

CHAPTER 4

Agency and Its Responsibilities



David Yoon

HyunSik Yoon

DRE #02015458 / NMLS #1755213



(661) 494-1111

DavidYoon.Realtor@gmail.com

CHAPTER 4. Agency and Its Responsibilities

Seller



Agent



Buyer



CHAPTER 4. Agency and Its Responsibilities

I. Agency – An Overview (에이전시)

A. AGENT, PRINCIPAL, AND THIRD PARTY

The Seller gives the right to represent him/her in the sale of property and the broker agrees to use diligence in obtaining a purchaser. This is called 'agency'

(Seller는 부동산 판매에 있어서 자신을 대표할 권리를 주고, Broker는 구매자를 얻기 위해 부지런히 노력하기로 동의한다. 이것을 agency 라고 부른다)

1. Agent

An **AGENT** is one who acts for and with authority from the principal to represent the principal in dealing with third parties.

(AGENT는 third parties와 거래할 때 principal를 대표하기 위해 principal 의 권한을 대행하는 사람이다.)

A '**dual agent**' is broker acting as an agent for both the seller and the buyer in the same transaction, with the informed consent of both parties.

(Dual Agent는 동일한 거래에서 Buyer와 Seller 둘 다 대표하는 Agent로 활동할 때 발생하는 것, 항상 Buyer와 Seller부터 사전에 dual agent라고 알려주고 동의를 얻어야 한다.)

CHAPTER 4. Agency and Its Responsibilities / I. Agency – An Overview (에이전시)

'Dual agency' occur when a broker represents both the buyer and the seller in a real estate transaction.

(Dual agency 는 중개인이 부동산 거래에서 buyer 와 seller 둘 다를 대표할 때 발생한다)

An agent not disclosing dual agency to both parties may :

1) be disciplined, 2) not receive a commission, and 3) it will be grounds for either party to rescind the contract.

(buyer 와 seller 양측에 dual agency 을 공개하지 않는 agent는 :

1) 징계, 2) 수수료 지급 불가, 3) 양 당사자가 계약을 철회할 근거가 될 수 있다)

CHAPTER 4. Agency and Its Responsibilities / I. Agency – An Overview (에이전시)

2. Principal (Seller, Buyer)

A PRINCIPAL (CLIENT) is a person who **hires** and authorizes an agent to work for him or her.
(PRINCIPAL(CLIENT)은 agent를 고용하고 그 사람을 위해 일하도록 승인하는 사람이다)

3. Third Party

If an agent works for the seller, the third party is the buyer.
But if the agent works for the buyer, the third party is the seller.
(agent 가 Seller를 위해 일하면 third party는 Buyer입니다.
그러나 agent가 Buyer를 위해 일하면 third party 는 Seller가 된다.)

The Broker, as agent of seller, owes the buyer the duty of honesty, disclosure of fact, and fair dealing.

(Seller 를 대표하는 Agent로써 Broker가 있다면, 이 사람은 buyer에게 정직,
사실의 공개, 공정한 거래의 의무를 지고 있다)

Agent : Broker or Salesperson

Broker : Broker's license Holder and employ salesperson's license

Salesperson : must be employed by a broker

CHAPTER 4. Agency and Its Responsibilities / I. Agency – An Overview (에이전시)

Creation of Agency (Agent 관계의 성립)

IMPLIED or **OSTENSIBLE AUTHORITY** is the authority that a third person reasonably believes an agent possesses because of the acts or omissions of the principal.

(IMPLIED(묵시적) 또는 OSTENSIBLE(표면적으로) AUTHORITY (승인) 은 제3자가 주인의 행동이나 누락으로 인하여 대리인이 소유한다고 합리적으로 믿는 권한이다.)

ESTOPPEL prohibits the principal from denying that a person is his or her agent if the principal has misled another to his prejudice into believing that person is the agent.

(ESTOPPEL은 Reasonable Person으로 하여금 어떠한 사실을 믿게 해놓고, 사후에 아니라고 agent 관계가 아니라고 부정할 수 없다는 법률용어)

RATIFICATION is approval (confirmation) of a transaction which has already take place.

(RATIFICATION (사후비준) 이미 발생한 거래의 승인(확인))

The best way to establish an agency relationship is the written agreement.

(Agency 관계를 맺는 가장 좋은 방법은 서면 합의다)

CHAPTER 4. Agency and Its Responsibilities / I. Agency – An Overview (에이전시)

B. LAW OF AGENCY

The Law of Agency is found in the **Civil Code**.

