Topic 14: Real Estate Brokerage
(*Copyright © 2024 Joseph W. Trefzger*)

In this course we study real estate primarily from a legal and financial standpoint. However, we devote a little time and effort to the study of real estate sales because it is a branch of the financial services industry, and because the institutional framework through which real estate is marketed has financial implications for buyers and sellers of property. For example, because of the high cost of real estate, the type of intermediary party that facilitates transactions usually is a *broker* (who typically does not take an ownership position), not a *dealer* (who buys and then resells at a markup), and the need for such intermediaries and the advice/guidance they offer is increased by the complexity of real estate transactions and the infrequency with which most people buy or sell. Economists and others who analyze labor markets and human capital sometimes find the real estate brokerage field interesting to study; the Multiple Listing arrangement gives all of an area's real estate brokers access to essentially the same inventory of properties, so the impact on income from variables like education, experience, and hours worked can more effectively be identified than in similar studies of many other professions.

Of particular interest is the broker's role as an *agent* with fiduciary obligations to the buyer or seller of real estate.

I. *Definitions & General Concepts*

A. *Broker* – a person (or firm) engaged in facilitating the *purchase*, *sale*, *leasing*, or *exchanging* of property for others. (An individual selling his/her own real estate – For Sale by Owner, *a.k.a.* "Fizzbo" – need not have a license, nor does an executor selling a deceased's property.) A real estate broker must be licensed by the state(s) in which the broker conducts business, and traditionally has been compensated through a commission that is a percentage of the transaction price. Licensing laws assure the public that brokers understand applicable laws, and give public officials the ability to discipline brokers, up to taking away their licenses and even referrals to law enforcement, for improper behavior; and the typical two-tiered licensing system requires people new to the field to be supervised until they gain some experience (Illinois actually has three classes of real estate brokerage licenses). Like other professionals, real estate brokers generally buy professional liability insurance coverage. In addition to the requirements noted below, a holder of any of these licenses generally must be 21 (in some cases only 18) years of age, have formal education of at least a high school diploma, meet continuing education requirements (not surprisingly, much of the pre-license and continuing education course work now can be completed on-line), and pass a criminal background check. (However, an Oregon court reinstated the license of a broker found guilty of cocaine use and sexual activity with a minor after the state license board had taken it away, on the reasoning that those were not real estate sales-related crimes, like stealing a home buyer's earnest money would be.[1]) Part of the fees paid for Illinois brokerage licenses are directed to the state-managed *real estate recovery fund*, from which clients can collect if they win suits for improper conduct against brokers who are unable to pay the judgments (many other states have similar arrangements).

1. Managing Broker – owns or manages a real estate brokerage firm, and supervises real estate brokers and leasing agents. Requirements for becoming a managing broker: have at least two years of experience as a real estate broker, complete 45 hours of course work beyond the 75-hour educational requirement for becoming a real estate broker, and pass the managing broker examination administered by the Division of Real Estate within the Illinois Department of Financial and Professional Regulation (that office also licenses and regulates real estate appraisers, real estate auctioneers, and home inspectors).

2. Real Estate Broker – works under the supervision of a managing broker (can not act independently; the brokerage firm holds the broker's license) to represent buyers and sellers in real estate transactions. So a broker who is not a managing broker is a sub-agent of a managing broker. Requirements for becoming a broker: complete 75 hours of course work and pass the Illinois real estate broker examination. Exception: in Illinois a licensed attorney at law can sit for the real estate broker's license exam without having taken preparatory course work – much of which addresses agency, fair housing, and other legal issues. [Note: "hours" referred to here are hours on the clock or "contact" hours, not college semester hours. So the 75-hour educational requirement for the broker's license is slightly less than the equivalent of two three-hour college courses that each would meet for three hours weekly over fifteen weeks, which would be 6 x 15 = 90 contact hours.]

3. Real Estate Leasing Agent – works under the supervision of a managing broker, and can handle duties relating only to property leasing transactions (whereas real estate broker's license holders can represent third parties in both sales/purchases and lease transactions). Requirements for becoming a real estate leasing agent: complete 15 hours of course work and pass the Illinois real estate leasing agent examination.

Illinois real estate licenses must be renewed every two years (odd-numbered years for managing brokers, even-numbered years for brokers and leasing agents). Reciprocity agreements with some other states, including neighboring Indiana, Iowa, and Wisconsin, allow brokers licensed in Illinois to facilitate transactions in those cooperating states without getting licenses there. Prior to May 2011 Illinois had two real estate license categories: Broker and Salesperson, with a salesperson required to work under a broker's supervision. A year of experience, plus 60 contact hours of education beyond the salesperson's 45, were required for a salesperson to take the broker's license exam. So in a big picture sense the Broker category has become Managing Broker and the Salesperson category changed to Broker, but a specific change is that upgrading the lower licensing

status to the name Broker also was accompanied by an increase from 45 to 75 contact hours of required pre-exam course work (which in turn followed an increase from 30 to 45 contact hours for the Salesperson's exam in the mid-1990s).

