

28 Alabama Agency

RECAD Brokerage Disclosure Misrepresentation Listings

RECAD

Definitions

Protection to the consumer

Representing the seller and/or the buyer

Definitions

To understand Alabama agency relationships and disclosures, one must first understand the terms used when discussing agency as set forth in the law and rules. In Alabama, the laws that set forth the Real Estate Consumer's Agency and Disclosure Act are found in Articles 4 and 5, Section 34-27 and in Chapter 790-X-3 of the Alabama Real Estate License Law. The following definitions apply to those laws and to agency relationships and disclosures.

Agency agreement is a written brokerage agreement between a real estate company and a consumer that creates a fiduciary relationship between the company's qualifying broker and the consumer wherein the real estate company is hired to represent the consumer, who becomes a client and represents the client's interest in a real estate transaction.

Brokerage agreement is a specific written agreement between a real estate company and a consumer that establishes a brokerage relationship and contains the terms and conditions of the services to be provided, including any compensation to be paid to or through the company. The term encompasses both agency transaction facilitator agreements.

Brokerage service is any service provided by a broker or licensee to another person which includes activities for which a real estate license is required. Rental and property management are not included.

Buyer's agreement is an agreement between a real estate company and a person who is purchasing real estate in which the company agrees to assist that person with the purchase in exchange for a fee as either a fiduciary or a non-fiduciary.

Consumer is a person who obtains information, advice, or services from a real estate licensee regarding real estate and real estate transactions.

Customer is a person who is provided brokerage services by a licensee but is not a client of the licensee.

Client is a person who has an agency agreement with a broker for brokerage service. A client can be either a buyer or a seller.

Dual agency is an agency relationship in which a licensee represents both the seller and the buyer in the same transaction with the informed written consent of all parties, who have signed the consent agreement.

Fiduciary duties are those owed to a client when an agency agreement has been signed. Fiduciary duties are those performed under obligation and trust and include loyalty and reasonable care.

Informed consent is a consumer's agreement to allow something to happen based on full disclosure of the facts needed to choose appropriate brokerage services.

Listing agreement is an agreement between a real estate company and a property owner who is selling real estate in which the company agrees to assist that party with the sale in exchange for a fee as either a fiduciary or a non-fiduciary and also applies to the seller's future decision to sell the property.

Material fact is a fact that is of significance to a reasonable party which affects the party's decision to enter into a real estate contract.

Single agent is a licensee who is engaged by and represents only one party in a real estate transaction through a signed agency agreement. A single agent can be a seller's agent or a buyer's agent. A single agent may be only a buyer's agent or a seller's agent in any single transaction.

Transaction facilitator is a licensee who assists one or more parties in a transaction without being an agent, fiduciary, or advocate for that party's interest in the transaction. Without a signed agreement in place, a transaction facilitator relationship remains in effect.

Protection to the consumer

Home buyers and sellers are often confused about the real estate salesperson or broker's role in residential real estate transactions. They are also often unclear about whom the salesperson or broker actually represents and what defines the boundaries of the agent-buyer-seller relationship.

To help clear up the confusion and protect consumers, the Alabama Legislature enacted the Real Estate Consumer Agency and Disclosure Act (RECAD) to set forth the roles and duties of real estate brokers.

Alabama law requires that consumers be informed about the types of services that real estate licensees may perform. Therefore, RECAD required the AREC to write a Real Estate Brokerage Services Disclosure form. All licensees must use the form as a means of disclosure to consumers. While consumers are not required to sign the form, licensees should encourage them to do so as acknowledgement of having received the form. If the consumer refuses to sign

the disclosure form, the licensee should make a note of the refusal on the form itself.

The disclosure form describes the different types of brokerage services that are available to Alabama real estate consumers, including the types of agency relationships available.

Representing the seller and/or the buyer

After having the different brokerage arrangements and services explained, the consumer may choose to enter into an agency relationship with the licensee or not. The consumer may also choose which brokerage arrangement and services best suits his or her needs. The consumer may choose any of the brokerage arrangements available (to be discussed in detail later in this chapter) or may choose not to enter into a brokerage or agency relationship at all. If the consumer chooses not to sign a brokerage arrangement, there is no agency relationship.

