**Real Estate Practice – Part 4**

**Contract Considerations**

One of the areas of liability an Agent can take on is through the completion of a real estate contract on behalf of their client. In this segment, attendees will learn about the concepts relating to contract law terminology and how it can impact the overall contract writing process. Learn about the unauthorized practice of law, validity of contracts and how what you write matters. Is the client legally competent, are the terms and conditions enforceable in a court of law and how carelessness in writing up a legal document can land a Licensee in hot water. Be prepared to engage in hands on activities that will help you raise your bar of competency in this area. Educators may want to use contract forms specific to the geographic area or area of practice of the students being taught.

**Type of learning methodologies used to engage the audience:**

* Group Exercises
* Interactive questioning
* Power Point Presentation
* Demonstration

**Session Objectives – Upon completion of the course, the participant will be able to:**

1. Prepare an offer in a legal manner without doing the unauthorized practice of law when completing terms, conditions and clauses in a contract.
2. Thoroughly explain the impact of a poorly written agreement as it relates to the client and the brokerage combined and describe accurately the proper handling of addendums, counter offers, negotiations, and amendments to a contract.
3. Outline the fundamental elements of contracts in general and what constitutes a legally binding contract.
4. Discuss the essential elements of a contract that addresses legal form, competent parties, the requirements for signatures and material matters to be included in a legally binding contract.
5. List the remedies for Seller and Buyer Default that include mutual rescission of the contract, suit for specific performance, injunction, sue for damages, declare contract forfeited.
6. Develop and enforce internal procedures for the fair handling of multiple offers that incorporate elements of confidentiality, legal seller instructions and shopping for additional offers in various agency representation situations.

**Length of Session: 3 Hours**

**5 Minutes Welcome, Objective Review and Icebreaker**

**20 Minutes Preparing Offers – Contract Considerations**

* Unauthorized Practice of Law – Defined
  + Town Hall Q & A
    - How would you handle getting signatures from someone suffering from Alzheimer’s or dementia, but they haven’t been legally declared incompetent?
    - What a real estate Licensee’s responsibility in determining whether a customer/client is a competent party and legally able to enter into a contract?
  + Group Exercise
    - List the most common “pain” points that arise from working with contracts during any part of the process.

**20 Minutes Amendments / Signatures**

* Amendments and Addendums
  + Electronic delivery
  + Signatures
  + Company policies
* Group Exercise
  + - If an inspection repair request is received by the Listing Broker and the Listing Broker gets a verbal approval from their Sellers about doing the repairs, is an email from the Listing Broker to the Buyer Broker stating that the Seller’s agrees to the request enough? Would it be considered a “legal” approval? What is your process?
    - It is possible a Seller or Buyer may ask that their Broker sign for them on their behalf because they may not be able to address a document in a timely manner.
    - Does your company policy allow the Agent to sign on their client’s behalf? If yes, is a specific Power of Attorney required to be in place executed between the Seller and your Broker?

**10 Minutes Signatures / Delivery - Continued**

* + Group Exercise
    - How are you ensuring the legal signing of a contract in this digital age? List pros and cons regarding the use of digital signatures.
  + Contract Delivery – Defined
    - Group Exercise
      * You are representing Buyers who are very anxious about getting the house they have just written an offer on. What steps should you take as the Buyer’s Agent to ensure delivery of the offer to the Seller?
    - Postal Rule – Defined

**10 Minutes Break**

**35 Minutes Terminology / Clauses**

* + Protective Clause – Defined
  + “As Is” clause – Defined
    - Group Exercise
      * As Is Confusion - Does As Is apply to items that break down before closing?
  + Warranty statements – Defined
  + Time is of the Essence clause – Defined
    - Group Exercise
      * Time Matters - Is notice required when deadline met?
      * Missed Deadline - Late delivery of inspection requests from Buyer to Seller
  + Back Up contracts – Defined
    - Group Exercise
      * Back Up Lingo – An Agent writes up an offer for their Buyers that clearly states that the offer is in a backup position. What terms and conditions do you recommend be in place when writing this type of an offer that best protects the Buyer?
      * Do your terms and condition recommendations change if there is Limited Dual Agency situation?

**15 Minutes Terminology / Contingencies**

* + Contingencies – Defined
    - Financing
    - Inspections
    - Subject to the Sale and Close of a Property
    - Back up offers
    - Escalation Clause

1. **Minutes Break**

**NOTE: This section is a customization option - an additional hour where the Instructor can select what is best for the attendee’s needs.**

**25 Minutes Terminology / Contingencies**

* + Group Exercise
    - List other contingency clauses that appear in a real estate purchase agreement.
    - What issues that come up with writing a subject to sale and close of a property clause and provide methods to ensure the process is efficient and effective.
    - Is a Bridge loan considered “cash” or should it be listed as a financial contingency? What about state programs subject to accepted offers?
    - What are the Pros and Cons of writing an escalation clause into the contract (The Buyer’s offer is $250,000, or $500 higher than the highest offer, not to exceed $260,000).
    - How do you handle writing an offer that has personal property (washer, dryer, etc.) staying with the property after close? What issues can come up relating to this clause?

**25 Minutes Practical Application – General Contract Q & A**

* + Town Hall Q & A
    - How can we reduce our liability in the taking and presenting of multiple offers?
    - Can the Seller dictate timelines for presentation of multiple offers?
    - Is the Listing Agent obligated to inform other Buyer’ Agents that they are in a multiple offer situation?
    - Is an Agent obligated to inform a Buyer Agent who has a client “on the fence” that other offers have been received and they need to get their offer submitted?
    - Do multiple offers create energetic competition, or does it cause Buyers to back out of the negotiations?
    - What are the top three things an Agents can do to help minimize disappointment and frustration from other Buyers and/or Agents when their offer isn’t accepted?
* Breach of Contract – Defined
  + Breach of Contract – Examples
* Remedies to Breach of Contract
* Sue for restitution
* Rescind (terminate)
* Specific performance

**OR**

**50 Minutes Practical Application – Writing An Offer**

* Group Exercise – Write an Offer for Multiple Presentation
  + Multiple Offer Presentation – three separate offer terms are listed. Group is to compare and contrast the recommendations for Best Practices. The primary responsibility is to determine the process in which they will present the offers and what information must remain confidential to either party.

**OR**

**50 Minutes Practical Application – Writing An Offer**

* Group Exercise – Write an Offer Using Local Forms Based on Scenario