

Definitions and Opinions

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1. The standard of care may be defined as the accepted manner in which the average licensee performs his or her duties within the parameters of the day-to-day practice of real estate with respect to codes of ethical conduct, relevant real estate laws and Commissioner's regulations, including educational and licensing provisions.

2. A real estate licensee has a fiduciary duty, that is, a legal obligation to act with the utmost care, loyalty, good faith and honesty toward his or her client, the principal. In the course of real property and business opportunity transactions, licensees who put the interests of clients before their own are following the tenets of what it means to be a fiduciary.

3. In order to help buyers and sellers make informed decisions regarding the purchase, sale, trade or lease of real property and business opportunities, licensees who are acting as fiduciaries are expected to advise their clients within their expertise as real estate brokers and salespersons.

4. The intent of real estate disclosure laws is to help provide consumers with accurate and sufficient information in order to help them make informed decisions regarding the property and/or business opportunity at hand. Timing, that is, when clients and/or customers are given disclosures, is just as important as the disclosures themselves.

5. The licensee's duties to third parties and principals includes honesty, fairness and to fully disclose any information he or she may know or should know about the subject property and/or business opportunity that may influence a seller's decision to sell, a buyer's decision to buy and the price and terms of the sale. This information is collectively referred to as material facts.

6. A material fact may be defined as any fact that would affect a buyer's decision to buy and/or a seller's decision to sell. More specifically, knowledge of a material fact will not only affect the buy/sell decision, it may very well affect the price offered and accepted as well as the terms and conditions of the sale.

7. A material fact that is an indicator of a potential problem instead of being the actual problem is referred to as a red flag.
8. All licensees, whether they are representing the buyer and/or the seller, must conduct a diligent visual inspection of residential real property that consists of one to four units and disclose any material facts and red flags discovered. The agent who is acting as a fiduciary has a further obligation to advise the client about what is discovered through such an inspection.
9. In practicing full-disclosure it is not enough for licensees acting as fiduciaries to just hand clients contracts, written disclosures and property inspection reports. Licensees cannot expect clients to sign them without first having a discussion regarding content and possible options for dealing with the information contained in these documents.
10. An employing broker must carefully supervise the real estate activities of his or her salespeople as well as assume liability for their actions.
11. A fully ratified purchase agreement is the blueprint for a real estate transaction. Furthermore, the principals must expressly and mutually agree to any changes made as to the terms and/or conditions of the contract in the course of a transaction.
12. Custom and Practice is the manner in which licensees perform their duties. It may differ throughout the state but all licensees must work within the parameters of the law, Commissioner's Regulations and applicable codes of ethical conduct.