B. *Realtor®* – a broker who is a member of the *National Association of Realtors®* (NAR) and adheres to that organization's code of ethics. *NAR is a trade or professional association*, which licensed real estate brokers can choose to join to obtain professional support through publications, continuing education, conventions, and the lobbying of legislators who pass laws that regulate brokerage activity and impact home ownership or other real estate issues. So while NAR limits membership to those who hold real estate brokerage/sales licenses, a practicing broker does not have to be a Realtor® (consider that a doctor must obtain a license from the state to practice medicine, and then may also, but is not required to, join the private American Medical Association for access to professional support, networking, and government lobbying).

NAR has 50 state sub-associations (real estate selling is affected by laws/regulations at both the federal and state government levels, and Realtors® like to have an influence on what goes into the attendant laws), and each state association is broken down into local boards. So an active broker in ISU's local area is reasonably likely to be a member of the National Association of Realtors®, Illinois Association of Realtors®, and Mid-Illinois Realtors® Association (serves brokers in McLean and DeWitt Counties, and some parts of Woodford County).

[Some figures I saw some time ago indicted that only about half of those who sell real estate professionally nationwide are Realtors®, and only about a third of those who hold broker licenses in Illinois are members of the Illinois Association of Realtors®. Not all brokers would necessarily find it profitable to pay the membership fees, part of which provide access to the *Multiple Listing Service* (discussed more below); recall that professional property managers in Illinois must hold broker licenses, and perhaps some of them are among license holders who choose not to be Realtors®. But major real estate broker organizations Re/Max and Anywhere (Better Homes and Gardens, Century 21, Coldwell Banker, Corcoran, Sotheby's) specifically agreed in a 2023 federal lawsuit not to require brokers in their firms to become NAR members, and many Redfin brokers have been told by the company to discontinue their NAR memberships.[2]]

The term Realtor® is a trademarked name (they actually call it a "registered collective membership mark"), which always should be capitalized and accompanied by the trademark sign. The National Association of Realtors® protects the use of this name so that it can not become a generic (though even people who are Realtors® sometimes write "realtor").

C. *Multiple Listing Service* (MLS) – a plan through which a broker can sell properties "listed" by other brokers in the local market area (if the sign in front says "For Sale; Contact ABC Realty," then ABC Realty has the *listing*). The goal is to provide wider market exposure to properties being sold; until recently brokers who placed listed properties on MLS's were offering to share commissions with licensed brokers who located buyers. These plans, operated locally by affiliates of the National Association of Realtors®, used to allow participating brokers to keep particular listings out of the MLS ("off-market"), which was said by proponents to benefit sellers of high-end homes (who did not want strangers coming through open-houses), or sellers of unusual properties (who did not want long periods on the market, which could be obvious through open advertising, to suggest that their houses had problems). But the practice was criticized for lower prices that could result from reducing the number of competing buyers (some critics felt brokers listing off-market were trying to earn double commissions by forcing buyers to work with them), and concerns could arise over possible charges of discrimination if only select potential buyers were made aware of a property's availability. In May of 2020 NAR began requiring every member to include all listings in the local MLS, though sellers with privacy concerns can ask to limit information to the listing broker's own firm. Opponents say this requirement restrains trade, although recall that a broker does not have to be a NAR member to be licensed to sell real estate. But then under a November 2020 settlement with the U.S. Department of Justice, MLSs must permit brokers who are not MLS members to have access to MLS-listed properties, and must disclose information on what "selling" brokers are being paid (rather than letting the fraction of the purchase price that becomes the "selling" broker's commission split appear to be a free service). An organization called Midwest Real Estate Data compiles MLS information over a broad Chicagoland region (reaching into Indiana and Wisconsin, and as far south in Illinois as McLean County) that member brokers can access.

D. *Commission* – a percentage of the transaction price paid to compensate the broker (occasionally payment comes as a flat fee). Under the traditional arrangement, a total commission is split 4 ways: owner of listing brokerage firm, individual broker from listing brokerage firm, owner of showing ("selling") brokerage firm, and individual broker for showing brokerage firm. But an industry-wide federal lawsuit settlement on March 15, 2024 may greatly change future practices (discussed below).

E. *Agent* – from Latin word meaning "to act." An *agent performs certain duties* on behalf of a *principal*. A real estate broker helping someone to buy or sell a property is likely to be acting, from a legal standpoint, as an agent for a party to the transaction. It is important to identify whether the broker is an agent for the buyer or the seller (or neither or both), because an agent holds a *fiduciary* obligation – obligation of utmost good faith – to the principal. Among qualities a fiduciary owes:

1. *Representation* – represent only the interests of the principal; for example, seek the highest price for the seller (if other terms of the agreement are acceptable as well).
2. *Diligence* – the exercise of due care. There have been cases in which brokers were found to have acted in a *negligent* manner, and thereby to have failed in their professional obligations and lost the right to collect commissions.
3. *Loyalty* – no conflict of interest; no self-dealing or commingling of client money with the broker's money – note that earnest money paid by a potential buyer usually is held by the listing broker (who is likely to be the party who keeps that money if the buyer backs out of the transaction), and that money must be held in a special trust or escrow account. [A Mt. Vernon, Illinois broker who had the listing on a deceased owner's house offered to buy it from the decedent's estate without reporting some promising offers to the executors, and then after buying it sold the property for almost a $20,000 gain; a court awarded the estate actual and punitive damages.[3] Also in the late 1970s two Peoria brokers were sued for self-dealing after buying a house from their principal, reporting that they had been unable to sell it under the listing contract, but then turned around and sold it at a sizable profit a short time later.] At the same time, a broker representing a real estate seller can not disclose to a potential buyer the lowest price that the seller would accept (perhaps to bring about a quicker sale), or other aspects of the seller's position, without the seller's clear permission.

