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## **AGENCY and The Real Estate Agent –**

*duties, obligations and professionalism in the performance of services.*

by Linda Jones Neil

In real estate the party that represents a buyer and or a seller in the purchase or sale of a property, is called an agent. In Mexico as in other countries of the world, the agent has a duty to treat his principal in an ethical and professional manner. The obligation to represent the interests of his principal makes it very difficult for the conscientious agent to represent BOTH buyer and seller since the buyer wants to buy the property for the lowest price possible and the seller is looking for the greatest amount of money he can get for his property.

With this in mind, how can the conscientious agent honestly represent both parties? Almost anyone will agree; there is a conflict of interest when anyone tries to fairly represent both sides of a transaction.

No matter how much we need or want the money that will come from a FULL commission, better to call in a colleague to represent one side or the other. That way both share in the commission, both principals are honestly and fairly served and the agent will have clients who will recommend his or her services to other friends and acquaintances

It ends up being win-win for everyone!

To reinforce the relationship with buyer or seller clients it is important to understand and discuss this with the client; outline the responsibilities of the buyer's agent, the obligations of the seller's agent and how to handle the important issues such as money where price is being negotiated. A confirmation of the relationship should be signed with the buyer or seller client.

Not only does this confirm the essentials of the fiduciary relationship, but also the clients, knowing that an agent is working EXCLUSIVELY for them, and not the other side, will be much more likely to remain loyal to his/her agent.

And what are the obligations and responsibilities? Simply put, the SELLER'S AGENT has the obligation to counsel his seller as to fair and reasonable selling price, as to the importance of disclosure of defects in the property, as well as to offer the property to the widest audience possible. The purpose of this, of course, is to obtain the highest price possible for the property.

The BUYER'S AGENT should assist the client in locating the best property possible which will meet buyer's requirements. Once located, the property should be inspected as to

suitability for the purpose intended and the most attractive price and terms possible negotiated for the acquisition of the property.

In all cases, the agent must treat all parties with honesty and fairness.

Forms confirming agency relationships are available by contacting the author at the address below.

**PROFESSIONALISM**.....everybody talks about it.

What really makes a PROFESSIONAL agent? What are the elements that contribute to professionalism in an agent's relationships with his or her clients?

**KNOWLEDGE and EXPERIENCE:** The true professional has absolute knowledge of the subject he or she is discussing. How do we obtain absolute knowledge?

Education is a good beginning. We must be like a sieve; absorbing everything available on real estate, on law, on construction, on land use. It is always a good idea to have a greater knowledge and understanding than is required for any specific case.

Experience picked up in a transaction is valuable, not just for the current sale, but for the future; it must be stored in the memory bank for the next transaction; or maybe ten transactions down the line.

For the new agent who may lack practical experience, it is wise to never lie or guess the answer to a client's question. It is perfectly all right to admit you don't know and add that you will find out,...and then do it. What you learn from the investigation is valuable information for the experience bank, for the next time the same or a similar subject comes up!.

**PUNCTUALITY** is a sign of professionalism and a super important quality of the successful real estate agent. Not only should the agent always be on time but he or she should always be prepared. Does the car need gasoline? Does a contract need to be picked up or filled out? Is there an answer promised? Compliance with promises and obligations helps create respect. Delays, waiting at a notary office, having to repeat a document - all these are necessary from time to time, but should be avoided if at all possible.

**COMMITMENT** Listen, *really listen*, to the needs and dreams of the client, be it a buyer or a seller. If the needs and requirements are reasonable, make a COMMITMENT to help the client achieve his or her objective. If the desires are not reasonable, explain and demonstrate why they are not realistic and assist in seeking more reasonable goals.

**LOOK AHEAD at the CONSEQUENCES;** Through experience, one learns what to reasonably expect. Review all aspects of the transaction as it is planned. Will it all fit together? Will it work? If not, why not? What are the problems to solve? Resolve them before they get out of hand. Be creative!

**HONESTY:** Don't ever try to disguise or deceive. A smart buyer or seller will suspect a problem. It is far better to tell the truth about a situation. The buyer or seller who wants to

will often come up with a far better solution than the agent, and will talk everyone into accepting it!

**ETHICS:** The really successful real estate agent is ethical. Those who cut corners do not last. The simplest way to be ethical is to ask oneself: How would I want to be treated under the same circumstances? This is another way to say, "Treat others as you would like to be treated". Following this adage it is virtually impossible to stray. This same philosophy is expressed in the Code of Ethics of the Mexican Association of Real Estate Professionals (AMPI) and the National Association of Realtors®(NAR).

**THE ETIQUETTE OF COOPERATION:** With the advent of buyer's agents and seller's agents, everyone will benefit economically by working together. Communication is essential and has never been easier. The Multiple Listing systems are wonderful tools, designed to help seller's agents promote listed properties, and buyer's agents locate ideal properties. Good humor and patience will go much further than anger or frustration. Each area has its own rules of cooperation and commission sharing. The following is a guideline:

1. Buyer and buyer's agent select the company to hold funds and supervise the transfer.
2. Commissions are paid to the company where the agent works, never directly to the agent.
3. Sales commissions are usually agreed upon with the Seller as a percentage of the purchase price negotiated, plus the added value tax. An invoice for services performed must always be presented to the party paying the commission, usually the seller.
4. Company representing the Buyer and company representing the Seller generally split the total commission generated from the sale, 50-50.
5. Referral fees – in which an agent sends a potential client to another agent, often from one area to another, will generally earn a portion of the Buyer's or Seller's portion of the commission. This needs to be negotiated and agreed upon between the agents and their brokers.

In Mexico, the law of agency is contained in Articles 273 to 308 of the Commerce Code. A copy of these articles is available, in English and in Spanish, upon request.

To conclude, it is far easier to represent one side of a transaction instead of straddling the fence and trying to counsel both buyer and seller on the same property. Not only is it easier but also, in the long run, more profitable, as the agent is able to earn respect, referrals and provide professional services to a greater number of clients.

*about the author:*

**LINDA JONES NEIL** has been designated as an Accredited Buyer's Agent (ABR) by the National Association of Realtors® (USA). She is also the founder of The Settlement Company®, which specializes in real estate transfers and escrows. Licensed as a California real estate broker, Ms. Neil has pursued her profession in Mexico for over thirty years. Her skills in negotiating contracts between parties from three distinct cultures have placed her services in demand as a consultant and for speaking engagements on Mexican law and customs in Mexico, the United States and Canada. She has been widely published on the subject of real

*property in Mexico. She is also a founding partner in Global Mexico Real Estate Institute (IGM) where she is an instructor for CIPS, ABR, SRES, RSPS and ePRO designations and courses. Memberships; FIABCI, AMPI and NAR. Linda is a former member of the National Advisory Council of AMPI and serves as Presidential Liaison from NAR to Mexico.*

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