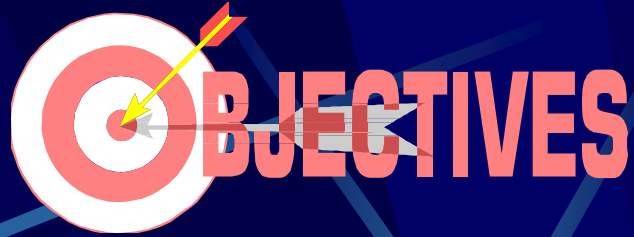


CHAPTER 6

CONTRACTS I - AGENCY & LISTING AGREEMENTS





STUDENT LEARNING OUTCOMES (SLOs):

1. Explain how a Real Estate agency is created.
2. List 7 ways a Real Estate agency may be terminated.
3. Describe the fiduciary relationship that exists between principal and agent.
4. Describe the special responsibilities and duties that a Real Estate agent and principal owe each other and responsibilities they owe third parties
5. Explain how the listing agreements are created.
6. Describe the duties and diligence of agent and principal required by the listing agreement.
7. Understand the significance of the Real Estate agency disclosure and the legal ramifications.

I. Creating An A. Agency Relationship

- AGENT

- PRINCIPAL

- THIRD PARTY



1. CREATION OF AGENCY

Agency = Authority

a. BY AGREEMENT

(Actual authority)

- Orally
- Written
- Mutual Actions

ARE



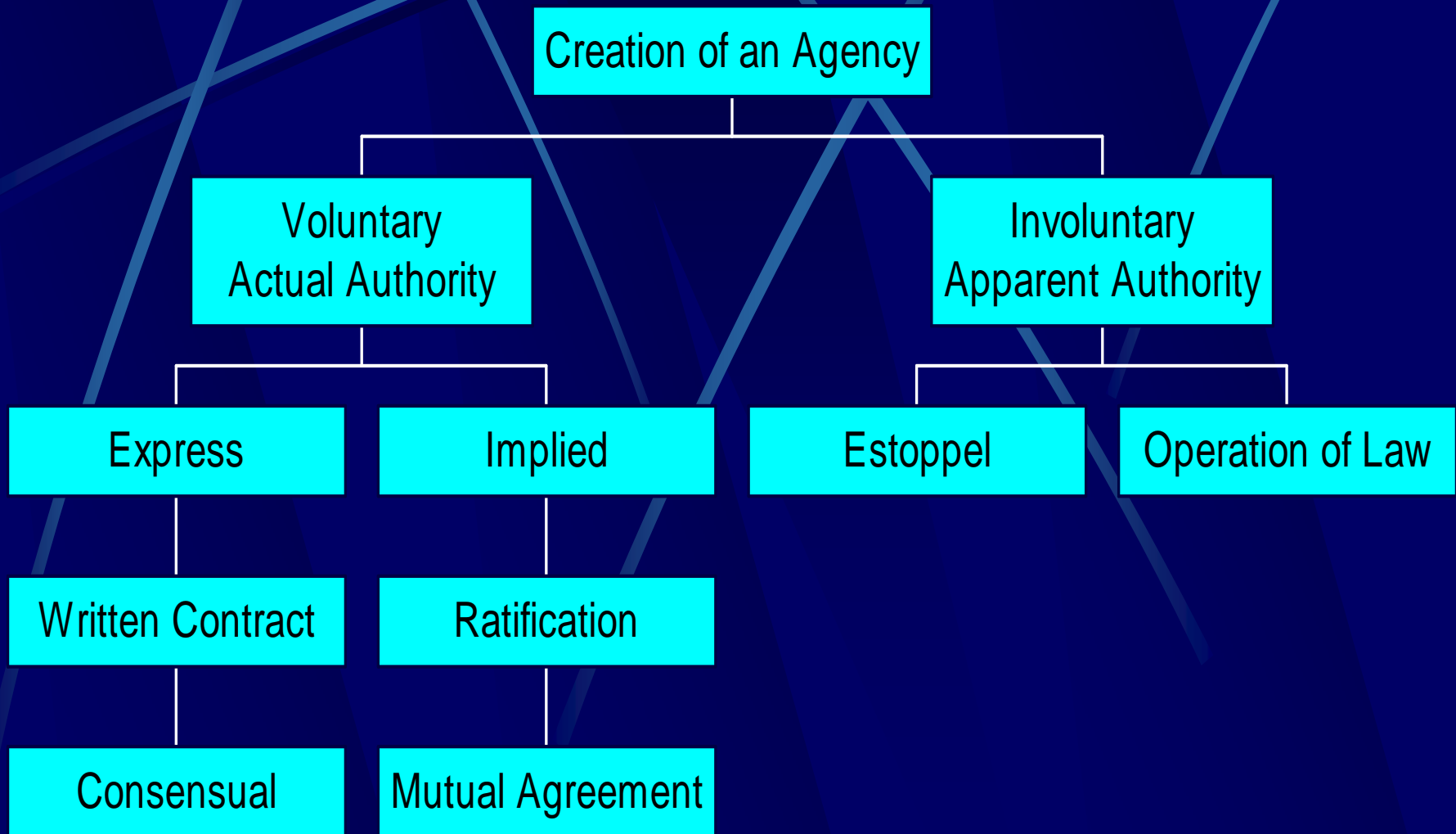
b. BY RATIFICATION (Implied authority)