A signed agency agreement must be in place before the licensee can perform certain acts, such as making any offers for buyers or listing a property for sellers. A licensee may show properties to potential clients or host an open house without having an agency agreement in place.

Based on the services offered by the company, the licensee may represent either the buyer or the seller, or in some arrangements, both. Some companies focus only on buyers while others focus only on sellers. Most companies represent both buyers and sellers. Regardless of which the licensee represents, he or she will act for or represent the client in negotiations with other parties. The licensee must put the client's best interests ahead of the interests of any other party to the transaction.

If the licensee represents the seller, he or she is obligated to negotiate the best selling price and terms for the seller. If the licensee represents the buyer, he or she is obligated to negotiate the best purchase price and terms for the buyer. If the licensee is representing both the buyer and the seller, he or she must strive to represent both equally and fairly, avoiding conflict whenever and wherever possible.

BROKERAGE DISCLOSURE

When to disclose

Offer to purchase required language

Agency disclosure office policy

Non-agency disclosure

Customer or client

Brokerage relationships

Consumer's legal rights

Licensee duties to customers

Agent duties to clients

Services provided by licensees

When to disclose

RECAD requires brokers to disclose a non-agency relationship and the available brokerage services to a consumer as soon as reasonably possible, as well as disclosing how the company and licensee are compensated for their services using a Real Estate Brokerage Services Disclosure form. The complete text of this required form, which discusses single agency, dual agency, and transaction facilitation, is found in Section 790-X-3-.13 of Alabama Real Estate License Law. The broker must provide the disclosure form to the consumer before any confidential information is exchanged and before the licensee provides any brokerage services. The consumer then has the option of signing an agreement with the broker or not and deciding what service arrangement will work best for him or her. Consumers are not required to sign this form, but if the consumer refuses, the licensee should make a note of the refusal on the form.

**Offer to purchase
required language**

All offers to purchase must prominently contain a representation disclosure clause using prescribed language, which states the type of agency being practiced. This applies to both listing and selling licensees.

**Agency disclosure
office policy**

RECAD also requires all qualifying brokers to adopt and maintain an agency disclosure office policy that sets the types of brokerage services his or her own company may offer or accept. Qualifying brokers are required to explain the office policy to all licensees at least once a year. Licensees are required to sign a form acknowledging receipt of the company's policy statement and must also provide the office policy disclosure to consumers so the consumer is fully informed. This policy must include an explanation of how the real estate company and the brokers are compensated.

Remember that Alabama licensees are only permitted to engage in services offered by the company and qualifying broker. Therefore, by setting an office policy as to the services to be provided, the qualifying broker is assuring that the associated licensees understand what services they may engage in and what services they may not. Licensees engaging in services not included in the office policy are violating the law.

**Non-agency
disclosure**

At the first contact between a licensee and a real estate consumer, the licensee is not considered an agent of that consumer. Until the licensee enters into a specific

written agency agreement with the consumer, an agency relationship is not assumed, implied, or created.

In addition to the non-agency disclosure and the disclosure of available brokerage services, the licensee is also required to describe the specific types of services that are provided by his or her company. The law does not require the licensee to engage in any or all of the broker arrangements specified in the law, but the licensee must inform the consumer that they exist.

The licensee is to use the Brokerage Services Disclosure form to explain the available services to the consumer. As explained previously, use of the form is mandatory but the consumer's signature on the form is not required. Remember that the disclosure must be provided at the initial contact with the consumer or as soon as reasonably possible.

Customer or client

The difference between a customer and a client is whether or not an agency agreement has been signed to obtain brokerage services.

A customer is a person who is obtaining brokerage services from a licensee but has not signed an agency agreement with the licensee or company. A client, on the other hand, is a person who has signed an agency agreement with the licensee or company for specific brokerage services.

The licensee has obligations to both customers and clients. Many of the obligations are the same for both, but additional obligations are owed to a client.

