

Example 1

Susan took a net listing on Gertrude's property. The asking price was \$330,000, the closing costs were expected to be \$15,000, and Gertrude had a loan balance of \$269,000. The net listing agreement called for Gertrude to receive \$23,000 in cash at closing.

After marketing the property for six months, Gertrude accepted an offer of \$318,000 for her property. Susan received \$11,000 as her brokerage fee because all costs of the sale (\$269,000 note plus \$15,000 closing costs) and the seller's agreed net (\$23,000) were deducted before Susan's fee could be calculated. If Susan and Gertrude had agreed on the 5.5% commission her firm had established as its commission fee, she would have earned \$17,490.

Example 2

Phillip, the broker for Action Real Estate, has been called by Elvin and Elma Jones to list their property. The Joneses have lived in their present home for 60 years and have decided to move to California to be close to their grandchildren. During the listing presentation, the Joneses tell Phillip that they would like to receive \$420,000 cash for their home, and if he can guarantee them that amount, they will be absolutely delighted with the sale. In fact, they are quite willing for Phillip to keep whatever amount he can obtain over the \$420,000, plus closing costs and repairs. Phillip attempts to tell the Joneses that he believes that the home will sell for at least \$490,000, but they Joneses are not impressed and tell him, "Just get us \$420,000 to take to California and we will be happy." The Joneses sign the listing agreement. The home subsequently sells for \$495,000. At closing, the Joneses receive their \$420,000, the closing costs and repairs cost \$22,000, and Phillip receives \$53,000! One week later, the grandchildren call and threaten to bring a lawsuit against Action Real Estate for fraud.

1. How could Action Real Estate have avoided this situation?
2. Could Phillip refuse to take the listing for Action Real Estate?

Example 3

Broker James, of Precision Realty, obtained a listing contract from Joyce to sell her home for \$218,000 cash or with a conventional loan. James marketed the home, and three weeks after he listed the property, a full-price cash offer was submitted by a buyer with the resources to fulfill the terms of the offer. James met with Joyce later that evening and presented the offer. After discussing the terms and projected proceeds, it appeared that Joyce was prepared to sign the offer; however, at the last moment she had a change of heart and decided not to sell the property after all.

1. Is the broker entitled to a fee or commission?
2. If this contract offer was written by another brokerage firm, could the other broker sue Joyce?
3. What recourse might the buyer have against Joyce?

Example 4 (Exclusive Seller Agency in Practice)

Sally as the listing associate. Sally successfully acquires for Bay Realty an exclusive listing of a three-bedroom town house from her friend, George. At the first open house conducted by Sally, prospective buyer Betty discusses the property with Sally. Sally initially discloses to Betty that she is an agent of the seller and furnishes Betty with a written TREC statement regarding information about brokerage services. Later that night, Sally prepares an offer from Betty on George's property, which is later accepted by George.

1. Because Sally represents the seller through Bay Realty, must she suggest that Betty use another brokerage firm that would represent Betty's interest?
2. Would Bay Realty's agency role change if Betty were referred to a different licensee within the firm?

Sally as the selling associate with no prior relationship with the buyer. Bay Realty has a policy of exclusive seller representation. Sally is the licensee on duty when Bob Brown walks in and asks about available properties. Sally checks Bay Realty's listings and finds a property on Main Street listed by Carol from a branch office of Bay Realty, and one on King Street listed by Tom, from Southside Realty on the other side of town. Sally makes appointments to show Bob both properties.

1. Because Sally is not the listing agent on the Main Street property, will she be free to represent Bob on this property?
2. When Sally shows the properties, how will her duties to Bob and to the sellers differ when she shows the Main Street property from when she shows the King Street Property?

Sally as the selling associate with prior relationship with buyer. Sally as listing agent, has just negotiated a completed sales contract on George's town house. She has opened escrow by placing the contract and earnest money with the escrow agent named in the contract. George is extremely pleased with Sally's professional attitude and skills and asks her to find a suitable replacement property. Sally is well aware of George's needs and wants, as well as his financial resources and favorite bargaining techniques. Sally knows a perfect property for George, and it happens to be listed with Bay Realty through Tom, another Bay Realty salesperson.

Sally knows from experience that when satisfied clients like George sell their homes and buy replacement properties in the same locality, the client typically works with the same listing agent (Sally, in this case). It is natural for George to think that Sally is still his agent. Sally recognizes that the seller of the new home might find it useful, in negotiations, to know how much cash George will receive from his recent sale and when George is planning to move. This seller, like most sellers, wants to learn as much information as possible from the agent about the buyer, especially if the offer is contingent on financing.

1. If Sally is to represent the new seller on behalf of Bay Realty, should Sally disclose these useful facts to the seller?
2. Would such disclosure surprise George or violate any fiduciary duty to him?