- OK an unauthorized agents action

c. BY ESTOPPEL (Apparent authority)

- Allow an innocent party to believe someone is your agent and act on that belief

CREATION OF AN AGENCY



2. AGENCY REQUIREMENTS

- a. Capacity of the parties
- b. Lawful objective
- c. Offer and Acceptance
- d. Consideration
- e. Written Compensation Agreement

3. SUB AGENT

- Salesperson working under the broker
- Broker working under the broker

4. TERMINATING AGENCY

- By Acts of the Parties

- a. Fulfillment of the purpose

- b. Term Expires

- g. Unilateral Action

- (Revoke, withdrawal, renounce, cancellation)

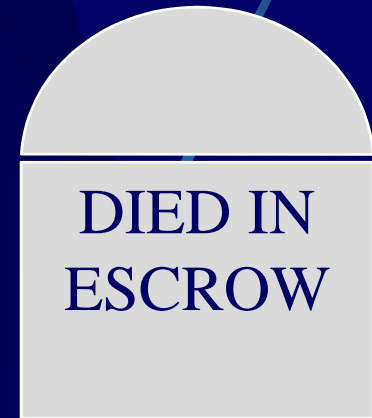
- e. Mutual Agreement of principal and agent

- By Law

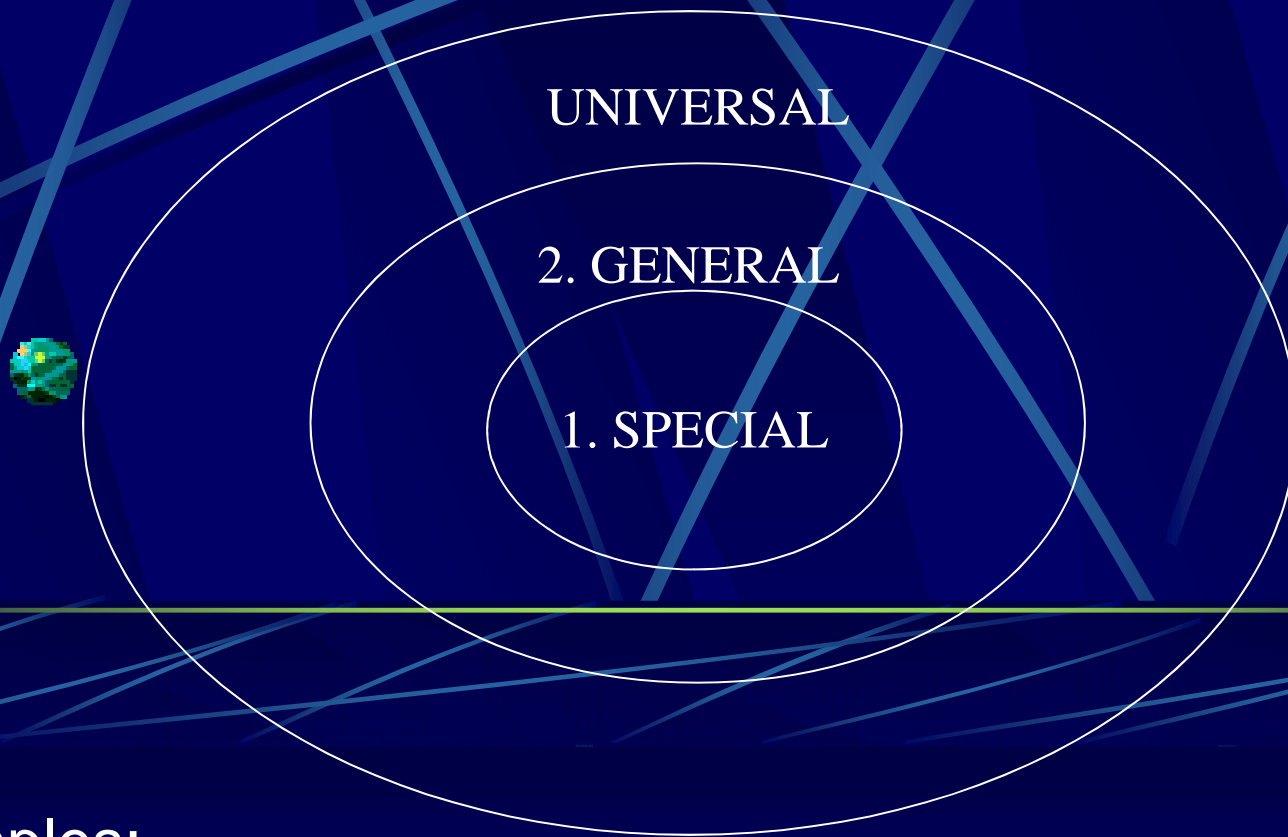
- c. Destruction of Property

- d. Death of one of the parties

- f. Court Action (bankruptcy, divorce)



II. Employment Relationship



A. Examples:

UNIVERSAL – Court-appointed Guardian

1. SPECIAL – Real Estate Broker (Specific)

2. GENERAL – Business Manager

PRINCIPAL
(Seller)

LISTING BROKER

Listing Salesperson
of Listing Broker

Multiple Listing Service
Association of Realtors

Selling Salesperson
of Listing Broker

SUB AGENT(s) Hundreds of
Selling Agents

SELLING BROKER

PRINCIPAL
(Buyer)

Selling Salesperson of
Selling Broker

B. BROKER employment with Salesperson or another broker

OFFICE STAFF

1. EMPLOYER & EMPLOYEE

Broker withholds Social Security taxes

Broker controls activities

May receive employee benefits

SALESPERSON

2. INDEPENDENT CONTRACTOR

Pays own taxes & Social Sec.

Control over their own activities

No employee benefits

Broker liable to principals & 3rd parties for actions of agents

B. REAL ESTATE SALESPERSON

- Usually an independent contractor for tax purposes
- Always an employee under the real estate law

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EMPLOYMENT RELATIONSHIP cannot be assigned or transferred