(Agency의 제반 법규는 민법에 근거를 두고 있다)

An agency relationship requires the parties to be **fiduciary** and **competent**. It does Not require payment of **'consideration'**

(Agency 관계는 당사자들을 신뢰할 수 있고 유능할 것을 요구한다. 댓가(보상)은 요구하지 않는다)

C. RESPONSIBILITIES OF AGENCY (Agency의 책임한계)

A **'Fiduciary duty'** requires the highest good faith from the agent to the **principal**.

(Fiduciary Relationship 는 agent 로부터 principal 에게 가장 높은 신의 성실을 요구한다)

A **'Honest and truthful duty'** requires the highest good faith from the agent to the **third party**.

(Honest and truthful duty 는 agent 로부터 third party 에게 가장 높은 신뢰를 요구한다)

CHAPTER 4. Agency and Its Responsibilities / I. Agency – An Overview (에이전시)

Broker's Duties, Right, and Responsibilities	
Fiduciary Relationship	Truthful Relationship
<p>Principal</p> <ol style="list-style-type: none">1. Honesty – Disclose Material Facts (정직함)2. Utmost Care (최고 케어)3. Integrity – Accounting for Actions (완벽함)4. Loyalty (충성함)5. Obey – Lawful Instructions (순종)6. No Secret Profits (비밀 수익 없음)	<p>Third Parties</p> <ol style="list-style-type: none">1. Honesty – Disclose Material Facts (정직함)2. Reasonable skill and care (기술있게 케어)3. Fair Dealing (공정한 거래)4. Good Faith (신용있게)

It the seller's agent informs the buyer that the seller will take less than the list price, the agent violate the fiduciary duty of confidentiality to the seller.

(Seller를 대표하는 agent가 제3자인 Buyer에게 리스팅 가격보다 낮게 오퍼를 해도 Seller가 받아드릴 것이다 라고 이야기했다면, Seller agent는 fiduciary duty 의무(Loyalty)를 위반하였다)

The seller's agent cannot keep silent about any material fact that affect the value of the property (for example, the property is in an earthquake zone or backs up to a freeway or school)

(Seller를 대표하는 agent는 부동산의 가치에 영향을 미치는 중요한 사실에 대해 침묵하면 안된다(Honesty 의무 위반))

CHAPTER 4. Agency and Its Responsibilities / I. Agency – An Overview (에이전시)

'Dual agency' occur when a broker represents both the buyer and the seller in a real estate transaction.

(Dual agency 는 중개인이 부동산 거래에서 buyer 와 seller 둘 다를 대표할 때 발생한다)

An agent not disclosing dual agency to both parties may :

1) be disciplined, 2) not receive a commission, and 3) it will be grounds for either party to rescind the contract.

(buyer 와 seller 양측에 dual agency 을 공개하지 않는 agent는 :

1) 징계, 2) 수수료 지급 불가, 3) 양 당사자가 계약을 철회할 근거가 될 수 있다)

CHAPTER 4. Agency and Its Responsibilities / I. Agency – An Overview (에이전시)

Broker Presents Seller



Broker Presents Buyer



Broker Presents Both Parties (Dual agency)



CHAPTER 4. Agency and Its Responsibilities / II. Real Estate Agency Relationship Disclosure

II. Real Estate Agency Relationship Disclosure

The **Real Estate Agency Relationship Disclosure Act**(Civil Code) became in **1988**.

A. AGENCY DISCLOSURE LAW

According to the Disclosure Regarding **Real Estate Agency Relationships form**, the first thing the agent must do is establish if he or she is an agent for the seller, buyer, or both.

(부동산 에이전시 관계 양식에 따르면, 대리인이 가장 먼저 해야 할 일은 판매자, 구매자 또는 둘 다를 위한 대리인인지 확인하는 것이다.)

A real estate agency disclosure form must be given to all parties when the transaction involves the sale of a residential 1 to 4 units property.

(부동산 에이전시 관계의 공개는 1~4 유닛 주거용 부동산의 거래 시 모든 당사자들에게 제공해야 한다.)

CHAPTER 4. Agency and Its Responsibilities / III. Listing and the Multiple Listing Service (MLS)

III. Listing and the Multiple Listing Service (MLS)

A. LISTING AGREEMENTS

A LISTING is a contract to employ a broker as an agent, to do certain thing for owner/seller.

It is an **employment contract** for personal service.

(LISTING은 agent을 고용하고 소유자/판매자를 위해 개인의 특정 일을 하는 고용 계약이다.)

All listing are the property of the broker who employs the salesperson.

(모든 Listing은 Salesperson을 고용하고 있는 Broker의 것이다)

1. Open Listing (non-exclusive)
2. Exclusive Agency Listing
3. Exclusive Right to Sell Listing
4. Net Listing (rare)
5. Option Listing
6. Oral Listing (not discussed here)

The usual listing contract authorizes a broker to find a purchaser and accept a deposit with an offer to purchase.

