

IC 25-34.1-10

Chapter 10. Real Estate Agency Relationships

IC 25-34.1-10-0.5

"Agency relationship"

Sec. 0.5. As used in this chapter, "agency relationship" means a relationship in which a licensee represents a client in a real estate transaction.

As added by P.L.130-1999, SEC.3.

IC 25-34.1-10-1

"Broker"

Sec. 1. As used in this chapter, "broker" means an individual or entity issued a broker's real estate license by the Indiana real estate commission.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.4.

IC 25-34.1-10-2

Repealed

(As added by P.L.128-1994, SEC.6. Repealed by P.L.130-1999, SEC.23.)

IC 25-34.1-10-3

Repealed

(As added by P.L.128-1994, SEC.6. Repealed by P.L.130-1999, SEC.23.)

IC 25-34.1-10-4

Repealed

(As added by P.L.128-1994, SEC.6. Repealed by P.L.130-1999, SEC.23.)

IC 25-34.1-10-5

"Client"

Sec. 5. As used in this chapter, "client" means a person who has entered into an agency relationship with a licensee.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.5.

IC 25-34.1-10-6

"Customer"

Sec. 6. As used in this chapter, "customer" means a person who is provided services in the ordinary course of business by a licensee but who is not a client.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.6.

IC 25-34.1-10-6.5

"In-house agency relationship"

Sec. 6.5. As used in this chapter, "in-house agency relationship" means an agency relationship involving two (2) or more clients who are represented by different licensees within the same broker company.

As added by P.L.130-1999, SEC.7. Amended by P.L.116-2015, SEC.18.

IC 25-34.1-10-6.8

"Licensee"

Sec. 6.8. As used in this chapter, "licensee" means an individual or entity issued a broker's real estate license by the Indiana real estate commission.

As added by P.L.130-1999, SEC.8. Amended by P.L.127-2012, SEC.42.

IC 25-34.1-10-7

"Limited agent"

Sec. 7. As used in this chapter, "limited agent" means a licensee who, with the written and informed consent of all parties to a real estate transaction, represents both the seller and buyer or both the landlord and tenant and whose duties and responsibilities to a client are only those set forth in this chapter.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.9.

IC 25-34.1-10-7.5

Repealed

(As added by P.L.130-1999, SEC.10. Repealed by P.L.127-2012, SEC.43.)

IC 25-34.1-10-7.8

Repealed

(As added by P.L.130-1999, SEC.11. Repealed by P.L.127-2012, SEC.44.)

IC 25-34.1-10-8

"Real estate transaction"

Sec. 8. As used in this chapter, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate.

As added by P.L.128-1994, SEC.6.

IC 25-34.1-10-9

"Subagent"

Sec. 9. As used in this chapter, "subagent" means a broker engaged to act for another broker in performing brokerage services for a client.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.12.

IC 25-34.1-10-9.5

Agency relationship; performance of duties

Sec. 9.5. (a) A licensee has an agency relationship with, and is representing, the individual with whom the licensee is working unless:

- (1) there is a written agreement to the contrary; or
- (2) the licensee is merely assisting the individual as a customer without compensation.

(b) If a licensee, under subsection (a)(1), does not have an agency relationship with the individual with whom the licensee is working due to the existence of a written agreement to the contrary, the licensee must perform at least the following duties under the written agreement:

- (1) Be available to receive and timely present offers and counteroffers for the purchase or lease of:
 - (A) the property of the individual, if the individual is a seller or landlord; or
 - (B) the property that the individual seeks to purchase or lease, if the individual is a buyer or tenant.
- (2) Assist in negotiating, completing real estate forms, communicating, and timely presenting offers, counteroffers, notices, and various addenda relating to the offers and counteroffers until:
 - (A) a purchase agreement or lease is signed; and
 - (B) all contingencies are satisfied or waived.
- (3) Timely respond to questions relating to offers, counter offers, notices, various addenda, and contingencies from the seller, landlord, buyer, or tenant pertaining to the subject property.

(c) If:

- (1) a licensee described in subsection (b) fails to perform the duties set forth in subsection (b); and
- (2) another licensee performs those duties on behalf of or at the request of a seller, landlord, buyer, or tenant;

the performance of those duties by the other licensee referred to in subdivision (2) does not constitute an agency relationship.