III. DUTIES OF The Parties

A. TO THE PRINCIPAL (Fiduciary relationship)

- Disclose Material Facts
 1. Disclosure of agency relationship
 2. Loyalty, confidentiality, full disclosure
 3. Obey principal's lawful instructions
 4. Use of skill, care and due diligence or competence
 5. Accountability

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● TO THIRD PARTIES

- Disclose Material Facts
- No Negligence
- Make ONLY Correct Representations

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B. BROKER owes to all parties:

1. Disclose agency agreement
2. Exercise reasonable care and skill & use due diligence
3. Honest and fair dealing
4. Disclosure of relevant information
(Easton v. Strassburger-CA Civil Code)
Must disclose what agent should have known.
5. Acts of the licensees under them
6. Try to find a buyer
7. Have written contract with each principal/licensee

C. TROUBLESOME AREAS

1. Misrepresentation
2. False Promises
3. Commingling
4. Conversion -using other's funds
5. Divided Agency
6. Secret Profit
7. Code of Ethics
8. Good Faith
9. Failure to Inspect
10. False Advertising
11. Negligence
12. Commissioner's rules and regulations

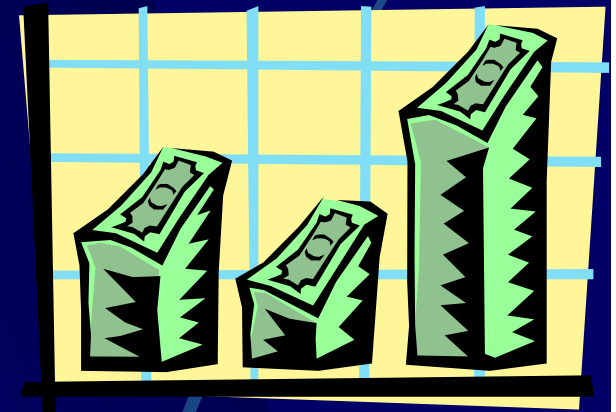


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Pg 6-3

D. Recovery Fund

- Financed by license fees
- Fees collected and administered by the California Department of Real Estate
- Reimburses public for uncollectable judgments against licensees
- Licensee must pay fund back before doing business again
- Injured party may collect up to \$25,000



IV. CONTRACT

1. An agreement between two or more legally competent persons.
 - ❖ Promise or mutual promise to do or not do specified acts
 - ❖ For consideration
 - ❖ Money
 - ❖ Services
 - ❖ Forbearance
 - ❖ Legal object
 - ❖ “Honor Thy Contract”