(일반적인 리스팅 계약은 브로커로 하여금 손님을 찾아오는 것, 오퍼가 오면 디파짓을 받는것을 허용해준다)

CHAPTER 4. Agency and Its Responsibilities / III. Listing and the Multiple Listing Service (MLS)

1. **Open Listing** (Unilateral, Non-Exclusive Contract) (일방적인, 비독점 계약)

Only the agent who is the procuring cause earns the commission.

(손님을 찾아온 Agent 만 커미션을 받는다), 혼자만의 약속!

2. **Exclusive Agency Listing** (No Commission if Owner Sells Privately) (만약 오너가 개인적으로 판매하면 커미션 없음)

It is a listing providing that only one agent (the listing broker) has the right to be the only person, other than the owner, to sell the property during a specified period and earn a commission.

(오직 한 명의 Agent 만이 유일한 Listing을 권한을 제공받는다,
owner 이외의 특정 기간 동안 부동산을 판매하고 커미션을 벌 수 있다.)

With an exclusive agency listing, the broker competes with the owner.

(Exclusive agency listing의 Broker는 Owner와 경쟁 관계이다)

An exclusive agency listing and exclusive right to sell listing both require definite termination date.

(독점권 계약이라면 반듯이 계약 종료 날짜가 명확하게 있어야 한다)

CHAPTER 4. Agency and Its Responsibilities / III. Listing and the Multiple Listing Service (MLS)

3. **Exclusive Right to Sell Listing** (Commission if Sold Within the Listing Period) (리스팅 기간내 판매가 될 경우 커미션 받음)

The most common type of listing is the exclusive right to sell listing
(가장 일반적인 유형의 listing 으로 독점 판매권이다.)

Only the Exclusive Right to Sell Listing entitles the listing broker named in the agency contact to a commission even if the owner sells the property privately during the listing period.

(Exclusive Right to Sell Listing 은 지명된 리스팅 중개인에게만 커미션을 제공한다, 오너가 개인적으로 판매했더라도)

A seller may revoke an exclusive right to sell listing by legally notifying the broker.

(셀러는 브로커한테 합법적으로 독점 계약권 철회를 통지 할 수 있다)

SAFETY CLAUSE (Broker Protection Clause) in a listing is a negotiated period (any agreed to time period) after the termination of a listing in which the listing broker may still be entitled to a commission.

(Listing이 종료되었다 할지라도 Listing 종료 이전에 Agent가 보여준 Buyer가 계약 종료 이후 특정기간에(60일, 90일) 계약이 체결되면 Listing Agent는 Commission을 받을 수 있다는 일종의 Broker 안전 장치이다)

An Exclusive Right to Sell Listing is a bilateral **executory agreement when signed by both seller and broker.**

(Seller와 Broker가 싸인하면 독점 계약권이 체결되면서 쌍방 **집행(이행)** 계약이다)

CHAPTER 4. Agency and Its Responsibilities / III. Listing and the Multiple Listing Service (MLS)

4. Net Listing (Seldom Used) (드물게 사용)

It is an agreement providing that the agent agree to sell the owner's property for a set minimum price, any amount over the minimum being retained by the agent as commission.

(Agent가 최저 가격으로 Owner의 Property을 판매하는 것에 동의하는 계약.
최소 금액 이상의 금액은 Agent가 수수료로 가져감.)

5. Option Listing (Broker has a Reserved Right to Buy) (Broker가 집을 구입할 수 있는 권한을 가짐)

It gives the listing broker the right to purchase the property.

(listing broker에게 부동산 구매 권한을 준다.)

Option listing agents must disclose to prospective buyers that he/she is acting in the dual role of agent and principal, and present all offers to the seller.

(Option listing agents는 반듯이 예비 구매자에게 나는 이 집의 주인(구매권한)이면서 Agent로써 두 가지 역할을 한다는 것을 공개 해야 한다)

To exercise option, Agent must disclose any anticipated profit and get the written consent of seller.

(Option을 행사하려면 Agent는 예상 이익을 공개하고 Owner의 서면 동의를 얻어야 한다)

CHAPTER 4. Agency and Its Responsibilities / III. Listing and the Multiple Listing Service (MLS)

B. LISTING AGREEMENTS COPIES (Give Copy when Signed)

Listing Agreement copies must be given to the signing party immediately AFTER THEY ARE SIGNED

(Listing Agreement 사본에 서명 즉시 서명자에게 전달해주어야 한다.)

