

Effective 5/13/2014

61-2f-308 Brokerage agreements.

(1) As used in this section:

- (a) "Brokerage agreement" means a written agreement between a client and a principal broker:
 - (i)
 - (A) to list for sale, lease, or exchange, real estate, an option on real estate, or an improvement on real estate; or
 - (B) for representation in the purchase, lease, or exchange of real estate, an option on real estate, or an improvement on real estate; and
 - (ii) that gives the principal broker the expectation of receiving valuable consideration in exchange for the principal broker's services.
- (b) "Client" means a person who makes an exclusive brokerage agreement with a principal broker under Subsection (1)(d).
- (c) "Closed" means that:
 - (i) the documents required to be executed under the contract are executed;
 - (ii) the money required to be paid by either party under the contract is paid in the form of collected or cleared funds;
 - (iii) the proceeds of any new loan are delivered by the lender to the seller; and
 - (iv) the applicable documents are recorded in the office of the county recorder for the county in which the real estate is located.
- (d) "Exclusive brokerage agreement" means a brokerage agreement that gives the principal broker the sole right to act as the agent or representative of the client for the purchase, sale, lease, or exchange of real estate, an option on real estate, or an improvement on real estate.

(2)

- (a) Except as provided in Subsection (2)(b), a principal broker subject to an exclusive brokerage agreement shall:
 - (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or exchange the client's real estate;
 - (ii) assist the client in developing, communicating, and presenting offers, counteroffers, and notices; and
 - (iii) answer any question the client has concerning:
 - (A) an offer;
 - (B) a counteroffer;
 - (C) a notice; and
 - (D) a contingency.
- (b) A principal broker subject to an exclusive brokerage agreement need not comply with Subsection (2)(a) after:
 - (i)
 - (A) an agreement for the sale, lease, or exchange of the real estate, option on real estate, or improvement on real estate is signed;
 - (B) the contingencies related to the sale, lease, or exchange are satisfied or waived; and
 - (C) the sale, lease, or exchange is closed; or
 - (ii) the exclusive brokerage agreement expires or terminates.

(3) A principal broker who violates this section is subject to Sections 61-2f-404 and 61-2f-405.

(4)

- (a) Subject to Subsection (4)(b), a principal broker who represents a buyer may directly contact a seller who is subject to a brokerage agreement or an exclusive brokerage agreement if:
 - (i) the seller's principal broker gives the buyer's principal broker written authorization; or

- (ii) subject to Subsection (4)(c), the seller gives the buyer's principal broker written authorization.
- (b) If a buyer's principal broker obtains a written authorization described in Subsection (4)(a), the buyer's principal broker may contact the seller directly to:
 - (i) discuss items related to a real estate transaction between the buyer and the seller;
 - (ii) provide the seller with blank state-approved forms; and
 - (iii) negotiate the terms of a real estate transaction between the buyer and the seller.
- (c) A buyer's principal broker may not solicit from a seller a written authorization described in Subsection (4)(a)(ii).
- (5) A principal broker who, in accordance with Subsection (4), engages in the conduct described in Subsection (4)(b) is not, by that conduct, representing that the principal broker is acting on behalf of both the buyer and the seller.

Amended by Chapter 350, 2014 General Session