclusive Agency** – Allows the seller to sell their own home while you have it listed, no commission would be due to listing agent.
* **Open Listings** – allows the seller to employ more than one broker to sell the property. A broker must prove they were the procuring cause to receive a commission.
* **Net Listings** – allows the broker to keep any money in excess of the purchase price as commission. Because this creates an inherent conflict, this is rarely used.

***What risks are associated with an exclusive right to sell listing?***

* Property must actually be “sold” during the listing period.
* If the property was listed previously, verify that the previous listing agreement has actually expired.
* Commission disputes determined according to the terms of the agreement, not necessarily procuring cause.

**Workshop: Listing Agreements**

*In small groups, have the students work through the following scenario and decide how to address the issue. Have them select a representative for the group to share the answers with the class.*

*Then have the class decide on the best answer(s).*

You are meeting with Andrew and Ellie Turner to list their home. They want the home, which appraised at $250,000, listed at $249,900. This is consistent with the area comps. Mr. Turner explains that they need to net at least $236,000 from the sale. He has an acquaintance who has discussed buying the property, so he doesn’t want to pay commission if he ends up selling it himself.

***Assuming you agree, what terms should be included in the listing agreement?***

***What issues, if any, should be addressed in the offer of cooperation in the MLS?***

## 1-4: When a Commission is Earned Under a Listing Agreement

***If the agreement is an exclusive listing and the property is transferred during the term of the listing, the broker is generally entitled to a commission.***

***What happens when the broker produces a ready, willing and able buyer, but no sale results?***

As discussed above, the terms of the listing agreement determine when a commission is earned. The agreement may specify that the broker must only procure a ready, willing and able buyer to earn a commission. Other listing agreements provide that the broker is entitled to a commission only when the broker procures a ready, willing and able buyer who enters into a contract with the seller and completes the transaction by closing escrow.

***In Bass Investment Co. v. Banner Realty, Inc.*, 103 Ariz. 75, 436 P.2d 894 (1968) ,** the Arizona Supreme Court stated two general rules for when a broker is entitled to a commission:

(1) If a broker brings the seller a buyer ready, willing and able to pay the list price for the property listed, regardless of whether the seller sells or refuses to sell.

(2) If the broker brings to the seller a buyer who is willing and able to buy at a price below the listed price, the commission is earned if, but only if, the seller actually sells the property or is willing to sell to that buyer.

***Management Clearing, Inc. v. Vance*, 106 Ariz. 95, 471 P.2d 707 (1970)**

**Case Facts:**

* The sellers entered into an exclusive listing agreement with a broker to sell an apartment complex.
* The broker found a buyer and produced an offer as agreed upon, except for the addition of a clause making the offer contingent on “an inspection and approval of the interior.”
* The sellers refused to sign the contract.
* The broker proceeded to file a claim for the commission.

**Decision:**

* Once again, because a contingency existed, the court ruled the broker had not earned the commission under the listing agreement.
* The court held that acceptance of the buyer’s offer that contained the provision

 ‘this offer is subject to inspection and approval of interiors’ was conditional

acceptance and since it was not binding on the buyer, it did not meet

requirements necessary for broker to recover the commission.

**Discussion:**

* **Do you agree with the Court’s decision?**

***Nationwide Resources Corp. v. Ngai*, 129 Ariz. 226, 630 P.2d 49 (1981)**

**Case Facts:**

* The sellers listed their property with the broker.
* The broker secured a buyer for the property and brought an offer to the sellers.
* The sellers accepted the offer, which contained three contingencies:
	+ (i) approval of the title,
	+ (ii) approval of the termite inspection and
	+ (iii) execution by the buyer and seller of a more detailed agreement than the purchase contract.
* All the parties showed up at the closing as scheduled except for the sellers.
* The buyer brought the funds needed to the scheduled closing.

**Decision:**

* The court found that the broker did produce a ready, willing and able buyer.
* The court awarded the commission to the broker and stated the broker could not

be penalized solely because the sellers refused to proceed with the sale.

**Discuss:**

* **Do you agree with the Court’s decision? Why was this decision different from the previous case?**
* **What “red flags” may indicate a seller is reluctant to complete a sale?**

* **If you have concerns about a seller’s willingness to perform under the contract, under what circumstances must you disclose this to the buyer?**

***Hyde Park-Lake Park, Inc. v. Tucson Realty & Trust Co.*, 18 Ariz. App. 140, 500 P.2d 1128 (App. 1972)**

**Case Facts:**

* The seller entered into an exclusive 90-day listing agreement with the broker.
* The listing agreement stated that the broker would be paid a commission on any sale that took place within 90 days after the expiration of the agreement, if the broker had contact with the buyer during the original listing period.
* After expiration of the listing agreement, the seller did sell the property to a buyer, whose name the broker had submitted as someone he had talked to during the listing period.
* The sellers did not pay the broker’s commission and the broker proceeded to file a claim.

**Assume you are the seller’s broker in this case, having executed the ARMLS Listing Agreement. Are you entitled to a commission? Why or why not?**

Zoom Poll: do you feel the listing agent was owed a commission? Yes / No

**Decision:**

* The court held that the broker was entitled to the commission under the listing

agreement.

* The court noted that the broker had fulfilled his duties and all terms spelled out in

the listing agreement.

**Importance of a “tail” period:**

* Most listing agreements contain a “tail” period clause to protect a broker and

ensure payment is received for their efforts during the listing period.