C. MULTIPLE LISTING SERVICE (MLS)

An association of real estate brokers that provides a pooling of listing, recent sales and the sharing of commission.
(전국부동산협회에서 운영하는 기관으로 리스팅, 최근 매출, 커미션 공유 정보 등을 제공한다)

A 'Pocket Listing' is the unethical practice of not giving a new listing to the MLS until the listing broker first tries to sell that listed property through only the other agent within the company.

(Pocket Listing 은 listing broker가 부동산을 회사 내의 다른 에이전트를 통해서만 판매하려고 시도 할 때까지 MLS에 새 리스팅을 제공하지 않는 비 윤리적 행동이다.)

Agent's agent = **Subagent**. He/She has **fiduciary duty** to seller and broker who hires him.

When a broker is acting as the subagent of another agent, the **subagent is primarily responsible to the seller.**

(Broker가 다른 Agent의 하위 Agent 역할을 할때, subagent는 주로 Seller(고용주)에게 책임이 있다.)

예: A 에이전트가 너무 바빠서, B 에이전트가 대신해서 Listing을 보여줄 때 Seller의 Subagent 역할을 한다

CHAPTER 4. Agency and Its Responsibilities / III. Listing and the Multiple Listing Service (MLS)

E. COOPERATING BROKERS

Non-Listing broker with whom the listing broker agree to share commission, if the non-listing broker sell the property.
(부동산을 판매하여 커미션을 나누어 가지도록 함께 협력하여 같이 일하는 Buyer의 대표하는 Brokers)

IV. Commissions (**Negotiable**)

A COMMISSION in real estate is a fee paid, usually as a percentage of the selling price, to a broker/agent as compensation for his or her services. (**Only licensed Broker/agent**)

(부동산 중개수수료는 보통 판매가격의 비율로 자신의 서비스에 대한 보상으로 broker/agent 에게 지급하는 수수료다.)

A broker/agent can pay a finder's fee to an unlicensed individual only for introducing a client to the broker/agent.

(unlicensed 개인이 고객을 브로커/대리인에게 소개한 경우에만 finder's fee 수수료를 지불할 수 있다.)

An agent can accept a commission in the form of a note, cash, or personal check.

(Agent는 note, 현금, 또는 개인 수표로 수수료를 받을 수 있다.)

CHAPTER 4. Agency and Its Responsibilities / IV. Commissions (Negotiable)

Salespeople only receive compensation for real estate transactions from their employing brokers.

(Salespeople은 고용 broker로부터 부동산 거래에 대한 보상을 받는다.)

All persons performing real estate activities for compensation must hold a valid estate license.

(부동산 활동을 하는 모든 사람은 반드시 유효한 부동산 면허를 소지해야 한다)

Procuring Cause : It is defined as a series of unbroken events that lead to an acceptable agreement with the seller.

(Procuring Cause은 Agent가 손님을 주인에게 제공했을 때 커미션을 받을 수 있다)

A listing for 1-4 residential units must disclose a notice that the commission is negotiable.

(1~4 unit 의 주거용 Listing을 받을 때에는 반드시 커미션은 Negotiable 이라고 공개해야 한다)

CHAPTER 4. Agency and Its Responsibilities / V. Transfer Disclosure Statement

V. Transfer Disclosure Statement

Transfer Disclosure Statement (TDS) identifies items of value attached to the structure or land and states whether these items are operational.

(TDS는 구조물이나 토지에 부착된 가치 항목을 식별하고, 이들 품목이 작동 가능한지 여부를 기술한다.)

Legally, the listing broker and buyer's broker must conduct a reasonably competent, diligent, and visual inspection of accessible area of the property and disclose to a prospective buyer all material facts affecting value and desirability.

(법적으로, listing broker 및 buyer's broker 는 부동산의 접근 가능한 영역에 대해 합리적으로 능력 있고, 부지런하며, 시각적인 검사를 실시하고, 잠재 구매자에게 가치와 만족도에 영향을 미치는 모든 중요한 사실을 공개해야 한다.)

B. Transfer Disclosure Statement (TDS) (Seller and Selling Broker MUST Provide This Form)

The law requires sellers of residential property of from one-to four-units (which includes triplexes) to provide prospective buyers with a Real Estate Transfer Disclosure Statement.

(이 법은 Seller는 반듯이 주거용 1-4 units(triplexes 포함)의 주택 거래 시 잠재 구매자에게 부동산 TDS를 제공할 것을 요구한다.)

CHAPTER 4. Agency and Its Responsibilities / V. Transfer Disclosure Statement

A buyer has two years to sue an agent for failure to make proper disclosures in the Transfer Disclosure Statement.

(TDS에서 적절한 사실을 Disclosure를 하지 않았을 경우, 발생한 손실에 대하여 buyer는 2년 내 소송을 할 수 있다.)