(d) This section does not prohibit a licensee from performing duties in addition to the duties specified in this section on behalf of or at the request of a seller, landlord, buyer, or tenant in a real estate transaction.

As added by P.L.130-1999, SEC.13. Amended by P.L.87-2006, SEC.8.

IC 25-34.1-10-10

Licensee representing seller or landlord; duties; disclosure of information

Sec. 10. (a) A licensee representing a seller or landlord has the following duties and obligations:

- (1) To fulfill the terms of the agency relationship made with the

seller or landlord.

(2) To disclose the nature of the agency relationship with the seller or landlord, and redefine and disclose if the relationship changes.

(3) To promote the interests of the seller or landlord by:

(A) seeking a price or lease rate and contract terms satisfactory to the seller or landlord; however, the licensee is not obligated to seek additional offers to purchase or lease after an offer to purchase or lease has been accepted by the seller or landlord, unless otherwise agreed between the parties;

(B) presenting all offers to purchase or lease to and from the seller or landlord immediately upon receipt of the offers regardless of whether an offer to purchase or lease has been accepted, unless otherwise directed by the seller or landlord;

(C) disclosing to the seller or landlord adverse material facts or risks actually known by the licensee concerning the real estate transaction;

(D) advising the seller or landlord to obtain expert advice concerning material matters that are beyond the licensee's expertise;

(E) timely accounting for all money and property received from the seller or landlord;

(F) exercising reasonable care and skill; and

(G) complying with the requirements of this chapter and all applicable federal, state, and local laws, rules, and regulations, including fair housing and civil rights statutes, rules, and regulations.

(b) A licensee representing a seller or landlord may not disclose the following without the informed written consent of the seller or landlord:

(1) That a seller or landlord will accept less than the listed price or lease rate for the property or other contract concessions.

(2) What motivates the seller to sell or landlord to lease the property.

(3) Any material or confidential information about the seller or landlord unless the disclosure is required by law or where failure to disclose would constitute fraud or dishonest dealing.

(c) A licensee representing a seller or landlord owes no duties or obligations to the buyer or tenant except that a licensee shall treat all prospective buyers or tenants honestly and shall not knowingly give them false information.

(d) A licensee shall disclose to a prospective buyer or tenant adverse material facts or risks actually known by the licensee concerning the physical condition of the property and facts required by statute or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the buyer or tenant. A licensee representing a seller or landlord owes no duty to conduct an independent inspection of the property for the

buyer or tenant or to verify the accuracy of any statement, written or oral, made by the seller, the landlord, or an independent inspector. This subsection does not limit the obligation of a prospective buyer or tenant to obtain an independent inspection of the physical condition of the property. A cause of action does not arise against a licensee for disclosing information in compliance with this section.

(e) A licensee representing a seller or landlord may:

- (1) show alternative properties not owned by the seller or landlord to a prospective buyer or tenant and may list competing properties for sale or lease without breaching any duty or obligation to the seller or landlord; and
- (2) provide to a buyer or tenant services in the ordinary course of a real estate transaction and any similar services that do not violate the terms of the agency relationship made with the seller or landlord.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.14.

IC 25-34.1-10-11

Licensee representing buyer or tenant; duties; disclosure of information

Sec. 11. (a) A licensee representing a buyer or tenant has the following duties and obligations:

- (1) To fulfill the terms of the agency relationship made with the buyer or tenant.
- (2) To disclose the nature of the agency relationship with the buyer or tenant, and redefine and disclose if the relationship changes.
- (3) To promote the interests of the buyer or tenant by:
 - (A) seeking a property with a price or lease rate and contract terms satisfactory to the buyer or tenant; however, the licensee is not obligated to locate other properties to purchase or lease while the buyer is under contract to buy property or while the tenant is under contract to lease property, unless otherwise agreed between the parties;
 - (B) presenting all offers to purchase and lease to and from the buyer or tenant immediately upon receipt of an offer regardless of whether the buyer is already under contract to buy or the tenant is under contract to lease property, unless otherwise directed by the buyer or tenant;
 - (C) disclosing to the buyer or tenant adverse material facts or risks actually known by the licensee concerning the real estate transaction;
 - (D) advising the buyer or tenant to obtain expert advice concerning material matters that are beyond the licensee's expertise;
 - (E) timely accounting for all money and property received from the buyer or tenant;
 - (F) exercising reasonable care and skill; and

(G) complying with the requirements of this chapter and all applicable federal, state, and local laws, rules, and regulations, including fair housing and civil rights statutes, rules, and regulations.