* The ARMLS Listing Agreement contains a “tail” period clause in paragraph 6(f).

***A Listing Agreement is not a Binding Agreement to Sell***

If the broker produces a “ready, willing and able” buyer (with no material contingencies), the seller will likely owe the broker a commission, but the seller is under no obligation to sell the property to the buyer.

## 1-5: Buyer-Broker Employment Agreements

A buyer-broker employment agreement is used when a buyer employs a broker to work with the buyer exclusively. The agreement benefits the buyer by setting forth the terms of the buyer-broker relationship. The agreement benefits the broker by assuring that the broker will be compensated the agreed upon amount if the buyer purchases a property during the term of the agreement. The agreement can be of particular importance when representing a buyer in a short sale transaction.

***How does the AAR Buyer-Broker Exclusive Employment Agreement address risks associated with buyer representation?***

* Clearly defines the terms of compensation
* Sets forth terms of the agreement
* Reduces the likelihood of disputes related to commission
* Others…

**Scenario:**

A buyer contacts you and asks to be shown several properties. After two meetings, during which you show the buyer five different homes, the buyer says they’ll contact you after they meet with their lender. A few days later, you find out the buyer made an offer through the listing broker for one of the homes you showed them.

***What are your options if you and the buyer entered into a Buyer-Broker Exclusive Employment Agreement?***

* Your options will depend on whether or not you have a signed employment

agreement with the buyer.

* Illustrates why it’s important to execute a signed employment agreement as soon

as possible.

***Termination of the Employment Agreement***

A broker employment agreement may be terminated in several ways:

* Completion of performance by sale and closing of the property;
* Expiration of the term of the agreement; or
* Mutual agreement of the parties.

**What are a broker’s duties to the buyer/seller after termination?**

broker generally owes no fiduciary duty to the buyer/seller after termination of the

 employment agreement and the broker is free to act for him/herself or the opposing

party as long as the broker does not hinder, delay or interfere with a transaction which

the agreement was intended to bring into being. *Coldwell Banker Commercial,* 156 Ariz.

226, 751 P.2d 542 (1988). Further, as discussed previously, the broker must also

maintain the buyer/seller’s confidential information.

## 1-6: Co-Brokerage Agreements

The Statute of Frauds does not extend to agreements between brokers to cooperate in making sales for a share of commissions. Therefore, a co-brokerage agreement does not have to be in writing to be enforceable.

**MLS Co-Brokerage Commission Agreements**

The MLS is a means by which broker participants make blanket unilateral offers of compensation to other broker participants. Entitlement to compensation is determined by the cooperating broker’s *performance as procuring cause of the sale (*or lease).”

* Therefore, a cooperating broker is entitled to a commission from the listing broker

pursuant to the MLS offer of compensation when the cooperating broker is the

“procuring cause of the sale.” This language implies that a “sale” must occur

before a commission is earned.

**Procuring Cause**

NAR video (5 minutes) https://www.nar.realtor/videos/policy-into-practice-3-procuring-cause

***How is procuring cause established?***

* Black’s Law Dictionary definition: “The proximate cause; the cause originating a

series of events which, without a break in their continuity, result in the

accomplishment of the prime object…”

* *Code of Ethics and Arbitration Manual* notes a difference in what constitutes

procuring cause in seller/listing broker disputes and what constitutes procuring

cause in listing broker/cooperating broker disputes.

* Courts may not make this distinction when deciding procuring cause in

commission disputes.

**~~Mohamed v. Robbins, 23 Ariz. App. 195, 531 P.2d 928 (1975)~~ REMOVED PER RICK MACK 5/2022**

**~~Case Facts:~~**

* ~~The seller entered into a 90-day exclusive listing agreement with the broker.~~
* ~~The listing agreement contained a clause allowing for commission to be paid to the broker after expiration of the agreement if the property was sold to a buyer with whom the broker had negotiated or dealt with.~~
* ~~The “tail” period clause contained no time limit.~~
* ~~During the listing period, the broker undertook lengthy negotiations and preliminary work to arrange a sale of the seller’s property to the Arizona Highway Department.~~
* ~~Although the negotiations and necessary steps involved outlasted the term of the listing agreement, the seller refused to renew the agreement.~~
* ~~The broker continued to work with the Highway Department to make progress on the deal, keeping the seller informed.~~
* ~~After several months, the Highway Department informed the broker they would need the seller’s authorization to continue negotiations.~~
* ~~The seller refused, directing the Highway Department to conduct all negotiations through her son.~~
* ~~An agreement was finally reached through the seller’s son for the sale of the land more than a year after the expiration of the broker’s listing agreement.~~
* ~~The broker filed a claim for the commission owed under the listing agreement.~~

**~~Decision:~~**

* The court recognized the broker’s dealings on behalf of the seller “to be the result

of a continuous and unbroken sequence of events and efforts on the part of the

[broker].”

* The court noted that due to the circumstances, the time elapsed was not so

unreasonable as to preclude the broker from receiving the commission.

* The court’s decision was made in spite of the fact that the seller had previous

 contact with the Highway Department prior to listing the property. This

determination was made due to the fact that all negotiations between the seller

 and the Highway Department “had broken down and were completely

abandoned” prior to the broker’s involvement.