The Transfer Disclosure Statement from should be **filled out and signed completely by the seller.**

(TDS는 Seller 의해 완전히 작성되고 서명되어야 한다)

The **Seller's agent makes a visual, diligent inspection of property**, fill out the appropriate section of the Transfer Disclosure Statement, and signs.

(Seller's agent 은 부동산에 대하여 시각적이고 부지런한 검사를 하고, TDS의 해당 부분을 작성하고 싸인한다.)

The listing agent can never legally complete the entire Transfer Disclosure Statement.

(법적으로 listing agent는 TDS 전부 작성할 수 없다.)

A 'TDS' is requires for an 'as is' sale of a single-family residence when being offered for sale by owner.

(집주인이 직접 single-family 주거용 주택을 'as is' 상태로 판매한다고 해도 TDS를 제공해야 한다.)

"as is 는 현재 결점이 있는 상태 그대로...주택을 판다 " 하지만 TDS에 그 결점을 반듯이 Disclosure 해야 한다

CHAPTER 4. Agency and Its Responsibilities / VI. Broker's Responsibilities

VI. Broker's Responsibilities (Broker의 책임)

A. TRUST ACCOUNTS (Other people's Money)

A broker accepting a money Deposit is required to 1) give it to the principal, 2) place it in a trust account, or 3) give it to an escrow company.

(Broker 오퍼를 받고 디팍지 머니를 별도로 관리해야 한다.)

1) principal 에 준다

2) 손님의 돈을 관리하는 별도의 은행 어카운트에 입금 3) Escrow 회사에 준다)

Commingling is the illegal practice of mixing a client's money with agent's private funds.

By law, each entry in the broker's trust account(bank) must be identified.

(Commingling은 고객의 돈을 에이전트의 개인 자금과 혼동하는 불법 행위다. 법에 따라, 고객의 돈을 명확히 식별되어야 한다.)

A broker can keep \$200 of his/her personal funds in trust account without being guilty of Commingling.

(Broker 자신의 개인 자금 200달러를 trust account 에 입금하는 것은 Commingling 위법이 아니다.)

Conversion is Unlawful misappropriation and use of a client's fund by a licensee.

(Conversion는 의뢰인 기금을 불법적으로 유용하고 사용하는 횡령이다.)

CHAPTER 4. Agency and Its Responsibilities / VI. Broker's Responsibilities

B. TRANSACTION FILE (**Keep for Three Years**)

The Real Estate Commissioner requires that all records of a broker or salesperson be kept a minimum of three years.

(부동산 거래의 관련 모든 기록은 최소 3년 이상 보관해야 한다.)

C. SALESPEOPLE MAY BE INDEPENDENT CONTRACTORS OR EMPLOYEES

Most real estate licensees are considered independent contractors under Federal Income tax laws,

(대부분의 부동산 면허소유자는 연방 소득세법에 따라 독립 계약자로 간주된다(IRS).

But according to California Real Estate Law and Real Estate Commissioner, they are considered employees of the broker.

(그러나 캘리포니아 부동산법과 부동산 커미셔너에 따르면, 그들은 브로커의 직원으로 여겨진다.)

D. WRITTEN BROKER-ASSOCIATE CONTRACTS

'Broker-salesperson contracts' must be in in writing.

(Broker 와 Salesperson 관계의 계약은 반드시 서면으로 해야한다)

(Broker는 새로운 Salesperson와 계약 후 5일 이내, 고용 해지 후 10일 이내 CalBRE에 통보해야 한다)

CHAPTER 4. Agency and Its Responsibilities / VI. Broker's Responsibilities

F. AGENT WHO BUY AND SELL FOR THEIR OWN ACCOUNT (**Disclose You Have a Real Estate License**)

A licensee must disclose in writing that he or she is licensed when involved in a transaction as a principal.

(license소지자는 서면으로 본인으로서의 거래에 관여할 때 부동산 license 소유 사실을 공개해야 한다.)

G. POWER OF ATTORNEY

Power of Attorney is an acknowledged, written authorization of one person to act for another.

(위임권은 어떤 특정한 권한을 가진 사람, 주인의 역할을 하는 사람.

한 사람이 다른 사람을 위해 행동하도록 승인하는 인정된 서면 승인이다.)

1) a General Power of attorney : 전반적인 위임을 받은 사람

2) a Special Power of attorney : 부분적, 특정, 제한된 위임을 받은 사람)

AN **ATTORNEY IN FACT** is a person of attorney is a person who has been given the right to transact all of a principal's business.

(위임권자, 주인의 모든 업무를 처리할 수 있는 권리를 부여 받은 사람)

AN Attorney in Fact cannot deed his client's property to himself.