Brokerage relationships

RECAD allows a qualifying broker to offer services as a single agency, dual agency, and transaction facilitation. The qualifying broker is not required to offer all of these services, nor is he or she limited to offering only one of the services.

Transaction facilitation. In this arrangement, the broker works with one or more parties in the same transaction without becoming an agent or fiduciary to any of the parties. The transaction facilitator provides services to customers with or without a written agreement. The broker can act as an intermediary between the buyer and the seller, providing neutral third-party services to both parties. The transaction facilitator is not an agent and does not perform the same services as an agent. This is a non-agency relationship in which the broker's services are not fiduciary. This is also a relationship in which the broker has reduced liability.

Buyers and sellers are customers and not clients because neither has signed an agency agreement with the broker. A seller would employ the broker to market his or her property and show it to prospective buyers. The seller would also use the broker's expertise in preparing the property for sale and determining an appropriate selling price. A buyer would use the broker to find and show suitable properties that meet the buyer's needs and wishes. The buyer may also seek the transaction broker's help in obtaining financing for the property and in finalizing the sale and recording the deed.

Transaction facilitation arrangements typically work best for consumers who need marketing services and real estate expertise but who do not need an agent to help with price and terms negotiations.

In this arrangement, the broker is required to provide services to all parties honestly and in good faith and must not show favoritism to either party. Under Alabama law, the licensee is required to exercise reasonable care and skill, answer all questions completely and accurately, and present all written offers promptly and truthfully. The licensee is also required to keep confidential information confidential unless disclosure is required under the law. To comply with this requirement, transaction facilitators must completely and honestly answer a buyer's questions about the condition of the property and must tell the buyer about any hidden defects the broker knows about that could impact the health or safety of occupants.

If a qualifying broker offers transaction facilitator services by written agreement, the agreement form must be included in the agency disclosure office policy.

Single agency. The single agent represents only one party in a transaction, and that party is the agent's client. The client may be the seller or the buyer but not both. A written agency agreement is required for the qualifying broker and/or the licensee to become a single agent.

A single agency brokerage arrangement works best for consumers who need advice and help negotiating from a real estate professional. The consumer may also need the licensee's marketing services. Buyers who are moving to a new area where they are unfamiliar with the local market conditions would benefit from a single agency agreement.

In this arrangement, the licensee is the client's agent and must represent only the client in negotiations with other parties. The licensee must seek the best price and sale terms for his or her client. The agent is required to be completely loyal and faithful to the client.

Dual agency. A licensee who is representing both the buyer and the seller is a dual agent. The agent may only represent both parties with their written, informed consent. Dual agency is illegal in many states but is allowed in Alabama as long as the involved parties consent to the arrangement.

Dual agency is used when one licensee represents both the buyer and the seller in the same transaction. The agent is required to be loyal and faithful to both clients except where the duties owed to the clients conflict.

In some states, if two or more salesperson under the same qualifying broker each represent a different party to the same transaction, it is a form of dual agency. In Alabama, however, both licensees are single agents. The qualifying broker and any other licensees involved in the transaction are assumed to not have any knowledge about the other party, even though the licensees are at the same real estate company.

Dual agency is common in larger real estate markets where companies have many properties listed for sale, properties in which their own represented buyers may be interested. With the dual agency agreement, agents representing sellers can show properties to buyers they also represent.

The primary function of the licensee in a dual agency is to help both parties reach mutually satisfactory terms and price. The dual agent must not show favoritism to

either party and must not reveal one party's confidential information to the other party.

Dual agency does not offer the full range of services or the loyalty offered by a single agency arrangement, but it does offer more assistance and guidance than offered by a transaction facilitator arrangement.

Agents in a dual agency arrangement must assure both clients understand the types of services to be provided and what information the agent will share with the other party to the transaction.

Consumers' legal rights

Whether or not a consumer signs a brokerage agreement with a licensee or company, Alabama law spells out the consumer's right to expect honest and fair representation by the licensee with whom the consumer is working. These rights are included in the law as the licensee's obligations to both customers and to clients.