4. Full information – even if doing so hurts the position of the agent-broker, or even if the broker does not feel that the principal needs to know (*e.g.*, an offer at a very low price).

5. Duty to *follow instructions, not to be negligent, not* to commit *misrepresentation or fraud* (either involves a material false statement that the principal relies on and then suffers harm, but fraud carries the extra offense of being made intentionally.)

6. An agent's authority to act on the principal's behalf can be:
   a. *Express* – the principal gives the agent explicit spoken or written instructions.
   b. *Implied* – through express authority to do something else. For example, an agent-broker with express authority to sell a house or other property generally would have implied authority to take potential buyers inside.
   c. *Apparent* – through past exercise of the agent's authority. For example, if a broker used to work for a particular real estate firm, outside parties may still view that broker as an agent of the firm, so the managing broker should take reasonable steps to notify people that the relationship no longer exists.

Any of the three types of authority may bind the principal to the agent's actions (an agent acting within his/her powers can bind the principal to a given course of action). In an Indiana case noted in our Contracts coverage a seller was looking for various ways to rescind a sale after a survey showed more land than the seller thought the tract contained. He argued that the buyer had not notified the seller when the buyer's loan was approved, but the court said this notification requirement was a very minor contract provision, and that it was fulfilled when the buyer notified the broker who was an approved dual agent of both parties.[4] [In real estate *leasing*, a broker typically has power to commit the owner to a lease. In real estate *sales* the broker typically does not have the power to bind the owner to a contract unless she has written power of attorney.]

Still, in the typical case, a listing broker has no fiduciary obligation to a potential buyer. But while some forms of "puffing" are acceptable ("great house for a family"), a broker can not misrepresent material facts; a broker owes a general duty of integrity to the public through being licensed. In one case, a court found that a listing broker had acted improperly in failing to understand a lease on rented property so she could accurately describe the terms to a potential buyer. A Naperville area buyer successfully sued the seller and listing broker when the house turned out not to be in the desired Indian Prairie school district, even though the district office also had been wrong about the tricky district border lines. The court noted that the broker had specifically stated an "acclaimed" District 204 location in a printed brochure describing the house (in Illinois brokers can face liability even for innocent misrepresentation, a form of negligent misrepresentation in which the defendant truly believed the statement made – the standard imposed is what the broker should have known, not what the broker did know; also the buyer had made clear that a District 204 location was the most essential consideration in buying a house).[5]

A Washington state court similarly found a broker guilty of negligence, for not realizing the new building site he helped a church buy was only a third of a larger tract he thought was being conveyed.[6] But a Kansas ruling held that a broker who had the listing and also sold a farm to buyers was not guilty of fraud in stating that dry wells had plenty of water, when he was merely repeating what the sellers had told him,[7] while a listing broker in Washington was found to have no liability after innocently misrepresenting to a buyer that a fence marked the property line, when the lot actually was somewhat smaller. And in 1993 an Ohio home *seller* was successfully sued for telling a buyer, who asked if bars on basement windows indicated crime problems, that the bars were put in after a break-in sixteen years earlier and there were no ongoing issues – even though two recent sexual assaults had occurred in the neighborhood, one at that very house! The listing broker heard the seller give that false answer, but was found to have had no affirmative duty to disclose a "psychological" defect to the buyer since the broker was not the buyer's agent and was not directly asked.

II. *The Dual Agency Problem*

If a real estate broker has a listing on a property, there is not much question that the broker is the seller's agent. Now consider a competing broker who shows that house to potential buyers through the Multiple Listing arrangement. In the traditional transaction structure, the law views this second broker as *also* being an *agent of the seller* (actually a *sub-agent* of the broker who has the listing). Question: can this "selling" or "showing" broker ever owe a fiduciary duty to the *buyer* as well? The answer can be *yes*, especially if the buyer reveals confidential information and the broker knows the buyer is relying on her advice. If the broker has a fiduciary obligation to both parties, then a *dual agency* exists. In the mid-1980s an attorney wrote of concerns that any buyer who learned "his" broker had been a dual agent, with a fiduciary obligation to the seller as well, could rescind the contract no matter how many years had passed since the closing – and that the only reason there were not mass rescissions of home purchases (and mass lost commissions to brokers) was that home values had risen.[8]