(위임권자는 의뢰인의 재산을 자신이 구매할 수 없다)

CHAPTER 4. Agency and Its Responsibilities / VI. Broker's Responsibilities

H. TORTS BY AN AGENT (Broker/Salesperson)

A Tort is any civil injury or wrong committed upon a person or person's property

(Tort는 어떤 사람 또는 사람의 재산에 민사상의 손실.)

(Agent가 Misrepresentation을 할 경우 Principal에게 Torts를 발생 시킬 수 있음)

I. MISREPRESENTATION OF A MATERIAL FACT

1. Innocent Misrepresentation are false statement that are not known to be false at the time they are made.

(순진한, 악의가 없는 거짓말)

2. Negligent Misrepresentation are false statement believed to be true, but made without reasonable grounds for that belief. (게을러서 생기는 거짓말)

An agent mistakenly confirms that a property is within a particular school district without checking.

(한 Agent가 실수로 부동산이 특정 학군 내에 있는지 확인하지 않고 확인하였다.)

3. Fraudulent Misrepresentation are statement made at a time when the broker knows the statement to be false

(이미 거짓임을 알고 고의로 하는 거짓말)

'Intentional deceptions' or the 'concealment of material facts' are fraudulent misrepresentations, which are immoral and unlawful.

(의도적으로 속이는 것 또는 알고 있는 것을 숨기는 것 모두 다 사기성 거짓말, 도적으로 나쁘고 불법적이다)

CHAPTER 4. Agency and Its Responsibilities / VI. Broker's Responsibilities

'Puffing' is a statement of opinion (not fact) that exaggerates a property's benefits.

It would only be a misrepresentation if a reasonable person would consider it a statement of fact.

(Puffing은 Property의 장점을 과장해서 이야기하는 의견이다,

합리적인 사람이 그것을 사실의 진술로 간주한다면 그것은 단지 잘못된 표현일 것이다)

J. SECRET PROPERTY

An agent may not make any secret profit. (Agent는 어떤 비밀 이익도 벌 수 없다.)

Example:

If a broker presented a full price offer to a seller, which the seller accepted, but the seller discovers during escrow that the buyer is the brother of the broker, the seller can cancel the transaction without any liability for the commission.

(만약 broker가 Seller에게 full price offer 제안을 제시, seller가 오퍼를 받고 Escrow 중에 Buyer가 Broker의 형제라는 것을 알게 되면, Seller는 수수료에 대한 어떠한 책임도 없이 거래를 취소할 수 있다.)

The **prosecution of an unlicensed salesperson, acting as a licensed salesperson, would be handled by the district attorney's office.**

(unlicensed salesperson, unlicensed salesperson 행위, 각 카운티 **검찰청에서 의해서 기소 처벌** 된다)

CHAPTER 4. Agency and Its Responsibilities / VII. Required Disclosures – Agent Summary

VII. Required Disclosures – Agent Summary (One to Four Unit Residential Sales)

A. VISUAL INSPECTION

Legally, the listing broker and buyer's broker must conduct a reasonably competent, diligent, and **visual inspection** of accessible area of the property and disclose to a prospective buyer all material facts affecting value and desirability.

(법적으로, listing broker 및 buyer's broker 는 부동산의 접근 가능한 영역에 대해 합리적으로 능력 있고, 부지런하며, 시각적인 검사를 실시하고, 잠재 구매자에게 가치와 만족도에 영향을 미치는 모든 중요한 사실을 공개해야 한다.)

B. DISCLOSURE OF AGENCY RELATIONSHIP

As a real estate agent, you must disclose, in writing, the duties which arise from certain agency relationships: the broker's status as agent of the seller, agent of the buyer, or agent of both the seller and the buyer (dual agent)

(real estate agent는 서면으로 에이전트의 관계에 따른 의무사항 반드시 공개해야 한다.

판매자, 구매자 또는 판매자와 구매자 모두의 대리인으로서의 중개인 지위 등)

C. DISCLOSURE OF THE NEGOTIABILITY OF REAL ESTATE COMMISSIONS

A listing for **1-4 residential units** must disclose a **notice that the commission is negotiable.**

(1~4 unit 의 주거용 Listing을 받을 때에는 반듯이 커미션은 Negotiable 이라고 공개해야 한다)

CHAPTER 4. Agency and Its Responsibilities / VII. Required Disclosures – Agent Summary

D. NO DISCLOSURE REQUIRED FOR MANNER/OCCURRENCE OF DEATH; AFFLICTION OF OCCUPANT WITH AIDS

Any death, which occurred within a three-year period, should be disclosed if it is "material."

If the death occurred more than three years before the date of the offer to buy, there is no liability for failing to disclose the fact of death.

