

58-30,107. Minimum requirements of buyer's or tenant's agent. (a) A buyer's or a tenant's agent shall be a statutory agent with the duty and obligation to:

(1) Perform the terms of the written agreement made with the client;

(2) promote the interests of the client with the utmost good faith, loyalty and fidelity, including:

(A) Presenting in a timely manner all offers to and from the client when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract;

(B) disclosing to the client all adverse material facts actually known by the licensee; and

(C) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(3) account in a timely manner for all money and property received;

(4) comply with all requirements of this act and rules and regulations adopted hereunder; and

(5) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes or rules and regulations.

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

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

(d) (1) A buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to material facts concerning the client's financial ability to perform the terms of the transaction.

(2) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any qualified third party.

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

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

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

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

(f) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This subsection is intended to allow a buyer's or tenant's agent to show competing buyers or tenants the same property and to assist competing buyers or tenants in attempting to purchase or lease a particular property.

(g) A buyer or tenant may agree in writing with a buyer's or tenant's agent that the agent may receive compensation from a seller's or landlord's agent or from a transaction broker.

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

History: L. 1995, ch. 252, § 7; Revived, L. 1997, ch. 65, § 34; L. 1997, ch. 65, § 35; Oct. 1.