Dual agency is permitted in Illinois and many other states (not legal in a group of states that includes Florida and Texas). It might come about when a prospective buyer sees a "for sale" sign in front of a home or other property and asks the listing broker to help her make the purchase. But the practice raises a number of troubling questions. For example, how can someone serve the seller's best interest (including working for a higher price) while also serving the buyer's best interest (including working for a lower price)? In fact, a dual agent is supposed to keep certain information confidential regarding both sides' positions, such as how high/low a price the buyer will pay/seller will accept, a difficult juggling act. A broker acting as a dual agent should disclose the situation to both buyer and seller, and should get explicit written approval from both parties (indeed NAR requires its members to complete those steps in any potential dual agency situation[9] – recall that the Indiana land sale that the seller, Mr. Perfect, tried to rescind involved a broker whose dual agency had been approved by both parties). Situations in which improper dual agency has been found:

- An unsophisticated buyer was advised by a broker who represented property sellers.
- A broker located a builder to build a custom home for a buyer, and charged each a commission.
- A buyer and seller were represented by two different brokers in the same brokerage firm (not always improper).
- In a Chicago transaction agent 1 in a brokerage firm showed houses to buyer 1, while agent 2 at that firm showed houses to buyer 2 whose current home was also listed for sale by the brokerage firm, and agent 1 did not inform buyer 1 that buyer 2 was going to make a higher offer for the house buyer 1 wanted to buy.

(But there generally is not a problem if two brokers from the same firm are merely representing different buyers interested in the same property, when of course only one of these clients will be able to buy.) In an Iowa case a broker got a signed acknowledgement from a seller and a potential buyer that she was a dual agent, but then failed to tell the seller that the buyer had multiple dogs and failed to inform the buyer that the neighborhood limited dogs to one per household, and the broker was successfully sued for losses the sellers suffered when the sale could not be completed.

How to solve these problems? Illinois has tried some legislative solutions: a 1989 law required a broker to get a buyer's signed acknowledgment that brokers represented property sellers, and a 1993 law allowed a brokerage firm to *designate* particular brokers as representatives of the buyer/seller in a given transaction if the firm had listed the property that a purchaser client was buying. Brokers also in some cases have tried to act as *facilitators* or transaction brokers, representing neither the seller nor buyer as agents, but merely bringing the two parties together and helping them complete the transaction.

These are steps in the right direction, but problems remain. For example, it is awkward for a brokerage firm to conduct sales meetings when two of its brokers are working opposite sides of the sale transaction and can not share information; a more workable solution probably would be for firms to specialize in representing sellers or buyers. In fact some brokers now specialize in representing buyers as *buyer's brokers*, directly working for buyers and disclaiming any fiduciary obligation to sellers ("who you work with is who you work for," as one broker told me), and can even earn NAR's Accredited Buyer Representative designation. Still, a February 2020 *Chicago Tribune* article warned that home sellers are likely to learn anything buyers tell their real estate agents. And it is perplexing that buyers' brokers have a fiduciary duty to negotiate the best terms for their buyer clients, yet often (not always) are compensated through traditional percentage commission splits and thus earn more when clients pay higher prices.

III. *When Is a Commission Due?*

A listing broker generally earns a commission when she locates a buyer who is *ready, willing, and able* to purchase the property under the terms spelled out in the listing agreement, or under other negotiated terms that the seller accepts. (She might locate that buyer through the cooperation of another broker showing properties to buyers through the MLS, with the commission then shared – but commissions can be shared only with other licensed brokers, and this longstanding practice has recently come into question, as discussed later.) So typically the buyer must be financially able, willing to buy, and ready to buy now. Brokers typically insert *procuring clauses* into their listing contracts: the seller owes a commission even if he chooses not to sell to the ready/willing/able buyer that the broker locates, or if a sale is completed 2 – 6 months *after the listing agreement has expired* if the buyer first learned of the property through the broker's marketing efforts (including indirectly, through actions of other MLS members) and thus the listing broker was the *procuring cause* (the broker may be

required, when the listing agreement expires, to provide names of any parties she had shown the property to).

The law generally holds that a buyer who can not get financing is not "able" (thus a broker should verify a potential buyer's ability to pay), such that if a seemingly willing purchaser becomes unable to complete the transaction then no commission is owed (one court viewed assuring the potential buyer's financial ability as a duty the broker owes). But some courts have found that a broker is owed a commission even if a buyer the broker locates ends up not being able to get financing or otherwise can not complete the purchase, as long as the seller had signed a contract to sell to that party, in essence approving that buyer (and the listing contract did not state that a sale must actually be completed for a commission to be owed). A seller can get protection by specifying in the listing agreement that an actual sale is required for the commission to be earned.

To be eligible to receive the commission, the broker must be currently licensed in the state where the property is located. In an Oregon case a CPA who helped a client sell an apartment building was denied a commission because he had no real estate broker's license when the listing agreement was signed, and thus that agreement was void, even though he did obtain a license before the sale closed two years later.[10] In an Illinois case a mortgage company employee with a broker's license helped a loan client with a purchase but could not collect a commission because none of the loan firm's principals were licensed brokers, and thus the company could not legally offer brokerage services. In another case a broker with an Illinois license sold land in Illinois but was denied a commission simply because the listing agreement under which the seller hired the broker was signed in New York. But then a commission might be owed even if the seller sells the property himself without the broker's help (see below). By law, commissions must be negotiable, but most commissions have followed local traditions (often 6%, occasionally 5 or 7%, of the gross sale price for residential, split four ways: the two brokerage firms and the listing and selling brokers; then something a bit lower for income property, and 10% for land). It is illegal for a broker organization or individual broker even to recommend a commission percentage that others should follow, but the "conscious price parallelism" of most or all market participants charging the same percentage is not illegal unless it results from collusion or other illegal acts. (Note that competing consumer goods often sell for identical prices, not because of collusion, but rather because competition has driven prices as low as they can go while still covering an efficient producer's costs.)