The seller and his/her agent need not voluntarily disclose affliction with AIDS or death from AIDS, but cannot make any misrepresentations to a direct question about death on the property.

(3년 이내에 발생한 모든 죽음은 그것이 "material" 경우 공개되어야 한다.

만약 3년 전에 사망이 발생하였다면, 사망 사실을 공개하지 않은 것에 대하여 책임이 없다.

Seller와 Agent는 에이즈에 의한 사망을 자발적으로 밝힐 필요는 없지만, 재산상의 죽음에 대한 직접적인 질문을 할 수 없다)

CHAPTER 4. Agency and Its Responsibilities / VIII. Terminating an agency Relationship

VIII. Terminating an Agency Relationship

A. REASONS FOR TERMINATION OF AGENCY

Terminating an Agency Relationship	
<u>Operation of Law</u>	<u>Acts of the Seller or Broker</u>
<p>a. Expiration of the Agency (Listing) Agreement (리스팅 종료)</p> <p>b. Destruction of the Property (화재)</p> <p>c. Death or Incapacity of Broker or Seller (Listing only) (사망 & 혼수상태)</p>	<p>a. Agreement by Both Broker and Seller</p> <p>b. Renouncement of Listing by the Broker (Broker로써의 리스팅 & 역할 포기)</p> <p>c. Revocation of Listing by the Seller (Seller의 Listing 계약 철회)</p> <p>d. Close of Escrow</p>

*Agent 계약은 고용 계약이므로 사망&혼수상태 발생하면 자동적으로 계약관계가 종료된다

If the Broker in a large real estate office dies, all listings are automatically canceled, and the new broker would need to re-list the properties.

(대형 부동산 Broker가 죽으면 모든 리스트가 자동으로 취소되고, 새로운 Broker가 그 부동산을 re-list 해야한다.)

CHAPTER 4. Agency and Its Responsibilities / IX. A Brokerage Must be Run Like a Business

IX. A Brokerage Must be Run Like a Business

A **Gross dollar** is all the income that is received by the office before paying out commissions.

(부동산 회사가 전체 얻어 들이는 수익(commissions)으로, Agent에게 commissions 지급하기 전)

A '**Company dollar**' is the dollar (income and commissions) a broker receives after all salespersons' commissions have been paid.

(Company dollar는 broke가 income & commissions를 받은 후에 모든 salesperson에게 commissions을 지불하고 남은 돈)

The '**Desk Cost**' for broker is the total operating expense divided by the number of agent in the office.

(부동산 회사가 에이전트 숫자의 비용, 대비 수입이 맞는지 측정하는 것)

CHAPTER 4 / SUMMARY

1. **Commingling** : The mixing of funds held in trust with personal funds.
2. **Open Listing** : Authorization from a property owner giving a real estate agent the non-exclusive right to secure a purchaser. Other brokers, or the owners themselves, may also solicit a purchaser.
3. **Conversion** : The unlawful taking and use of another's property placed in your trust, as an agent, by that person.
4. **Principal** : The person(s) who employs a real estate agent, usually through a listing agreement.
5. **Agency** : The relationship between the principal and the principal's agent that arises out of a contract, either expressed or implied, written or oral, wherein the agent is employed by the principal to do certain acts dealing with a third party.
6. **Subagent** : A person upon whom the powers of an agent have been conferred, not by the principal, but by an agent authorized by the principal.
7. **Pop Ups** : Paid advertisements that appear suddenly on a computer screen.
8. **Estoppel** : The theory of law that states a person cannot suddenly assert a legal right when that person has neglected to assert it previously. For example: If someone claims to be your agent and you know about it and don't stop that person, you can't later claim that person was not acting on your behalf. 8
9. **Independent Contractor** : A person who acts for another, selling final results and using his or her own judgment to achieve those results.
10. **Ratification** : The approval of an act performed on behalf of a person without previous authorization, such as the approval by a principal of a previously unauthorized act of an agent. .

CHAPTER 4 / SUMMARY

11. **Dual Agency** : An agency relationship in which the agent acts concurrently for both of the principals (buyer and seller), with their consent, in a transaction.
12. **Multiple Listing Service** : An association of real estate agents that provides a pooling of listings and the sharing of commissions.
13. **Third Party** : Any party to a transaction other than the principal with whom you have an agency relationship.
14. **Attorney in Fact** : One who is authorized to perform many acts for another under a power of attorney.
15. **Exclusive Agency Listing** : A listing agreement employing a broker as the sole agent for the seller of real property, under the terms of which the broker is entitled to a commission unless the homeowner sells the property
16. **Exclusive Right to Sell Listing** : A listing agreement employing a broker to act as an agent for the seller of real property. Under the terms of this agreement, the broker is entitled to a commission if the property is sold during the duration of the listing by the broker or by the owner without an agent.
17. **Net Listing** : A listing that provides for the agent to retain, as compensation for his or her services all sums received over and above a net price to the owner.
18. **Secret Profit** : An agent's making of additional money in a real transaction without disclosing it to the principal and third Party.
19. **Innocent Misrepresentation** : Making false statements about a property, without realizing it.
20. **Negligent Misrepresentation** : Making false statements regarding a property that could have been checked out or verified.