***What guidance is provided by the Ethics and Arbitration Manual regarding how procuring cause is determined?***

* Determinations are generally made based on what ultimately “caused” the sale.
* For the purposes of arbitration, there is no standard “measuring stick.” The

specific circumstances of each dispute play a significant role in determining

procuring cause.

***Can an unaccepted offer form the basis for a co-brokerage commission?***

* Not in arbitration, as there is no “sale” that would meet the requirement for a

“successful transaction.”

* In civil litigation, it is possible (but unlikely) that a commission might be awarded

where the offer was rejected and no sale was achieved.

* Remember that some courts will place great weight on the wording of the listing

agreement and whether it requires the broker to produce a ready, willing and

able buyer or an ultimate sale. Other courts will not make this distinction.

***Does Article 17 prevent REALTORS® from seeking remedies through civil litigation?*** *Optional Zoom Thumbs up with you agree*

* One of the duties of membership in the REALTOR® association is the duty to

submit to arbitration all disputes specified in Part 10 of the NAR Code of Ethics

 and Arbitration Manual by the procedure therein provided, and to abide by the

arbitrator’s award. Pursuant to Part 10 of the NAR *Code of Ethics and Arbitration*

*Manual, R*EALTOR® brokers are obligated to arbitrate “entitlement to

commissions and compensation in cooperative transactions that arise out of the

 business relationships between REALTORS® and between REALTORS® and

their clients and customers. . .”

* In a situation where the dispute cannot be arbitrated, such as a procuring cause

dispute where the sale does not close escrow, cooperating brokers can take

legal action.

***Arbitration Request Guidelines are included as an Appendix***

## Arbitration Hearing

(instructor note: this is a good opportunity to cover via town hall format)

Zoom – breakout opportunity??

*Students should read through the following scenario and discuss the questions.*

# Student Manual Page 23

**Scenario:**

The seller listed her home with Alice Lister, signing a 90-day exclusive listing agreement using the ARMLS Listing Agreement. The “tail” period clause in the ARMLS Agreement was specified as 90 days in section 6(f).

The buyer attended an open house, at which point he spoke with Lister about purchasing the home. Lister asked if he was represented by an agent and he said he was. Lister instructed him to have his agent contact her to make an offer.

The buyer contacted Lister several times directly about purchasing the home over the next couple of months. Lister showed him the home again during that time, after he explained his agent was out of town. The buyer told Lister he was very interested but needed the price reduced by $10K to qualify for financing. During that time, the seller was unwilling to lower the price.

About three weeks before the expiration of the listing agreement, the seller agreed to reduce the list price by $10K. Lister contacted the buyer and explained the situation. When he said he was still interested in purchasing the home, Lister asked for the name of his agent. She then called the buyer’s broker to discuss a possible offer. The buyer’s broker said he would speak with his client and get back to her.

Although Lister contacted the buyer’s broker several more times before the expiration of the listing agreement, he never returned her calls. The seller, frustrated, chose not to renew the listing agreement. A couple of weeks later, Lister ran into the buyer, who apologetically explained that he did end up making an offer, which was accepted by the seller. He told Lister that the buyer’s broker was representing both parties in the transaction.

*Assume the transaction closed and Lister filed a request for arbitration, claiming she was the procuring cause of the sale. An arbitration hearing has been scheduled.*

**Discuss:**

* **What circumstances would be material to the Hearing Panel’s decision?**

Who introduced the property?

Who wrote the offer?

Was there a break….??

* **Under what circumstances might the Hearing Panel find in Lister’s favor?**

Had Lister written an offer, the panel may have upheld in her favor as the Buyer’s

agent was unresponsive to write the offer. Buyer Broker Employment Agreement

does not define procuring cause.

* **Under what circumstances might the Hearing Panel find in the buyer’s broker’s favor?**

An offer was written by the Buyer Broker on the Client’s behalf, no break in the

chain, transaction closed (must have closed for procuring cause).

Buyer’s Agent would have no responsibility to Selling Agent.

One transaction ended (listing with Lister) and a new transaction began, re-listed

and offer written.

## 1-7: Commission Reductions

**Discuss:**

***How do you handle a client’s request to reduce the agreed upon commission?***

Commission considerations should not be part of the Purchase Contract negotiation process. If commission is negotiated as a part of the sales process, the interests of the principals could become secondary to those of the brokers.

***What do you do if another broker wants you to reduce your commission?***

The Commissioner’s rules prohibit brokers from allowing disputes over commission to

jeopardize, delay or interfere with a transaction. Therefore, while a separate agreement

to reduce commission may be reached, a broker who tries to “bully” you into reducing

your commission by threatening to prevent the transaction from closing is in violation of

the Commissioner’s rules. Also, the Code of Ethics requires any changes in commission to be disclosed prior to the offer.

**How do you handle a lender’s refusal to approve a short sale contract unless the commission is reduced?**

Unfortunately, these situations are common in a short sale. As a buyer’s broker, you should understand that the reduction is being required by the lender, not the seller, and the seller’s broker doesn’t normally have any control over what the lender will allow.

Because the offer of cooperation in the MLS discloses the circumstances, you should

discuss the situation early on with the seller’s broker. Generally, when and if the lender

approves the short sale offer, they will specify the amount of commission they’ll allow in

their approval. In this case, refusing to accept the reduction proposed by the lender

could be interpreted as interfering with the transaction.