But then a federal antitrust lawsuit verdict at the end of October 2023 held the National Association of Realtors® guilty of colluding to keep U.S. real estate commissions far higher than those in other advanced economies. Plaintiffs alleged that broker pay is excessive, particularly for those who represent buyers, because home sellers must agree to compensate buyers' brokers as a condition of having their properties listed on local Multiple Listing Services, resulting in brokers not showing buyers residences that would generate less compensation than MLS-listed homes.[11] On March 15, 2024 NAR agreed to pay $418 million to settle that case and others that had been filed, including one in Chicago's federal district court. The accusers' accompanying argument that commissions on stock trades have plummeted in recent years seems irrelevant, in that all shares of a company's common stock are identical, and stock brokerage firms process trades on-line without giving advice or facing uncertainty, while real estate brokers provide numerous services and incur marketing costs in transactions involving unique properties. Surely brokers get to represent sellers or buyers in a few easy sales, but face more extensive work and costs than had been anticipated in others, and can never know in advance which transactions will fall into which category. And while 6% total commissions do give brokers higher gross revenues as real estate prices rise, it is likely that their costs of being in business, including advertising properties and driving prospective buyers around, have risen as well (and the money spent in marketing and showing a property does not always lead to a sale). We might also ask whether owners' longstanding ability to publicize and display their own homes without the help of brokers or the MLS, now much enhanced by the internet, offers evidence that those who pay brokers based on the traditional commission model feel they get fair value for their money.

Industry observers' views on how this recent court settlement will affect the market differ. Some feel that real estate brokerage will change substantially, with lower pay for buyers' representatives and fewer people in the field. If the buyer's broker is no longer automatically compensated with the standard half of a 6% commission, wrapped into the purchase and paid for largely with borrowed money, then cash-strapped, less affluent buyers will have to offer low hourly or fixed fees – or not have broker representation at all. (Will a prospective buyer who ends up not making a purchase be billed an hourly fee by the broker who spent time and money showing properties to that individual?) Yet others predict that changes will be minor. For example, a buyer could ask the seller to compensate the buyer's broker, which would likely cause the seller to simply raise the agreed selling price accordingly – or the seller could offer during negotiations to terms that would include paying the buyer's broker, but simply could not advertise a specific buyer's broker payment in the listing. It is interesting that the settlement covers NAR and most individual brokerage firms in the country, but not Berkshire Hathaway's Home Services of America[12] (perhaps Warren Buffett agrees with some of the points raised above).

As noted, a commission is owed to the broker who locates a ready/willing/able buyer even if the transaction is not completed, unless the listing contract specifies the additional condition that a sale must actually take place for a commission to be due. The broker can sue the seller for payment; in Illinois, an unpaid broker can file a lien in a commercial property sale. But selling broker S who spends time and resources showing properties, including home X, to potential buyer B generally is not entitled to a commission if B ends up purchasing X after looking at it again with the help of Broker T – who does get a commission (shared with listing broker L) – unless S is a buyer's agent with an "exclusive right to represent" the buyer.

A commission also is foregone if a broker does not meet fiduciary duties owed to a principal; examples might be failing to disclose essential information that leads to a buyer cancelling the purchase of a property the broker has listed; telling a potential buyer to offer a price below the asking price and encouraging the seller client to accept it, just to facilitate a quicker sale; or failing to tell buyers the broker represents that a seller is legally required to provide a document disclosing defects.

IV. *More on Broker's Disclosing of Information: Your Elderly Non-Broker/Non-Lawyer Instructor's Take*
Brokers sometimes can get in trouble for saying too much about a property (or other aspects of a possible sale) to a potential buyer or seller or that party's agent, and sometimes can get in trouble for saying too little. Below is your aging non-broker/non-lawyer instructor's interpretation of what the textbooks and court cases say, with the caution that we need to generalize because state laws, circumstances, and various courts' rulings under seemingly similar circumstances can differ.