Additionally, Alabama is one of ten states that have mandated the consumer's rights by requiring real estate brokers to provide buyers, sellers, landlords, and tenants a minimum level of services. This mandate includes helping the consumer negotiate, presenting and receiving offers, and answering questions. The idea behind this law is that real estate consumers need to be able to expect certain services from a broker hired to represent them and that laws are necessary to guarantee a minimum level of service, thereby giving consumers legal rights when being represented in a real estate transaction.

Licensee duties to customers

If a consumer does not sign an agency agreement or brokerage service agreement, the consumer is a customer and not a client. However, the licensee still has obligations to customers.

One of the first obligations is to provide the customer with a copy of the Real Estate Brokerage Services Disclosure form and the agency disclosure office policy. The disclosure form outlines the types of representation that are available in Alabama, and the office policy describes the brokerage services provided at that specific real estate company. Allow the customer to ask any questions he or she has regarding the services. The agency disclosure office policy must also outline how the licensee and real estate company will be paid. The AREC requires the licensee to sign, date, and provide the consumer with a copy of the Brokerage Service Disclosure form and the agency disclosure office policy. Both forms must be provided before the licensee lists a property or makes an offer on the person's behalf.

Alabama law also imposes the following obligations or duties on all real estate licensees to all consumers, regardless of their relationship:

- ▶ to provide services honestly and in good faith
- ▶ to exercise reasonable care and skill in providing services
- ▶ to keep confidential any information obtained in confidence or any information the licensee knows should be kept confidential, unless disclosure is required by the law or by the duty to a client, unless

the information becomes public knowledge, or unless disclosing the information has been authorized in writing

- ▶ to account for all property belonging to others that may come into the possession of the licensee
- ▶ to make timely disclosure of the licensee's personal interest in a property, including on behalf of a member of the licensee's immediate family or on behalf of an organization or business entity in which the licensee has a personal interest
- ▶ to provide any party with requested information that affects a transaction unless disclosure of the information is not allowed by law
- ▶ to accept delivery of and present to the consumer all offers, counteroffers, and addenda related to the listed property in a timely and truthful manner
- ▶ to answer questions related to the transaction completely and accurately

Additionally, licensees may assist customers who are not clients in the following ways:

- ▶ provide information about properties.
- ▶ show properties.
- ▶ assist in writing an offer.
- ▶ provide financing information.

Agent duties to clients

In addition to the duties the licensee owes to all consumers, Alabama law spells out specific duties the licensee has to clients. Once the licensee and the consumer sign an agency agreement, the licensee becomes the agent and the customer becomes the client. The agent then owes the following duties to the client:

- ▶ to put the best interests of the client ahead of the interests of any other party to the transaction unless such loyalty to the client would violate the licensee's legal duties to other consumers or unless such loyalty would violate a law or rule
- ▶ to disclose to the client any known information that is material to the transaction and may not be discovered by the client through investigation or observation, unless the information is confidential and disclosure would violate the licensee's duties to all consumers
- ▶ to fulfill all obligations required by the agency agreement and any lawful instructions given by the client within the agency agreement, unless such instructions would violate the licensee's duties to all consumers

When the licensee represents more than one client in the same transaction, he or she owes the same duties to all those represented clients, unless the duties to one client would violate the duties to other clients.

Services provided by licensees

Remember, a broker may provide brokerage services as a dual agent only if the other clients in the same transaction have been informed and have consented in writing.

In addition to fulfilling the required duties to customers and clients, licensees and brokerages traditionally offer the following services:

- ▶ marketing the property, including MLS, local media, and the internet
- ▶ hosting open houses
- ▶ reviewing contracts, including providing advice on pricing, home inspections, and other contractual terms, not to include scripting contracts which is to be handled by attorneys
- ▶ negotiating with potential buyers and sellers
- ▶ finding properties for prospective buyers
- ▶ arranging property inspections for prospective buyers
- ▶ providing information on local property values, recent selling prices, property taxes, etc.
- ▶ providing information to buyers about financing alternatives
- ▶ helping with the writing and review of offers, counteroffers, and acceptances
- ▶ helping with the transaction closing

MISREPRESENTATION

Misrepresentation occurs when one party makes false statements about the property or the transaction that affect the other party's decision to enter into the contract. Typically, the misrepresentation would be on the seller's part to persuade the buyer to actually purchase the property. Misrepresentation generally applies only to statements of fact and not to opinions or predictions. It can also occur through omission or failure to disclose material facts.