# Unit 2: Agency Relationships and a Broker’s Duties

**Learning Objectives**

*Upon completion of this unit, students will be able to:*

* Describe how an agency relationship is created in Arizona.
* Identify the duties of a broker as required by the ADRE Commissioner’s Rules.
* Identify the risks associated with different types of agency relationships.
* Avoid risks through the proper use of the Real Estate Agency Disclosure and Election (READE) and the Consent to Limited Representation (“Consent”) forms.

## 2-1: Creating an Agency Relationship

Agency relationships become extremely important if a dispute arises – the first question that a lawyer will ask a broker when a claim is filed is “who did you represent?”

***What risks are associated with agency relationships?***

* Failure to understand fiduciary duties
* Failure to understand how an agency relationship may be established
* Failing to properly explain representation
* Others…

***How is an agency relationship created?***

Agency is a relationship in which one person (the agent) is authorized to represent the interests of another (the client) in business dealings with third parties.

Zoom – provide definition of Express Consent – ask students to write in the chat the type of agency relationship it is: Express Consent or Implied Consent)

* Express Consent: An agency agreement is signed in writing by the broker and

the principal.

* Implied Consent: An agency relationship is implied by the actions of the broker

and the principal, without a formal written agreement.

***Does compensation create an agency relationship?***

Thumbs up if yes, thumbs down if no

No. (See case next page.)

***Alaface v. National Investment Co.*, 181 Ariz. 586, 892 P.2d 1375 (App. 1994)**

**Case Facts:**

* The buyers, the Alafaces, purchased a lot on which to build a cabin.
* The two agents they dealt with, who worked for the same realty company, both represented that water was available to the lots within the subdivision.
* When construction of the cabin was near completion, they found out they could not obtain water service.
* The Alafaces filed suit against their own agents and the seller, claiming the sellers were liable for the misrepresentation of the agents.

**Judgment:**

* The court rejected the Alafaces’ argument regarding the liability of the sellers for

 the misrepresentations of the agents.

* The court stated that the agents clearly represented only the buyers and that

payment of commission by the sellers did not establish an agency relationship.

**Significance:**

* Whenever there is a dispute between parties, establishing who was represented

by each agent will have a significant effect on how liability is determined.

**Scenario: Agency Relationships**

Tom represents the seller of a four-bedroom home. An unrepresented buyer calls to inquire about the property and Tom arranges a showing. During the showing, the buyer notices some minor damage to a small area of trim in the family room. Tom contacts the sellers, who tell him they’ve never noticed it and are unaware of any problems with the property. Tom explains this to the buyer, who proceeds to purchase the property.

A couple of months after closing, the buyer hires a contractor to do some remodeling in the family room. The contractor discovers significant water damage in the wall where the buyer first noticed the damage to the trim. The buyer files suit against the seller and Tom.

**Discuss:**

***Assume you are the judge and jury. In your opinion, does the buyer have a case against Tom for negligent misrepresentation?***

Probably not. Tom, in good faith, passed along information from the seller that he had

no reason to believe was false and had no duty to verify. Tom’s only duty to the buyer

was to deal in good faith.

***How would the case be different if Tom represented the buyer?***

Tom would certainly have more liability if he represented the buyer. The duties that flow

between a broker and the principal are greater than what exists between a broker and

an unrepresented party.

##

## 2-2: Agency Duties

**Instructor – If time allows, have students complete on their own.**

**Your chance for a break!**

***How are required agency duties established?***

Agency duties are outlined in the ADRE Commissioner’s Rules, in R4-28-1101. These

duties are also supplemented by existing case law.

**Self-Check: Agency Duties Zoom poll**

*The following questions apply to agency duties as outlined in R4-28-1101.*

1. Brokers are only required to disclose known material defects to the party they represent.
2. True
3. False\*\*
4. The Commissioner’s rules require brokers to protect and promote the interests of
5. All parties
6. Their client\*\*
7. Brokers are required to take reasonable steps to assist their client in confirming the accuracy of any information relevant to a transaction.
8. True\*\*
9. False
10. Brokers are required to disclose any present or prospective interest in a transaction
11. Within 3 business days of contract signing
12. Within 30 days of contract signing
13. Prior to contract signing\*\*
14. The Commissioner’s rules permit a broker to act as a dual agent without prior written consent.
15. True
16. False\*\*
17. Brokers are prohibited from delivering possession prior to the close of escrow unless expressly instructed to do so by the
18. Seller\*\*
19. Buyer
20. Escrow agent
21. The requirement to expeditiously perform all duties without delay applies to
22. The client
23. All parties\*\*
24. Brokers are not required to provide services consistent with any specific real estate discipline.
25. True
26. False\*\*
27. Brokers may receive compensation for goods and services related to a transaction with prior written consent.
28. True (it’s acknowledgement)\*\*
29. False
30. Brokers may provide services to a client outside their field of competence if they first disclose their lack of expertise to the client in writing.
31. True\*\*
32. False

***Morley v. J. Pagel Realty & Insurance, 27 Ariz. App. 62, 550 P.2d 1104 (1976)***

**Case Facts:**

* Morley owned a three-bedroom home in the Warren area of Bisbee, Arizona.
* They listed their property for sale with Pagel Realty. The asking price was $ 15,000.
* Broker received an offer from the buyers that provided for a purchase price of $15,000, with a $2,500 down payment and the $12,500 balance would be payable by buyers executing, in favor of sellers, a demand note payable at not less than $100.00 per month. Interest rate on the note will be 8%. The note will be all due and payable 10 years from date of closing.
* Broker presented the offer to sellers without giving them any advice concerning its contents.
* At COE buyers executed a promissory note for $ 12,500, included the words "This note is secured by a mortgage on real property," but these words were crossed out.
* Sometime during the next six months the buyers deeded the property to a third party for cash, defaulted on the note, and went bankrupt.
* Sellers sued the broker alleging breach of fiduciary duty and that they had negligently represented sellers in the sale of their land and were grossly negligent in failing to protect the seller’s interests.