A. Broker is representing (has fiduciary obligation to) the seller
1. Do not volunteer any information to the buyer or buyer's agent that could harm the seller's position *unless* it involves a *material* fact that the broker knows relating to the structural integrity of the improvements (*e.g.*, the foundation is unstable) or other safety features of the property. In fact, even selling a property "as is" is not a defense to requirements to disclose items of material importance. (An Alabama court did accept an "as is" defense in the sale of a recreational property with unexpectedly low lake water levels that prevented the buyer from using the docks, but with no apparent safety issues. But a California seller's broker was required to pay considerable money to a buyer for having failed to disclose soil problems he knew about on a property that later suffered severe mudslide damage.[13])
2. If specifically asked a question and the answer could harm the seller's position, do not lie if you know the answer. (A brokerage industry publication stated that a broker can say "my client has not authorized me to talk about that topic," but of course that comment would be a red flag to any buyer.) In fact while the seller's broker can "puff," it is illegal to fabricate (saying "someone else is about to make an offer, so if you want this house you had better offer the full asking price today" when no such party exists).
3. But there is no affirmative requirement that the seller's listing broker find things out for the buyer, so if the broker truly does not know the answer, perhaps because of not wanting to know the answer, it is acceptable to say, "I don't know" (of course the accompanying lack of information might be a red flag/cause the potential buyer to lose interest in the property).
4. In one case a seller's broker was found guilty of fraud for not giving the buyer the page within a termite inspection report that said there was termite damage. An Illinois broker who was not the buyer's agent was found guilty of fraud after assuring that the buyer's current home would sell quickly for a high price so the buyer would purchase a house the broker had listed; the buyer's initial home did not sell (and the broker was unable to sell the new home) and the buyer could not afford the two mortgage loan payments. Another Illinois broker who sold a house he owned contract-for-deed to a buyer who wanted a "maintenance-free" property had to pay damages when the house was found to need some costly repairs.

[When someone buys, from a professional builder, a newly built house or one still under construction, there is an implied warranty of habitability, handed down from English common law, just as we saw with residential rental properties. A Colorado ruling held that to meet the implied warranty the construction should be "completed in workmanlike manner" and the structure should be "reasonably suited for the intended purpose of human habitation." The court in that case also saw the home owner's cost of having problems solved as fair damages to collect from the builder for a breach of the implied warranty.[14] English common law made no provision for buyer protection in purchasing a previously occupied home. The requirement, enacted by legislatures in Illinois (Residential Real Property Disclosure Act, October 1994) and many other states starting in the 1990s, that a home (but not business property) seller provide a written list disclosing known defects reduces a listing broker's concerns of getting sued by a seller for telling too much *vs*. sued by the buyer for dishonestly withholding information on known problems; the obligation to disclose and penalty for failing to do so now generally fall on the home seller. (A selling entity like a bank trust department that has not lived in a house it is selling for a deceased owner's estate is not required to disclose defects. A link to the disclosure form recommended by the Illinois Association of Realtors® is with Topic 14 materials on our course web site.) However, a South Dakota buyer successfully sued a home seller *and* the listing broker when the basement flooded during a major rain storm shortly after the closing, while the disclosure form did not show a water problem. Actually the basement had flooded many years earlier, but the sellers said they thought any problems had been corrected. In fact the buyers had orally asked the sellers before the purchase if there had ever been a basement water problem, and the sellers said well, yes, but it was long ago and it's fine now. At trial the sellers conceded that the written disclosure was wrong but claimed that the verbal disclosure absolved them of liability; the court said that if verbal disclosures were sufficient the state would not require the written form. And why was the broker liable when the disclosure form puts the onus on the seller to inform the buyer? The sellers stated that the broker had told them not to disclose the basement water problem because it happened so long ago (the broker denied that charge).

And a Princeton, Illinois buyer successfully sued a seller (but not the listing broker) when rain caused serious water damage, even though the buyer knew there had been prior water problems and the seller had not tried to conceal the previous damage, because the seller had checked "no" on the water damage line on the all-important disclosure form – although the court did take the buyer's knowledge of the earlier issues into account in setting the damages to be awarded.] Then again, an Ohio

court stated that the "disclosure form does not serve as a substitute for" a careful inspection, such that the buyer is deemed to know what an inspection would show (it ruled that rust and holes on a riverfront home's seawall did not have to be disclosed in an "as-is" sale, because they did not pose safety issues, and the unsightliness would have been obvious upon inspection).[15]

B. Broker is representing (has fiduciary obligation to) the buyer

1. A buyer's broker generally has no duty to provide accurate information to a property seller. An Indiana broker showing houses to a buyer couple encouraged a seller to accept their offer (and allow them to move in and pay rent for several months before an expected closing date), despite concerns expressed by the sellers' listing agent. When the buyers stopped paying rent and were found to have falsified some financial records – for example, mortgage debt on real estate the buyers were supposed to sell to get the purchase price exceeded that property's value – the sellers sued the buyers' broker for failing to disclose that the buyers lacked financial capacity to buy. The court ruled that a buyer's agent owes no such duty to a seller.
2. A buyer's broker might be found to have an affirmative requirement to provide and verify information that the buyer would benefit from knowing …
3. *Unless* disclosing that information would violate the law (major example: disclosing that a registered sex offender lives in the neighborhood, even when specifically asked, usually is illegal). Solution: provide every home shopper with a list that has contact information (web sites, phone numbers) for various local government offices, including the police department/other web site with sex offender information; encourage potential buyers to use that list to find anything relevant to their concerns.