TYPES OF CONTRACTS

a. UNILATERAL

One Party
Obligated

OR

b. BILATERAL

Both Parties
Obligated

2. EXPRESS

Written or Oral

OR

IMPLIED-IN-FACT

Acts of Parties

3. EXECUTORY

Yet to be
Performed

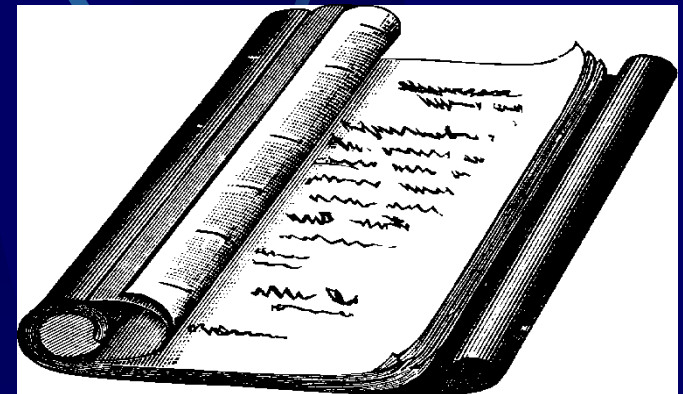
OR

EXECUTED

Fully Performed

B. ESSENTIAL ELEMENTS OF A VALID CONTRACT

1. Capable parties age 18 or over (Emancipated minor)
2. Mutual Consent (Offer and Acceptance)
3. Lawful Object
(Cannot break law)
4. Sufficient Consideration
(Anything of value)
-Money -Goods -Promises -Services
5. Must be in writing to be enforceable as stipulated by the Statute of Frauds (Must be in writing to be enforceable by a court of law)



C. Legal Effect of Contract

1. VALID

Fully Enforceable

- All Essentials Included
- No Negative Influences

3. UNENFORCEABLE

Not able to be Enforced

Was not put in Writing

- Property does not Exist
- Statute of Limitations has run out

2. VOIDABLE

Able to be Enforced or Voided only by the Injured Party

- Lack of Capacity
- Fraud, Undue Influence, Duress, Menace

4. VOID

No Contract:

No one can enforce it

An essential element is missing

- Capacity
- Mutual Consent
- Lawful Object

TERMINATION OF CONTRACT

- Mutual Agreement
- Written release
- Substituting --Novation
- Rejection of Contract
- Incapacity of Either Party
- Counter Offer
- Completed Performance



STATUTE OF LIMITATIONS

Provides Deadline for Filing Court Action

Examples:

Must File Within:

1 Year

- Against Banks for Forged Checks

2 Years

- Oral Contracts
- Title Insurance Matters

3 Years

- Trespass
- Fraud or Mistake (3 years from discovery)

4 Years

- Written Contracts

10 Years

- Judgment



D. Breach of contract

- 1. Sue for money damages
- 2. **Rescission:** Contract cancelled or annulled. Parties put back to their original position. The injured party rescinds the contract.
- 3. Sue for specific performance.

V. LISTING AGREEMENTS

A contract between the Principal (Seller) and Agent (Broker) that:

1. Authorizes agent to find buyer or tenant
2. Establishes the commission
(State law: Commissions are negotiable)
3. Lists
 1. delegated powers to broker, as agent
 2. terms and conditions that the seller will sell
(promise of diligence in finding a ready, willing and able buyer)
 3. amount of the broker's commission and when earned
4. Has a definite termination date

A. Open listing

1. Owner has contract with several agents
2. Commission paid only to 1st agent with acceptable offer
3. Owner may sell property without a commission
4. No definite termination date required

B. Exclusive Right-to-Sell

1. Commission to agent regardless of who sells the property
2. Listing broker may share commission with subagent who finds a buyer
3. Owner liable for commission if owner withdraws or makes unmarketable
4. MUST have a definite termination date

C. Exclusive Agency Listing

1. Commission is payable to the listing broker
2. Seller reserves the right to sell the property without paying a commission
3. Must contain a definite termination date

D. Net Listing

1. Seller and broker agree that the seller is to receive a fixed amount
2. Broker earns everything over the net amount
3. Broker must reveal the exact selling price to buyer and seller before closing

E. Option Listing

1. Agent pays a fee to seller for the option
2. If agent finds buyer, within time in option listing, agent may exercise option
3. Agent must reveal sales price to all parties

F.

M L S

Multiple Listing Service

Pg 6-6

- a. Pool of licensees sharing listings
 - Maximizes market exposure for owners
 - Association of Realtors affiliation

Most AORs have

Member status

Affiliate status

- b. Seller pays listing agent who pays any co-operating broker

Pg 6-7

**HURRAY!!!
TIME TO
GO HOME**

