

### Agency Relationships With Customers and Clients (Pg. 12 of the outline)

- o What does an agency relationship look like?

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### Agency Relationships

#### A. General Agency Terminology

- o Agency (the word used to describe that special relationship between a real estate licensee and the person he or she represents)
- o Governed by two kinds of law:
  - o **Common Law** – the rules of a society established by tradition and court decisions
  - o **Statutory Law** – the laws, rules, and regulations enacted by legislatures and other governing bodies

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### Creation of Agency

- o Express agency – based on a formal agreement between the parties
  - o **(In IDAHO it must be in writing)**
  - o EX: a seller representation agreement
  - o EX: a buyer representation agreement

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### Creation of Agency cont...

- Compensation
  - The source of compensation does **NOT** determine agency. (An agent does not necessarily represent the person who pays the commission.)
  - EX: a listing agreement

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### Definitions:

- **Agent** – the individual who is authorized and consents to represent the interests of another person.
- **Subagent** – the agent of an agent (no longer in Idaho)
- **Principal** – the individual who hires the agent and delegates to him or her the responsibility of representing the principal's interests. Often referred to as the CLIENT
- **Agency** – the relationship between the principal and the agent

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### Definitions:

- **Fiduciary** - A relationship which implies a position of trust or confidence (Common Law)
- **Statutory** - agency duties that are defined by law
- **Client** – the Principal
- **Customer** – the third party for whom some level of service is provided
- **Non-Agent** – a middleman between a buyer and seller who assists both parties with a transaction without representing either party's interests. (IREC Guideline #20)

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## B. Types of Agency Relationships

- **Universal Agent** – a person empowered to do anything the principal (client) could do personally. Could be created by a general power of attorney

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## Types of Agency Relationships

- **General Agent** – may represent the principal in a broad range of business matters or general activities, i.e., a property manager

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## Types of Agency Relationships

- **Special Agent (Limited Agent)** – a person authorized to represent the principal in one specific act or business transaction only, under detailed instructions

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### Types of Agency Relationships

- Single Agency - The agent represents only one party in any single transaction and owes duties exclusively to one client, who may be either the buyer or seller in a transaction. Any third party is a customer.

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### Single Agency

- Seller as Client/Principal
- Broker is the Agent of the Seller
- Buyer is a Customer

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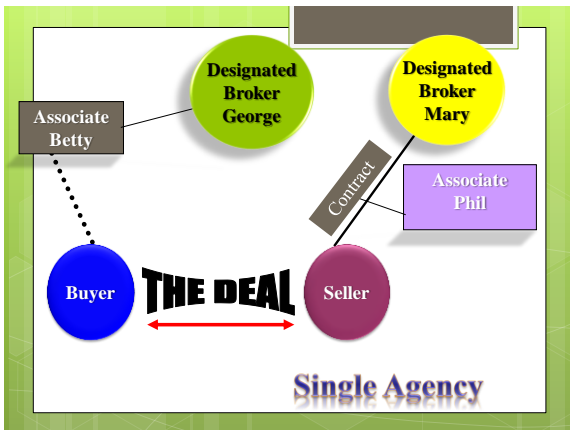
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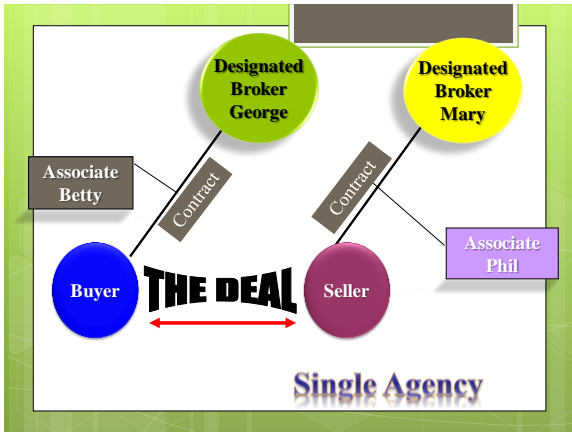
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### Single Agency

- Buyer as Client/Principal
- Broker is Agent of the Buyer
- Seller is a Customer

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### Dual Agency Without Assigned Agents (in Idaho it's called LIMITED DUAL AGENCY)

- Dual agency requires equal loyalty to two separate clients at the same time. Because agency originates with the broker, dual agency arises when the broker is the agent of the buyer and the agent of the seller.
- Disclosed Dual Agency (Idaho - inform and obtain consent) – alerts of conflicts

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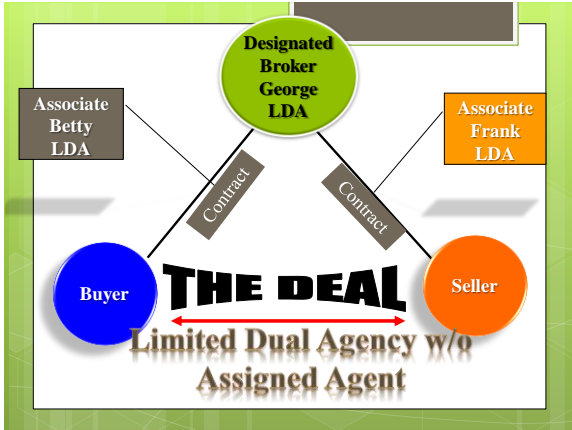
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### Limited Dual Agency With Assigned Agents

- Individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code.