(b) A licensee representing a buyer or tenant shall not disclose the following without the informed consent, in writing, of the buyer or tenant:

(1) That a buyer or tenant will pay more than the offered purchase price or offered lease rate for the property or other contract concessions.

(2) What motivates the buyer or tenant to buy or lease the property.

(3) Any material or confidential information about the buyer or tenant unless this disclosure is required by law or where failure to disclose would constitute fraud or dishonest dealing.

(c) A licensee representing a buyer or tenant owes no duties or obligations to the seller or landlord except that a licensee shall treat all prospective sellers or landlords honestly and not knowingly give them false information.

(d) A licensee representing a buyer or tenant owes no duty to conduct an independent investigation of the buyer's or tenant's financial ability to perform for the benefit of the seller or landlord or to verify the accuracy of any statement, written or oral, made by the buyer, the tenant, or a third party.

(e) A licensee representing a buyer or tenant may:

(1) show properties in which the buyer or tenant is interested to other prospective buyers or tenants and may show competing buyers or tenants the same property or assist other buyers or tenants in purchasing or leasing a particular property without breaching any duty or obligation to the buyer or tenant; and

(2) provide to a seller or landlord services in the ordinary course of a real estate transaction and any similar services that do not violate the terms of the agency relationship made with the buyer or tenant.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.15.

IC 25-34.1-10-12

Licensee acting as limited agent

Sec. 12. (a) A licensee may act as a limited agent only with the written consent of all parties to a real estate transaction. The written consent is presumed to have been given and all parties are considered informed for any party who signs a writing or writings at the time of entering into an agency relationship with the licensee that contains the following:

(1) A description of the real estate transaction or types of real estate transactions in which the licensee will serve as a limited agent.

(2) A statement that in serving as a limited agent, the licensee

represents parties whose interests are different or even adverse.
(3) A statement that a limited agent shall not disclose the following without the informed consent, in writing, of the parties to the real estate transaction:

(A) Any material or confidential information, except adverse material facts or risks actually known by the licensee concerning the physical condition of the property and facts required by statute, rule, or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the parties.

(B) That a buyer or tenant will pay more than the offered purchase price or offered lease rate for the property.

(C) That a seller or landlord will accept less than the listed price or lease rate for the property.

(D) What motivates a party to buy, sell, or lease the property.

(E) Other terms that would create a contractual advantage for one (1) party over another party.

(4) A statement that there will be no imputation of knowledge or information between any party and the limited agent or among licensees.

(5) A statement that a party does not have to consent to the limited agency.

(6) A statement that the consent of each party has been given voluntarily and that any limited agency disclosure has been read and understood.

(b) A licensee acting as a limited agent may disclose and provide to both the seller and buyer property information, including listed and sold properties available through a multiple listing service or other information source.

(c) A cause of action does not arise against a licensee for disclosing or failing to disclose information in compliance with this section, and the limited agent does not terminate the limited agency relationship by making a required disclosure.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.16.

IC 25-34.1-10-12.5

Representations by licensees

Sec. 12.5. (a) An individual licensee affiliated with a broker company represents only the client with which the licensee is working in an in-house agency relationship. A client represented by an individual licensee affiliated with a broker company is represented only by that licensee to the exclusion of all other licensees. A managing broker does not represent any party in such transactions unless the managing broker has an agency relationship to personally represent a client.

(b) A licensee who personally represents both the seller and buyer or both the landlord and tenant in a real estate transaction is a limited agent and is required to comply with the provisions of this chapter

governing limited agents.

(c) A licensee representing a client in an in-house agency relationship owes the client duties and obligations set forth in this chapter and shall not disclose material or confidential information obtained from the client to other licensees, except to the managing broker for the purpose of seeking advice or assistance for the client's benefit.

