

DUTIES AND SERVICES REQUIRED OF A LICENSEE

Hello Michigan Realtors® and welcome back to the Letter of the Law. Today we look at some the differences between fiduciary duties owed to the client and the execution of services agreed to under a service provision agreement. Based on many of the calls that we receive, there seems to be a fair amount of confusion between duties owed and services rendered pursuant to an agency agreement.

If the term “service provision agreement” doesn’t ring a bell, just be aware that it’s a statutory term in the Occupational Code. Under the Code, a “service provision agreement” is defined as a listing agreement or buyer’s broker agreement that establishes an agency relationship.¹ Since 2008, the Code has defined both agency responsibilities (or duties) as well as the minimum services that a licensee must provide to his or her client.

The proper execution of a service provision agreement is very important because the language in a service provision agreement will establish whether the licensee will be acting as a *traditional agent* or a *designated agent* and whether he or she will be providing *full* or *limited services*. As we’ve discussed in prior Letter of the Law installments, if the service provision agreement is silent on these matters, the default position under the Code is a traditional agency relationship providing full service.***

In traditional agency firms, a client of the firm has an agency relationship with the firm and every licensee within the firm. If a firm opts to practice designated agency, a client of the firm has an agency relationship with only the firm, the individual licensee working with that client, and, if that licensee is a salesperson, the named supervisory broker.²

¹ MCL 339.2501(j).

² MCL 339.2517(6)–(10).

Duties

Regardless of whether the licensee is a designated agent or traditional agent and regardless of whether the licensee is providing full or limited services, the Occupational Code provides that any broker or salesperson acting under a service provision agreement is responsible for the following duties:***

(1) Exercising reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.

(2) Complying with the terms of the service provision agreement.

(3) Maintaining loyalty to the interest of the client.

(4) Complying with applicable laws, rules, and regulations.

(5) Referring the client to other licensed professionals for expert advice not within the expertise of the licensee.

(6) Accounting for all money and property received by the agent.

(7) Maintaining the confidentiality of all information obtained in the course of the agency relationship, unless disclosed with the client's permission, including the duty not to disclose confidential information to any licensee who is not an agent of the client.^{3***}

A buyer or seller cannot waive any of these fiduciary duties. In other words, every licensee under a service provision agreement owes all of the listed duties to his or her client. This is true for both designated and traditional agents and for both full and limited service agents. It is particularly important that the supervising broker stress the importance of these

³ MCL 339.2512d(2).

statutory duties to all affiliated licensees. Failure of a salesperson, team, or associate broker to meet these duties can very quickly become the supervising broker's problem.

Services

In addition to the duties that I have listed, the Occupational Code provides that a broker or salesperson acting under a service provision agreement must provide the following services to the client, which cannot be waived: ***

1. When the real estate broker or real estate salesperson is representing a seller, marketing the client's property in the manner agreed upon in the service provision agreement.

2. For a broker or associate broker who is involved at the closing causing to be furnished to the buyer and seller, a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursement affecting that party.⁴ ***

Again, the services listed above cannot be waived – meaning that every licensee under a service provision agreement must provide these services to his or her clients. However, since April of 2017, an associate broker need not review and sign a closing statement if the closing is conducted by a licensed title agency.

Limited Services and the Necessary Waiver

A broker or salesperson acting under a service provision agreement must provide the following additional services unless those services are waived by the client in writing:***

1. Accepting delivery of and presenting offers and counteroffers. At the time of execution of a purchase offer, a licensee is required to recommend to the purchasers that they require the seller to provide them with a title insurance policy.

⁴ MCL 339.2512d(3).

2. Assisting in the development, communicating, negotiation, and presentation of offers, counteroffers until a purchase agreement is executed.

3. After execution of a purchase agreement by all parties, assisting as necessary to complete the transaction under the terms specified in the purchase agreement. A licensee may not close the transaction contrary to the terms of the written purchase agreement without the written approval of both parties.***

A waiver of any or all of these services must be done through a limited service agreement and then disclosed on the agency disclosure form.⁵ The Code contains specific language that must be included in any limited service agreement.⁶ A limited services waiver is available on MR's website (Form "Y").***

Conclusion

In summary, regardless of the type of service provision agreement, the Code provides that a licensee owes traditional agency responsibilities to his or her client – including reasonable care, loyalty, confidentiality and an accounting. In addition, unless the client signs a written limited services agreement, a licensee must provide a client with assistance in preparing and exchanging offers and counteroffers and then, once a purchase agreement is signed, assistance in moving the transaction toward closing. A licensee must review and sign the closing statement unless that work is done by a licensed title agency. And finally, in all events, a licensee working with a seller must market a property as he or she has agreed to do in the listing contract.***

As usual, thank you for watching and providing such valuable suggestions for this video series. If you enjoy the "Letter of the Law" format, please visit ondemand.mirealtors.com for

⁵ MCL 339.2512d(5), 339.2517.

⁶ MCL 339.2517(4).

legal continuing education opportunities, especially as we quickly approach the end of the licensing cycle. And keep those suggestions coming to the email below. Thanks again, and we'll see you next time for a discussion on the Role of the Transaction Coordinator.