V. *Organization of Brokerage Businesses*

Long, long ago real estate brokerages tended to be small organizations, each with just one to a few brokers. They generally grew as technology improved access to information that had a large fixed cost component (subscribing to MLS, then Internet access), since a larger organization could spread that fixed cost over more people or more transactions (although even before MLS existed a larger brokerage firm would have more interested buyers and sellers to try to match together in transactions). A brokerage firm might specialize in certain types of properties (residential, farm, commercial; note that there are a Society of Industrial and Office Realtors® and a Realtors® Land Institute within NAR), or in representing sellers *vs*. buyers (there now is a National Association of Exclusive Buyer Agents, consisting of firms that do not accept listings and thus clearly are representing only buyers, and one industry source states that buyers' representatives increasingly were accepting flat fee compensation rather than percentage commissions – even before the 2024 lawsuit settlement that might serve to push buyers' brokers farther in this direction). A real estate brokerage firm could be organized as one of the following:

A. Sole Proprietorship
B. Partnership
C. Corporation
D. *Franchise* – a firm of one of the above types pays an entrance fee plus regular rent for trade names, advertising, and the referral service of a national firm. Examples: RE-MAX, Keller Williams, Berkshire Hathaway. (RE-MAX pioneered the "100% commission" or "desk fee" concept, in which independent brokers pay toward the firm's office expenses but keep the full commissions on all properties they list or sell). New Jersey-based Anywhere Real Estate is the corporate parent of franchise organizations that include Better Homes and Gardens, Century 21, and Coldwell Banker. As of March of 2024 ISU finance graduate Tim Swanson was the company's Director of Investor Relations.

VI. *Listing Agreements*

A listing agreement is an employment contract between a property owner and a real estate broker. It allows the broker to advertise and show the property to prospective buyers, and spells out various conditions that must be met for the broker to earn a commission. Residential property listing agreements often last for three months, commercial property listings for six months. (A commission generally is owed if a purchase contract is signed within the listing period, even if the closing occurs later.) A listing agreement should describe the property, specify the broker's duties and limitations on those duties, state an asking price and a date when the listing agreement expires, and specify what happens if earnest money must be returned because the seller refuses to sell to a ready/willing/able buyer the broker locates.

A listing agreement is a *contract*, and thus should contain all features requisite to an enforceable contract, including legally competent parties; interestingly, a listing agreement is void if the listed property is acquired by a government unit through eminent domain during the listing period. In one case a broker unsuccessfully sued for a commission when an owner sold land to the U.S. government after it threatened to take the land under eminent domain, even though the broker had no listing agreement with the seller and had merely spoken with the seller a few times about the land's suitability for a new post office to be built.[16] While employment contracts generally would not have to be in writing, a listing agreement likely should be in writing, to meet the statute of frauds, if it gives the broker agency authority to bind the selling principal in a contract to sell real estate.)

In connection with accepting a listing, the broker typically recommends:

- an asking price – should be a price that reasonably reflects an objective measure of the property's value; an asking price that is too high or too low causes problems (too high may discourage interest from potential buyers).
- minor (or major) repairs and improvements to make the property more salable.

Types of listings:
A. *Open listing* – the broker has no exclusive privileges; other brokers may list and sell the same property. Only the one who delivers a ready/willing/able buyer gets a commission, or the owner can find a buyer by himself and pay no commission. (The federal government sometimes uses this approach with houses it has repossessed under federal loan guarantee programs, with a series of brokers holding open houses over a series of weekends, but open listings otherwise are rare in residential real estate sales.)

B. *Exclusive agency* – only one broker has listing rights. But if the owner sells to a party that the broker did not locate, no commission is owed. (An owner who lets another *broker* sell the property probably owes a commission to both.)

C. *Exclusive right to sell* – the most common. It is best for the broker, in that the broker earns a commission if anyone, even the owner, finds a buyer during the period when the listing agreement is in force. Multiple listing arrangements typically call for participating brokers to accept only this type of listing (a point that does not seem to have been an issue in the March 2024 lawsuit settlement). It likely provides benefits for the seller as well, in that the broker can more confidently advertise and otherwise promote the property, knowing that her right to compensation can not be undermined by her own client.

D. *Net listing* – the broker's commission is the amount in excess of the amount the seller had expected to receive. For example, the seller expects $160,000. If the broker sells for $185,000 she gets a $25,000 commission, though a $162,000 price nets her only a $2,000 commission. Net listings are not illegal in Illinois, but brokers generally view them as unethical. (The idea is that brokers should give their seller clients their best advice and efforts, and should then get a fair percentage commission in return; they certainly should not set a low expected price that in turn leads to a much higher commission.)

E. *Limited service listing* – the broker accepts a flat fee for placing the seller's property on the Multiple Listing Service, but provides limited service otherwise (does not hold open houses or individually advertise the property, for example). This type of listing arrangement is controversial among traditional brokers, who feel clients are best served by full brokerage service. But limited services by buyers' brokers may become more common after the March 2024 lawsuit settlement.