**Decision:**

* The broker had a duty to affect a sale for the client on the best terms possible.
* The broker had a duty to disclose to the client all information the broker

possessed pertaining to the transaction.

* The broker was obligated to inform the sellers they should require security for

carryback.

* A broker should make all explanations commensurate with the education and

understanding of the client and, if the broker can’t give competent advice, should

 allow the client the opportunity to obtain advice elsewhere.

**Significance:**

* The court of Appeals states:

Having achieved, by virtue of (Article 26 Section 1 of the Arizona Constitution), the

right to prepare any and all instruments incident to the sale of real property, including

promissory notes, real estate brokers and salesmen also bear the responsibility and

duty of explaining to the persons involved the implication of these documents.

Failure to do so may constitute real estate malpractice.

**Scenarios: Agency Duties**

**Zoom activity: breakouts – assign different scenarios to the different breakout rooms so they all aren’t dealing with the same scenario**

Instructors:

In this student activity you can have them work individually, or break them into groups and have them discuss and review each other’s answers.

**Scenario 1:**

Renee represents the buyer of a large home on a wooded lot. The buyer inquires about two large trees in close proximity to the home’s structure that do not appear healthy. When she asks the sellers about the trees, the sellers tell her they don’t think there’s anything wrong with them. However, Renee is not sure and is somewhat concerned due to their location and proximity to the home.

**If you were Renee, how would you proceed?**

Renee should assist her buyer in locating a surveyor and/or tree surgeon to determine

 the condition of the trees and whether they need to be removed, as well as the cost of

removal.

Because she has reason to believe the sellers may be mistaken (although the mistake

may be unknowing and unintentional) about the condition of the trees, she has a duty to

her buyer to use reasonable care to assist them in verifying the condition of the trees.

**Scenario 2:**

Bill gives a listing presentation to the Johnsons, who are looking to sell their home. During the listing presentation, they disclose to Bill that they’ll do whatever it takes to sell quickly. They subsequently list the property with another agent.

Two weeks later, a buyer approaches Bill and signs a representation agreement with him. The buyer wants to make an offer on the Johnsons’ property.

***Is the information obtained from the Johnsons considered confidential?***

Zoom – thumbs up if yes, thumbs down if no

Probably not. A listing presentation alone is usually not sufficient to create an implied

agency. Because no agency relationship exists between Bill and the Johnsons, the

information obtained would not be considered confidential in a court of law.

HOWEVER, it is not a good idea to share information obtained from a seller during a listing presentation with the buyer. Even in the absence of an agency relationship, the sellers probably expected the information to be kept confidential (unless Bill explicitly stated it would not be). Divulging the information to the buyer could be construed as a violation of the Code of Ethics, even if his actions were not legally actionable.

Bill can still perform his duty to the buyer (to achieve a sale on the best terms possible) without divulging the information obtained during the listing presentation. This approach reduces Bill’s risk while still allowing him to provide the highest level of service to his client.

**Scenario 3:**

Joyce lists a home in a subdivision. The seller wants to list the home for slightly over what Joyce believes is a fair asking price. Because it doesn’t amount to a very substantial difference, Joyce agrees to list the home at the higher amount. During the first month of the listing, a home on the same street with the same floorplan is listed and sold for $25,000 less than Joyce’s listing.

A couple of weeks later, an interested buyer contacts Joyce to make an offer on the property.

***What, if anything, is Joyce required to disclose to the buyer?***

Joyce is not required to disclose information related to comparable sales in the area.

Although Joyce has a duty to disclose any adverse facts of which she has knowledge,

courts have generally interpreted this to mean defects or other circumstances related to

the specific property. Brokers do not have a duty to counsel non-clients on whether

contractual terms (including price) are advisable, since this would run counter to their

duty to secure the best terms possible for their own client.

## 2-3: Agency Disclosure

***What risks are associated with failing to properly disclose agency status?***

* Undisclosed dual agency
* Uninformed buyers and sellers
* Others…

***Is disclosure of agency status required in Arizona?***

No, it is not addressed by statute or regulatory requirements.

***Why is disclosure of agency status important?***

It is important to have clients who are well-informed and understand the sales process,

including your role. This can help you avoid misunderstandings and risks related to

clients’ misconceptions of the duties associated with agency relationships.

***What specific items are addressed in the READE form?***

* That the broker may represent others interested in buying or selling the same or

similar properties

* That a broker may represent both parties in a transaction with their knowledge

 and informed consent

* That the seller or seller’s representatives may not treat offers as confidential

unless a confidentiality agreement is in place

* “Stigmatized property” clause

***What risks are addressed by the READE form?***

* Misunderstandings
* Failure to make disclosures required by the Code of Ethics
* Undisclosed dual agency
* Others…

**Roundtable Discussion**

**Instructor – If time allows, have them break into several groups and each take on one question, if time is short, you should select one question and have them discuss with people around them.**

*As a class, discuss the following:*

***How do you explain agency to potential clients?***

***How do your explanations and the use of the READE form reduce your risks?***

It explains the fiduciary duties a broker owes when representing a buyer or seller

exclusively (accountability, confidentiality, obedience, loyalty, disclosure).