Because there is a duty to correct any false statements or omissions, failure to make the correction is also considered misrepresentation, or, more specifically, negligent misrepresentation.

Misrepresentation is the lawsuit that brokers face the most. The second lawsuit brokers face most often is the failure to disclose. Misrepresentation can be classified as innocent, negligent, and fraudulent. Negligent misrepresentation includes not disclosing significant property defects out of ignorance. Fraudulent misrepresentation is purposefully hiding a property defect just to make the sale.

Consequently, honest and timely disclosures are the best way to avoid being guilty of misrepresentation. However, what about caveat emptor? Does that eliminate the chance of being liable for misrepresentation?

Caveat emptor and property disclosures. Caveat emptor is a Latin term meaning "let the buyer beware." This phrase also implies that the seller has no actual duty to disclose issues with the property's physical condition to the buyer – all of that is up to the buyer. The burden of examining the property before purchase falls on the buyer and, the responsibility for the property's condition is placed on the buyer.

Many states do not employ the rule of caveat emptor. Rather, they require sellers to formally disclose issues with the property, usually with an approved disclosure form. Alabama, however, is not one of those states. It uses the rule of caveat emptor for the sale of used residential property. There are exceptions to the rule in Alabama:

- ▶ if a fiduciary relationship exists between the buyer and the seller, meaning there is a legal responsibility to act in the best interest of the other party, such as the seller's doctor is the buyer
- ▶ if the seller knows the property may pose a health or safety risk to the buyer, meaning if the seller knows the home has lead paint or asbestos
- ▶ if the buyer asks direct questions to the seller on specific defects, meaning if the buyer asks about a defect such as pest infestations

In any of these exceptions, the seller must disclose those defects of which he or she is familiar. If the seller fails to disclose the known material defects to the buyer, the seller may be liable for damages. The buyer who later discovers the defect would be able to sue the seller for misrepresentation.

However, under Alabama's caveat emptor law, the failure to disclose a known defect may not be sufficient grounds on which to hold the seller liable. The buyer would need to prove that the seller knew that the specific defect posed a direct threat to the buyer's health or safety. For example, the buyer would have to prove that the seller knew the buyer was allergic to a particular product or substance contained in the home. That's fairly difficult to prove in most cases.

Notice above that Alabama uses the rule in the sale of *used* residential property. Because new homes have an implied warranty of habitability by the builder, the rule of caveat emptor is not applied to new homes. However, for the home to meet the requirements of the implied warranty in a liability case, the buyer must show six things:

1. the buyer purchased a new home from the seller
2. the seller built the home
3. the home was not inhabited by any other person before the buyer's purchase
4. the home was built by the seller for the purpose of sale and was sold to the buyer in a defective condition which impaired the home's intended use

5. the buyer was not aware of the defective condition and had no knowledge or notice which would have allowed the buyer to reasonably discover the defect
6. the defective condition decreased the fair market value of the home, resulting in damage to the buyer

Whether the property falls under the rule of caveat emptor or under an implied warranty of habitability, the smartest thing the seller can do is to disclose material defects to prospective buyers. The seller's agent should also insist the defects be disclosed to avoid being held liable for misrepresentation.

Possibly the best way to disclose the defects and avoid misrepresentation is to have the seller complete a property disclosure form and give it to the buyer prior to closing. Most Alabama agents provide the form to the seller for completion at the time the seller lists the property with the agent. The agent can then provide a copy of the completed form to the potential buyer. Alabama sellers are not required to complete or provide the disclosure form but doing so is the best way of making all disclosures that are legally required.