CHAPTER 4 / SUMMARY

- 21. Transfer Disclosure Statement** : A form that notifies buyers of any physical defects to a property and requires the seller and the agent to list any evidence of defects of which they are aware.
- 22. Agency Disclosure Form** : A form presented to the principal(s) in a transaction stating exactly who the agent is working for: the buyer, the seller, or both.
- 23. Fiduciary Relationship** : The relationship between the agent and the principal that requires the highest level of trust and good faith.
- 24. Employee** : One who works directly for another person, is told what to do, and is controlled in how they do it.
- 25. Policy Manual** : A written book of procedures explaining how a broker expects the agents working under him or her to conduct business and handle routine problems.
- 26. Special Attorney in Fact** : Someone authorized to represent a principal in a specific task, such as selling a property
- 27. REALTOR® domain** : A domain suffix available only to REALTORS®.

CHAPTER 4 / QUIZ

1. **When a seller agrees to pay a commission and the broker agrees to use diligence in obtaining a purchaser, this is called:**
 - a. attorney in fact.
 - b. power of attorney.
 - c. specific performance.
 - d. agency.

2. **The broker, as agent of the seller, owes the buyer:**
 - a. only a duty to disclose any item that relates directly to the sales price of the property
 - b. the same fiduciary obligations he or she owes to the seller.
 - c. only the duty to answer questions honestly.
 - d. the duty of honesty and fair dealing.

3. **The best way to establish an agency relationship is through:**
 - a. written agreement.
 - b. oral agreement.
 - c. estoppel.
 - d. consideration.

CHAPTER 4 / QUIZ

4. A salesperson's listings are the property of:

- a. the salesperson.
- b. the salesperson and his/her heirs.
- C. the broker who employs him/her as a salesperson.
- d. the MLS.

5. Seller Skinner signed a 90-day exclusive right to sell listing with Broker Bill. Two weeks later, Skinner cancelled the listing with Bill and gave an open listing to Broker Carl and another open listing to Broker Paul. Three weeks later, Paul presented an offer to Skinner that the seller accepted. Which of the following is most correct?

- a. Broker Bill only is entitled to a full commission.
- b. A full commission will be divided equally between Bill, Carl, and Paul.
- c. Broker Paul only is entitled to a full commission.
- d. Paul is entitled to a full commission and Bill is entitled to a full commission as well.

6. Seller signed a 90-day exclusive right to sell listing with Broker Able. When the listing expired Seller gave an open listing to Broker Baker and Broker Charlie. Three weeks later, Broker Baker presented an offer to the seller which he accepted. Which of the following is most correct?

- a. Broker Able only is entitled to a full commission.
- b. A full commission will be divided equally between Able, Baker, and Charlie
- c. Broker Charlie is entitled to a full commission. a
- d. Broker Baker is the procuring cause of the sale and is entitled to a full commission.

CHAPTER 4 / QUIZ

7. When inspecting a seller's home, the agent discovers several physical defects that the agent fails to disclose to the buyer. The buyer can file civil action against the agent for up to:
- a. 2 years.
 - b. 3 years.
 - c. 4 years.
 - d. 5 years.
8. What is the maximum amount of a broker's personal funds that can be kept in his or her trust account without being guilty of commingling?
- a. \$200
 - b. \$300
 - c. \$400
 - d. As much as he/ she wants
9. Which of the following is most correct about "puffing?"
- a. It is legal, and proper business tactics.
 - b. It is usually unethical unless approved by the agent's broker.
 - c. It is only an "opinion of value" of a specific property as of a given date.
 - d. It may be misrepresentation if a reasonable person considers it a "statement of fact."

CHAPTER 4 / QUIZ

10. The broker in a large real estate office dies. All listings:

- a. usually belong to the subagents according to the terms of the broker/ associate contract.
- b. are continued during probate, unless the subagent moves to another firm.
- c. are automatically cancelled and the new broker would need to re-list the properties.
- d. may be cancelled unilaterally by each principal with 24 hours written notice.

CHAPTER 4 / QUIZ

1. D
2. D
3. A
4. C
5. D
6. D
7. A
8. A
9. D
10. C