It also introduces the concept of limited dual representation.

***What are some potential outcomes of failing to properly use the READE form?***

Not disclosing agency

Potential COE violation

Party may believe you represent them when you don’t

Party may not understand if limited representation exists

Party may not understand your duties owed to them

## 2-4: Dual Representation

***What risks are associated with dual representation?***

* Undisclosed dual agency
* Failure to obtain written consent
* Failure to properly use the Consent form
* Civil liability
* Regulatory sanctions
* Others…

**Specific risk-prone areas associated with dual representation (discuss):**

* Confidentiality
* Representations regarding property characteristics
* Negotiating price and terms
* Property defects
* Handling disputes between the parties
* Others…

***Review the Consent form, included in the Appendix.***

***What is required to properly execute the Consent form?***

* An identified buyer and seller
* An identified property

***When should the Consent form be signed by the parties?***

The Consent form should be executed prior to the offer. When your buyer has chosen a

 specific property where dual agency will be an issue (i.e. one of your listings) and

wants to make an offer, you should properly explain the Consent form and obtain

signatures from both parties.

***Why is it necessary to have an identified property before executing the Consent form?***

Until a specific property has been identified, the parties may not be informed enough to

give consent to dual representation.

***What specific risks is the Consent form designed to address?***

* Potential conflicts of interest related to in-house transactions
* Undisclosed dual agency
* Required consent of both parties
* Failure of parties to understand the consequences of dual agency
* Others…

***In what situations might undisclosed dual representation occur?***

* Selling a FSBO without an agency disclosure
* Selling an in-house listing
* Where an implied agency occurs
* Taking a listing when you already represent the buyer
* Others…

## 2-5: Termination of an Agency Relationship

**Scenarios for Discussion**

**Scenario 1:**

You list a small cottage for the seller, Mary Davis. A prospective buyer completes an inspection of the property and discovers that the furnace needs to be replaced. You explain to Mary that the furnace issue must be resolved because of the potential health hazards. Mary refuses and the buyer moves on. When you explain to Mary that the furnace issue will have to be disclosed to subsequent buyers, she refuses to disclose the issue. You terminate the listing agreement.

A few months later, you notice that Mary’s property has been relisted with another agent. Curious, you call the agent and ask about the furnace. The new agent isn’t aware of any problems.

***Can you tell the other agent what you know?***

Using the chat – write yes or no

Yes – material defects are not considered confidential.

**Scenario 2:**

You represent a buyer, Steve Wilson, in the purchase of a condo. During the course of your relationship, Steve tells you about the nasty divorce he’s going through with his wife of 10 years. He mentions they are desperately trying to unload their home, which is listed by his former wife’s brother.

A couple of weeks after the closing on Steve’s condo, you are contacted by another buyer who asks to view a specific property. When you contact the listing agent to arrange a showing, you realize the property is the home belonging to Steve and his ex.

***Can you tell your buyer what you know?***

Using chat, write yes or no

No – the information was obtained in the course of your agency relationship and the

confidentiality survives the termination of that relationship. You could contact Steve and

obtain his written permission to disclose the information if he agrees.

# Unit 3: The Standard of Care and a Broker’s Duties

**Learning Objectives**

*Upon completion of this unit, students will be able to:*

* Describe how the standard of care is established under state law, the Commissioner’s rules and common law.
* Explain the specific duties to buyers and sellers required to provide the legally required standard of care.

## 3-1: Standard of Care

***What risks are associated with failure to adhere to the standard of care required in Arizona?***

* Misrepresentation
* Liability for damages related to falling below the standard of care
* Regulatory sanctions
* Potential COE violation
* Others…

***How is the standard of care established in Arizona?***

* Commissioner’s rules
* Arizona law (A.R.S. §32-2124 (E)(2))
* Existing common law (case law) serves to clarify and interpret Commissioner’s rules
* Expert testimony

**Example: *Lombardo v. Albu*, 199 Ariz. 97, 14 P.3d 288 (2000)**

**Case Facts:**

* The sellers, in default on their loan, entered into a loan agreement with their lender to list and sell their home to pay the loan. They proceeded to list the property.
* Another broker, representing the buyer, presented an offer to the listing broker, which was accepted.
* Prior to presenting the offer, the buyer’s broker was told by the buyer that her husband had serious financial problems and had filed for bankruptcy. The wife made an offer in her name only.
* After several delays in closing, the buyer was unable to close on the property.
* The sellers ultimately lost their equity in the home when it was sold at a trustee’s sale.
* The sellers filed suit against all the other parties involved in the transaction.

**Decision:**

* After the trial and appellate courts held that the buyer’s financial information was

confidential and the buyer’s broker had no duty to disclose it to the seller, the

case was eventually heard by the Arizona Supreme Court, who reversed the

decision.

* The court cited R4-28-1101 (B)(2), which established the duty to disclose “Any

information that the buyer or lessee is, or may be, unable to perform due to

insolvency or otherwise.”