Misrepresentation and broker liability. Alabama law holds that a client is not liable for misrepresentation which is made by the broker while providing brokerage services to the client unless the client knows or should have known about the misrepresentation. The client can be held liable for a misrepresentation made by the broker if the broker is repeating a misrepresentation made by the client to the broker. For example, a client knows his property contains asbestos but lies about that to the agent. Then, if the agent fails to disclose the asbestos to the buyer because the agent is repeating the client's misrepresentation, the client can be held liable for that misrepresentation.

Alabama law also holds that a licensee is not liable for providing false information if the information was provided by the client, a customer, or another licensee. If the licensee knows or should have known the information was false, then he or she can be held liable.

Even with the rule of caveat emptor, there are times when a real estate broker can and will be held liable for misrepresentation. Purchasers who discover physical defects in the property after the transaction has closed may want to recover their losses from the real estate broker who handled the transaction. Honest and thorough disclosure is the best way to avoid these situations.

LISTINGS

Required listing services. Alabama license law mandates specific requirements to be met by a listing agent when working with a property seller and the seller's agent. The law states the following:

"When accepting an agreement to list an owner's property for sale, the broker or his or her licensee shall, at a minimum, accept delivery of and present to the consumer all offers, counteroffers, and addenda to assist the consumer in negotiating offers,

counteroffers, and addenda, and to answer the consumer's questions relating to the transaction." Section 34-27-84(c)

What the AREC expects based on this law is for listing agents to offer two specific services in relation to accepted listings:

1. when the listing agent is presented with a written offer for the seller's property, the agent must take delivery of the offer and then present it to the seller; this includes all offers, counteroffers, and addenda so the agent can assist the seller in negotiations
2. when the seller has questions related to the transaction, the listing agent must answer the questions; the agent cannot refuse to answer questions or make him or herself unavailable to answer questions regarding the transaction for the listed property

When listing a property, the seller has several options. The seller may negotiate listing agreements that meet his or her individual needs, knowledge, and experience. The seller may choose to receive any offers directly from a selling agent and may have his or her contact information made available for this purpose. In making this choice, the seller is relieving the listing agent of the duty to prepare and provide an estimated closing statement, which is required when an offer on a single-family residential property comes through the listing agent. The selling agent, however, is still required to provide an estimated closing statement to the potential buyer. The selling agent is not required to provide the estimated closing statement to the seller since the selling agent is only transmitting the offer and not presenting it to the seller. The selling agent is also not required to answer the seller's questions; that is the responsibility of the listing agent.

Sellers may also choose to control the use of their property when it comes to signage. The seller may allow the listing agent to provide and post signage on the listed property, or the seller may choose to use his or her own signage. The seller can choose to have both the agent's sign and the seller's sign on the property or no signs at all.

In any listing where the seller is exercising his or her rights to negotiate brokerage services and arrangements, the licensee should consult with the qualifying broker to ensure that office policies are being followed.

RECAD**Definitions**

- important terminology includes agency and brokerage agreement, brokerage service, consumer, client, customer, fiduciary duties, dual agent, material fact, single agent, and transaction facilitator

Consumer protection

- RECAD was enacted to protect consumers by setting the roles and duties of brokers
- consumers must be informed about the types of services licensees may perform
- RECAD requires use of services disclosure form to include types of agency relationships that are available

Representing seller and/or buyer

- licensee may represent either buyer or seller, or both, depending on the services offered
- licensee owes duties to whichever client he or she represents

**BROKERAGE
DISCLOSURE****When to disclose**

- non-agency relationship and available brokerage services must be disclosed as soon as reasonably possible
- disclosure form must be provided before confidential information is exchanged

**Agency disclosure
Office policy**

- RECAD requires qualifying brokers to maintain an agency disclosure office policy that sets the types of brokerage services the company offers
- qualifying brokers must explain the policy to licensees at least once a year
- licensees must sign an acknowledgement form to show receipt of the company's policy
- licensees are only permitted to engage in services offered by the company and qualifying broker
- the agency disclosure office policy is required to be provided to consumers before the licensee provides any brokerage services

Non-agency disclosure

- no agency relationship exists until there is a written agreement between the licensee and the consumer
- the licensee must disclose what services his or her company offers and how the company and licensee are compensated
- the consumer is not required to sign the disclosure