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### Limited Dual Agency w/Assigned Agents

- The designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

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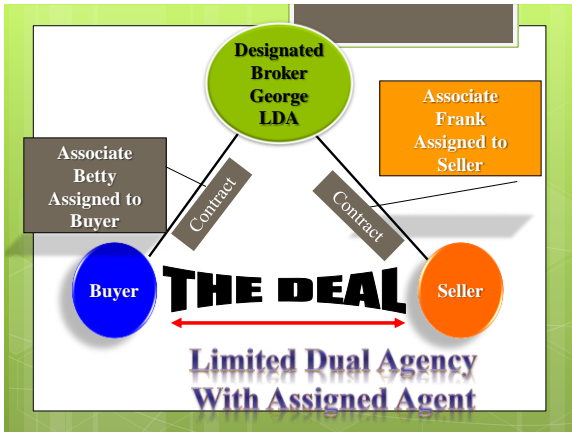
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### Non-Agency

- No signed buyer or seller representation agreement
- Agent is a non-agent
- Buyer or Seller is a Customer
- No "implied "agency in Idaho

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### C. Creation of Agency Relationships

- Common Law Agency
- No longer used in Idaho
  - Implied Agency (unintentional, inadvertent or accidental)
  - Expressed Agency (in writing)

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## Agency in Idaho

- o **Statute Replaces Common Law Agency in Idaho**
- o **Vicarious Liability Abolished**
  - Client is not liable for any wrongful act made by agent
- o Broker must create and maintain a written agency office policy which must be available upon request

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## Agency in Idaho

- o Compensation Does NOT Determine Agency!

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## Idaho Agency Requirements

Idaho Real Estate Commission requires:

- o Agency Disclosure Brochure (*often referred to as the "Blue Brochure"*)
  - o First Substantial Business Contact
- o Agency Representation Agreements
  - o Seller representation agreement
  - o Buyer representation agreement
    - o Confidential Client Information
    - o Agreement for payment of a commission only is not enough to create an agency relationship
    - o **Confirmation** – Statutory Language Required

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2. Customer Relationship (I.C. 54-2086)

A. Duties Owed to the Customer – Non-Agent duties:

- o Assist the customer
- o Honesty, good faith, reasonable skill and care
- o Account for customers money or property
- o Disclose all Material facts

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### Agency in Idaho

B. Additional Duties Owed to Customers with Written Compensation Agreement or Customer Services Agreement (I.C. 54-2086-2)

- o Receive & timely present all offers
- o Duties may not be waived or abrogated

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### Agency in Idaho

C. Duties NOT Owed to Customer

- o Independently inspect the property
- o Verify customer's financial condition
- o Confidentiality

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### Agency in Idaho

- o 3. Client Relationship (I.C. 54-2087)
  - o Perform all terms of the written representation agreement
  - o Use reasonable skill and care
  - o Be available to the client to receive and timely present all written offers and counteroffers

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### Agency in Idaho

- o Promote best interest of client in good faith, honesty and fair dealing. This includes but is not limited to:
  - o Disclosure of any adverse material facts that the agent knows, or reasonably should have known
  - o Seek an acceptable property and assist in negotiation...

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### Agency in Idaho

- o Advise buyer client to obtain inspections or seek appropriate legal, tax or other counsel
- o Confidentiality-sold prices are NOT confidential
- o Properly account for money or property

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### Agency in Idaho

- 4. Limited Dual Agency (I.C. 54-2088)

Brokerage must have written consent to limited dual agency signed by all parties  
 Duties to both clients  
 Duties to the extent they do not unreasonably conflict

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### A. Without Written Consent, Cannot Disclose:

- a) *Buyer will pay more than listed price*
- b) *Seller will accept less than listed price*
- c) *Personal factors motivating the parties to buy or sell*
- d) *Buyer or seller will agree to price or terms other than as agreed*

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### B. Assigned Agency

- Accommodates an "in house" sale where two different agents are involved.
- Broker assigns different agents to represent the different principals while the broker remains a dual agent.
- Idaho Code (54-2088) Limited Dual Agency and Assigned Agency Permitted

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### E. Duration of Client Relationship

- Begins on: date and time of signed agreement
- Representation ends at occurrence of the first of:
  - Agreement is completed
  - Client and brokerage agree to end relationship
  - Expiration date set out on the agreement

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### F. Duties after Representation of Client Ends

- Proper accounting of money or property
- Keeping confidential client information confidential

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### G. Licensees Dealing with Their Own Property

**IREC Guideline #24**

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## Disclosure of Agency

- Agency Disclosure Brochure
  - "Blue Brochure"

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