* The court cited the *Restatement (Second) of Agency* §348(e), which states:

Although the making of a contract by the agent does not constitute a representation by him that his principal is known by him to be solvent or honorable, if the agent knows that the principal does not intend to perform the contract because of hopeless insolvency or other reason, the making of a contract for him under such conditions subjects the agent to liability. [Citation omitted.]

**Significance:**

* In deciding disputes between parties and brokers, courts will rely on the standard

of care prescribed by the Commissioner’s rules.

***Where can you find the Commissioner’s rules?***

<http://www.azsos.gov/public_services/Title_04/4-28.htm>

Links are also available on AAR’s website.

***How can you stay updated on revisions to the Commissioner’s rules?***

Check for updates often. AAR’s website also publishes information regarding changes and updates to the Commissioner’s rules and other legal policy. The AAR Industry Contacts page provides useful links to government affairs and legislative issues at <http://www.aaronline.com/documents/useful_links.aspx>.

***How do courts determine whether a broker has fallen below the standard of care?***

1. Expert testimony
2. The plaintiff must prove they failed to use the skill, prudence and diligence that other real estate brokers commonly exercise.
3. The plaintiff must prove the broker’s conduct caused harm to the plaintiff (usually in the form of money damages).

***What is a broker’s liability for falling below the standard of care?***

* Damages ($)
* Regulatory sanctions (imposed by ADRE)

## 3-2: Duty to Conform to the Standard of Practice for the Specific Real Estate Discipline

**Scenario**

You specialize in residential transactions. A client asks you to represent him in the purchase of a commercial building to use for his manufacturing business.

***How should you proceed?***

* Advise him in writing that you do not have expertise in commercial transactions
* Engage the assistance of a broker who does specialize in commercial

transactions

***What might be the consequences in failing to do the above?***

* Liability for problems resulting from your lack of expertise
* Failure to consider conditions material to commercial transactions
* Failure of the transaction to close due to problems arising from your lack of expertise
* Regulatory sanctions
* Others…

***How can you avoid risks related to working in an unfamiliar geographical area?***

1. Investigate the area to identify any unique issues
2. Engage the assistance of a broker familiar with the area
3. Disclose to the client in writing your lack of familiarity with the area

***What other issues should you investigate when practicing in an unfamiliar area?***

* Different local practices
* May use a different contract
* Differences in local taxes, tax consequences
* Zoning issues
* Suitability of property due to unique area concerns
* Others…

## 3-3: Representations

***What are a broker’s duties in relation to the discovery of material facts?***

* Brokers are required to assist clients when they make specific inquiries in

obtaining the requested information.

* Brokers should advise clients to obtain professional advice when an area of

concern is outside the broker’s expertise.

***Are brokers required to investigate and discover all material facts about a property or transaction?***

No. Brokers should take care not to act outside their expertise as a licensee. Doing so

exposes you to unnecessary liability. If you recognize any suspicious conditions or “red

flags” related to a property or transaction, you should disclose this to your client and

recommend they obtain any needed professional or technical inspections or advice.

***What is a broker’s responsibility in regard to verifying information obtained?***

* A broker must explain to the client that information obtained from third parties

has not been verified.

* When the accuracy of information obtained is in question, licensees are expected

 to take reasonable steps to assist clients in confirming or verifying information.

* A broker is required to obtain and communicate (but not necessarily verify) all

information material to the client and relevant to the transaction.

***Under ADRE rule and policy, what is reasonable care?***

* Brokers should operate within their expertise.
* When the accuracy of information is in question, brokers should assist clients in

confirming or verifying information, including obtaining independent verification

by a qualified professional.

* Brokers should recommend clients seek professional or technical advice when needed.

***Aranki v. RKP Investments, Inc.*, 194 Ariz. 206, 979 P.2d 534 (App. 1999)**

*Students will break up into two groups representing the buyer and the listing broker. After reviewing the case facts below, each side will be given a few minutes to develop their argument. Then, an attorney appointed by each group will present their argument in a motion for summary judgment.*

**Case Facts:**

* Listing Broker listed a single-family home in Cave Creek, Arizona.
* The buyers, represented by their broker, purchased the property.
* Buyers file a lawsuit against the seller, listing broker and buyers’ broker. The complaint alleges that they discovered many latent defects and problems with the home after the sale closed.
* Evidence and arguments include: Buyer hired a professional inspection service for the purpose of revealing defects, and this report identified at least some of the problems that form the basis of buyer’s damages claim. Buyer’s had waived the seller's warranties and agreed to amend the purchase contract to buy the property "as is." Buyers allege that buyers’ broker advised them that that the defects were "merely cosmetic," Buyers allege that buyers’ broker advised them that $2,000 was adequate to correct any defects in the house.
* Listing broker and buyers’ broker defend on two grounds: (1) lack of evidence that they knew or reasonably should have known of the problems with the home and a corresponding lack of duty to discover and disclose such problems, and (2) an exculpatory clause in the sales contract releasing brokers from liability for the condition of the premises.

**Decision:**

* The court stated that while the listing broker’s only duty to the buyers was to deal

 fairly with them.

* The court found the listing broker had no knowledge of the property defects and

no duty to perform any investigations to discover defects not readily apparent.

* The court further stated the listing broker was not liable to the buyers for passing along information obtained from the seller without proof the listing broker knew or should have known the information might be false.

**Significance:**

* *Absent a reason to believe the information is false*, brokers are not liable for

passing along information obtained and do not have a duty to verify the

information.