Customer or client

- the difference is whether or not an agency agreement has been signed
- the customer has no signed agreement
- the client has a signed agreement
- the licensee owes additional duties to a client

**Brokerage
relationships**

- transaction facilitator – the broker works with one or more parties in the same transaction; broker provides services with or without a signed agreement; broker is not an agent; broker's services are not fiduciary in this non-agency relationship; broker must not show favoritism to either party; broker must show skill and care, answer all questions, and present offers promptly
- single agency – broker represents only one party in the transaction; written agency agreement is required; agent must be loyal to client and seek best price and sale terms
- dual agency – licensee represents both the buyer and the seller; must have both parties' written consent; dual agents must be loyal to both clients; dual agent must

not show favoritism to either party or reveal confidential information to the other party

- Consumer's legal rights**
- Alabama law spells out duties owed to consumers whether or not a signed agreement exists
 - Alabama requires brokers to provide consumers with a minimum level of services to include helping the consumer negotiate, presenting offers, and answering questions
 - the laws gives consumers the right to expect certain services from a hired broker
- Licensee duties to customers**
- licensees owe all consumers, with or without a signed agreement, certain duties to include honesty, reasonable care and skill, confidential information, an accounting of property belonging to others, offer presentations, disclosure of licensee's interest in a property, providing requested information, and answer questions
 - licensee may assist customers by showing properties, providing information about properties, assisting in writing an offer, and providing financing information
- Agent duties to clients**
- in addition to the duties owed to all consumers, licensees owe clients with an agency agreement the duty to put the client's best interest ahead of others, to disclose any known material facts related to the transaction, and to fulfill all obligations under the agency agreement
 - more than one client in the same transaction are owed the same duties; clients in a dual agency agreement must consent in writing
- Services provided by Licensees**
- licensee may also offer services in addition to the required duties, to include marketing the property, hosting open houses, reviewing contracts, negotiating, locating properties, arranging property inspections, providing information on property values and financing alternatives, helping to write offers, and helping with the closing
- MISREPRESENTATION**
- misrepresentation occurs when one party makes false statements that affect the other party's decision to enter into a contract
 - typically applies to statements of fact and not opinions
 - can also include omission or failure to disclose material facts
 - can also include failure to correct false statements or omissions
 - brokers are sued most often for misrepresentation and failure to disclose
 - the best way to avoid liability is honest and timely disclosures
 - Alabama recognizes caveat emptor as a rule to eliminate the seller's duty to disclose issues with used residential properties but employs three exceptions: when a fiduciary duty exists between the buyer and the seller, when the seller knows the property may pose a health or safety risk, and when the buyer asks direct questions about specific defects
 - failure to disclose in any of these exceptions may result in liability issues for either or both the seller and the agent
 - new homes have an implied warranty of habitability by the builder, so caveat emptor is not applicable; but new home must be built by the seller to sell, never inhabited, sold in a defective condition that decreased the home's value, and its defective condition was unknown to the buyer
 - both the seller and the agent should disclose issues whether or not required to do so
 - use of a property disclosure form is the best way to disclose issues and avoid misrepresentation or failure to disclose liability
 - Alabama law does not hold a client liable for misrepresentation by the agent unless the client knows about the misrepresentation
 - Alabama law does hold a client liable for misrepresentation by the agent if the agent is simply repeating a misrepresentation made by the client

- Alabama law does not hold a licensee liable for providing false information if the information was provided by the client
- Alabama law does hold a licensee liable for providing false information if the information was provided by the client and the licensee knows or should have known the information was false

LISTINGS

- Alabama law mandates listing agents to present all consumer offers, to assist the consumer in negotiating offers, and to answer the consumer's questions related to the transaction
- sellers can choose from different listing options, such as receiving offers directly from the selling agent, relieving the listing agent from that duty
- selling agents must provide an estimated closing statement to the buyer but not the seller and is not required to answer the seller's questions
- sellers may also want to control the signage, using their own signs, the broker's signs, both, or neither
- when the seller is negotiating brokerage services, the licensee should consult with the qualifying broker to assure office policies are being followed