(d) A broker company, a managing broker, and any affiliated licensee shall take reasonable and necessary care to protect any material or confidential information disclosed by a client to the client's in-house agent.

(e) In all in-house agency relationships, a broker company, a managing broker, and an individual licensee possess only actual knowledge and information. There is no imputation of agency, knowledge, or information among or between clients, the broker company, the managing broker, and licensees. Information contained in records of prior transactions maintained by the broker company concerning any existing or previous adverse material facts or risks with respect to real property may not be imputed to a broker or affiliated licensee unless the broker or affiliated licensee had actual knowledge of any adverse material facts or risks with respect to the real property. A person may not bring a cause of action against a broker or licensee for failure to disclose adverse material facts or risks if the cause of action is based on imputed knowledge of the adverse material facts or risks.

As added by P.L.130-1999, SEC.17. Amended by P.L.127-2012, SEC.45; P.L.150-2013, SEC.1; P.L.150-2013, SEC.2; P.L.116-2015, SEC.19.

IC 25-34.1-10-13

Written office policy regarding agency relationships; disclosure of policy; disclosure of compensation; compensation not creating agency relationship

Sec. 13. (a) A managing broker shall develop and enforce a broker company written office policy that identifies and describes the agency relationships that a licensee may have with a seller, landlord, buyer, or tenant and that specifically permits or rejects the practice of disclosed limited agency.

(b) At the beginning of an agency relationship, a licensee shall disclose in writing the broker company's written office policy set forth in this section before the disclosure by the potential seller, landlord, buyer, or tenant of any confidential information specific to that potential seller, landlord, buyer, or tenant.

(c) Parties to a real estate transaction shall be advised whether compensation will be shared with other broker companies that may represent other parties to the transaction whose interests are different or even adverse.

(d) The payment of compensation does not create an agency relationship between a licensee and a seller, landlord, buyer, or

tenant.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.18; P.L.127-2012, SEC.46; P.L.116-2015, SEC.20.

IC 25-34.1-10-14

Commencement and termination of agency relationship

Sec. 14. (a) The duties and obligations set forth in this chapter begin at the time the licensee enters into an agency relationship with a party to a real estate transaction and continues until the agency relationship terminates.

(b) If the agency relationship is not fulfilled or completed for any reason, the agency relationship ends at the earlier of:

- (1) a date of expiration agreed upon by the parties; or
- (2) a termination of the relationship by the parties.

(c) Except as otherwise agreed to in writing and as provided in subsection (b), a licensee representing a seller, landlord, buyer, or tenant owes no further duties or obligations after termination, expiration, or completion of the agency relationship, except:

- (1) accounting for all money and property received during the agency relationship; and
- (2) keeping confidential all information received during the course of the agency relationship that was made confidential by request or instructions from the client, unless:
 - (A) the disclosure is required by law;
 - (B) the client gives written consent to the disclosure; or
 - (C) the information becomes public from a source other than the licensee or by subsequent words or conduct of the client.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.19.

IC 25-34.1-10-15

Fiduciary duties superseded

Sec. 15. The duties and obligations of a licensee set forth in this chapter supersede any fiduciary duties of a licensee to a party based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties and obligations set forth in this chapter.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999, SEC.20.

IC 25-34.1-10-16

Liability for misrepresentation

Sec. 16. (a) A client is not liable for any misrepresentation made by a licensee in connection with the agency relationship, unless the client knew or should have known of the misrepresentation.

(b) A licensee is not liable for any misrepresentation made by another licensee, unless the licensee knew or should have known of the other licensee's misrepresentation.

As added by P.L.128-1994, SEC.6. Amended by P.L.130-1999,

SEC.21.

IC 25-34.1-10-17

Subagency prohibited

Sec. 17. A licensee may not make an offer of subagency through a multiple listing service or other information source, or agree to appoint, cooperate with, compensate, or otherwise associate with a subagent in a real estate transaction. The elimination of subagency by this section is not intended to limit the rights of a licensee to cooperate with, compensate, or otherwise associate with another licensee who is not acting on behalf of a client.

As added by P.L.130-1999, SEC.22.