## 3-4: Duty to Refer to Competent Professionals – Negligent Referrals

***What risks are associated with recommending professionals?***

* Liability associated with negligent referrals
* Failing to exercise reasonable care
* Incurring unnecessary liability
* Others…

**Discussion:**

***What standard is established under Thomson v. McGinnis in regard to negligent referrals?***

* Brokers should exercise reasonable skill and care in retaining third party

professionals.

* Brokers may be held liable if a negligent referral causes harm to the client.

***How can you avoid risks related to making referrals?***

* Provide more than one recommendation.
* Allow the buyer to determine which specific professional to hire.
* Never directly hire a third party on a buyer’s behalf.
* You should encourage buyers to verify an individual’s qualifications and investigate their liability insurance coverage, if applicable.

## 3-5: Duty Regarding “Shopping Offers”

***What risks are associated with failing to understand a broker’s duty regarding shopping offers?***

* Failure to exercise reasonable skill and care
* Failure to obtain the best price and terms for the client
* Liability for failure to provide adequate representation
* Others…

***Marmis v. Solot, Co.*, 117 Ariz. 499, 573 P.2d 899 (App. 1977)**

**Case Facts:**

* Buyers made an offer to purchase property from an estate.
* The offer was accepted, subject to court approval of the transaction and giving the sellers five days thereafter to accept.
* At the court hearing for approval of the transaction, the original buyer was outbid by a second buyer.
* The original buyer sued the agent representing the estate for tortious interference with business expectancy.

**Decision:**

* The court found that the listing agent’s efforts to secure the best offer possible

were consistent with their fiduciary duty to the seller.

* The court stated a broker cannot be penalized for fulfilling their duties to a seller.

**Significance:**

* Your duty as a listing broker is to secure the best terms possible for the seller,

which may include shopping the offer.

***How can you avoid risks related to shopping offers?***

* Always discuss the situation with your client before proceeding.
* Always explain the potential effect(s) of shopping the offer in the given situation.
* Only disclose the price and terms of an existing offer at the direction of the seller.
* Other ideas…

**Roundtable Discussion**

*As a class, discuss the following:*

* **When shopping an offer, how do you maintain an appropriate level of professionalism?**
* **What behaviors have you witnessed or heard about that you felt were unprofessional in regard to shopping offers?**

## 3-6: The Effect of Article 26

***What is the significance of the court’s decision in* State Bar of Arizona v. Arizona Land Title & Trust Co.*?***

The court’s ruling that brokers and licensees who drafted purchase contracts were

engaged in the unauthorized practice of law led to the passing of Article 26 of the

Arizona Constitution.

**Article 26, Section 1. Powers of real estate broker or salesman**

 Any person holding a valid license as a real estate broker or a real estate salesman regularly issued by the Arizona State Real Estate Department when acting in such capacity as broker or salesman for the parties, or agent for one of the parties to a sale, exchange, or trade, or the renting and leasing of property, shall have the right to draft or fill out and complete, without charge, any and all instruments incident thereto including, but not limited to, preliminary purchase agreements and earnest money receipts, deeds, mortgages, leases, assignments, releases, contracts for sale of realty, and bills of sale.

***What is the effect of Article 26?***

Brokers and licensees are allowed to draft purchase contracts and related documents

for transactions in which they represent one of the parties.

***Olson v. Neale*, 116 Ariz. 522, 525, 570 P.2d 209 (App. 1977)**

**Case Facts:**

* Olson had entered into a listing agreement with Neale to sell Neale’s property. After several extensions, the listing agreement expired.
* A sale was ultimately achieved after the expiration of the listing agreement, which did not provide for any commission to be paid after the expiration of the written agreement.
* Because Neale met with Olson more than once after the expiration of the listing agreement, Olson argued for a right to commission.

**Decision:**

* The court rejected the claim, citing the requirement of the Statute of Frauds that

brokerage agreements be in writing and signed by the parties.

* The court relied on Article 26 to establish that “If a broker can practice law in the

area of real property sales, it is reasonable to hold him to a full understanding of

the implications and ramifications of the Statute of Frauds.”

**Significance:**

* The case interpretations of Article 26 impose a significant duty on brokers and

salespersons to carefully adhere to the requirements of the rules and policy

governing agents in Arizona.

* Because brokers and salespersons have been allowed this limited practice of law

in real estate transactions, they are subsequently held to a higher standard in

interpreting the implications of the documents they are allowed to draft.

**RESOURCES**

“Independent Contractor” Article by K. Michelle Lind 42

NAR article, "Ten Ways to Successfully Manage Your Independent Contractor 44 Relationships"

NAR article: Independent Contractor Status - Frequently Asked Questions 46

Buyer Broker Exclusive Employment Agreement (2/2010) 49

Arbitration Guidelines 52

Mohamed v. Robbins 60

Morley v. Pagel 63

READE/Real Estate Agency Disclosure and Election Form (1/2009) 68

Consent to Limited Representation Form (12/2002) 69

Article 11 / Professional Conduct R4-28-1101 70

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Aranki v. RKP Investments, Inc. 73

Olson v. Neale 79

R4-28-1103: Broker Supervision and Control 83

“Broker-Salespeople Commission Disputes” Article by K. Michelle Lind 84

“Procuring Cause and MLS Co-Brokerage Commission Agreements Between 87 Brokers” article by K. Michelle Lind

Code of Ethics 88

CRMS Requirements for Certification 96