Your Elderly Non-Broker/Non-Lawyer Instructor's Take on Listings: the best balance seems to be an exclusive right to sell listing with a procuring clause covering a few subsequent months (sometimes called a "protective period," to protect the broker), coupled with a provision that no commission is owed until the property is actually, successfully sold (to protect the seller). A Florida cattleman contacted a Kansas broker after seeing a ranch advertised on the broker's web site; on the day the potential buyer arrived in town the broker was unavailable but notified the sellers that the man was staying at the nearby motel. The sellers called the motel and gave the prospective buyer directions; he went to the ranch, loved it, immediately offered to buy it, and the sellers drew up a contract. A procuring clause won the broker a commission in court on his exclusive agency (not exclusive right to sell) listing, but he had to sue for it because the sellers claimed that they had done all the work of selling the property – despite the fact that the buyer knew of the ranch only because of the broker's web site. But in an Iowa case with a similar listing arrangement a broker lost the right to a commission when land was sold within a year of the listing expiration (the broker's protection period) to a buyer who had expressed to the broker a possible interest in a property of that type, because the broker never made any effort to actually show that specific property to the potential buyer.

VII. *Unauthorized Practice of Law*
In completing the paper work in connection with listing and selling a property, a broker could, inadvertently but nonetheless illegally, perform duties that should be completed by a licensed attorney at law.

To remove uncertainty, many years ago the major real estate and bar associations in Illinois adopted a broker-lawyer accord. Under the terms of this agreement, a broker can fill in blanks (price, closing date, identities of parties) on *pre-printed, bar association-approved* listing contracts and offers to purchase (must be for a sale that the broker is involved in, and the broker can not charge a separate fee for filling in the form). But brokers can not prepare deeds, and should encourage clients to seek independent legal counsel on potentially complex legal matters (an Iowa broker and the estate of a deceased broker had to pay more than $500,000 when a court found they had discouraged their clients from seeking legal advice in a contract involving seller financing with complicated terms). In return, *attorneys* are *not to advise clients* on property *values* or real estate *market conditions*. And while an Illinois licensed attorney can take the real estate broker's exam without meeting the standard pre-license course work requirement, since most of the relevant material would have been covered in law school, an Illinois lawyer 1) must actively hold that license to perform brokerage duties (some other states, including Texas, let any practicing attorney handle real estate brokerage tasks) and 2) an Illinois attorney with a real estate broker's license can not represent a buyer or seller as her broker and her attorney within the same transaction. This law makes sense, in that a broker

generally is compensated with a commission only if a sale is completed, which could conflict with an attorney's duty in some situations to advise the client not to complete a particular proposed transaction.

VIII. *Fair Housing Laws*

One of a real estate broker's most important legal duties is to comply with the fair housing laws. A broker can not refuse to show, sell, or lease real estate (or agree to do so only on different terms) to anyone based on that individual's race, religion, age, national origin, or family status, and it is illegal to coerce, intimidate, threaten, or in any other way interfere with a person's attempts to own, sell, or rent real estate. If a home seller asks a broker, for example, to "sell my house, just not to a [racial or religious minority] family," the broker has a legal duty to inform the client that such action would violate the law, and if the client persists in this desire then the broker is legally obligated to refuse to sign a listing agreement with the client. Two laws play prominent roles in supporting fair housing opportunities.

A. Fair Housing Act of 1968: part of the Civil Rights Act of 1968. This law makes it illegal to discriminate with respect to a buyer's or renter's *race*, *color*, *national origin*, or *religion* (religious groups can give preference to their members if they do not discriminate in other ways) in activities involving selling, renting, advertising, or financing real estate. Discrimination on *gender* was prohibited through a 1974 amendment, and discrimination based on *having children* or *being disabled* was banned by 1988 amendments (though children can legally be excluded from senior developments for residents over age 55). Much of the disability focus is on wheelchair accessibility for buildings built after 1991, including tenants' right to have ramps or other improvements put in, sometimes at their own expense, although other covered matters include reasonable accommodation on pets and late rent payments necessitated by tenant disabilities. A Colorado mobile home park resident became unable to do maintenance required in her ground lease and asked permission to have someone move in with her who could do the work (in violation of the lease terms) as a reasonable fair housing accommodation, but the park refused and tried to evict the resident. A court awarded the resident $150,000 in damages and ordered park management to perform future maintenance for her.

The Act also requires brokers and lenders to prominently display "Equal Housing Opportunity" posters. The Fair Housing Act does not apply to individuals selling their own single-family homes without broker assistance (or to owners of 1-4 unit buildings who live on-premises), although even these individuals must refrain from discriminatory advertising. But brokers are bound under the law (can be fined or lose their licenses for violations). Violators can be prosecuted either by HUD or by the Justice Department. (The Illinois Human Rights Act closely parallels the Fair Housing Act, but also provides for state enforcement. Cook County also has a fair housing ordinance. Some states or localities have fair housing laws more comprehensive than the federal laws, such as including sexual orientation.)

An interesting Illinois fair housing case occurred in the west suburbs in 1979. Plaintiffs provided evidence that two real estate brokerage firms were trying to maintain a certain racial breakdown in Bellwood, by "steering" white buyers to primarily white neighborhoods and minority buyers to an integrated neighborhood. The defense claimed that no harm had been done, because the plaintiffs who were steered to minority areas were merely "testers," who did not really want to buy and were not actually denied equal access to housing, and therefore had no standing to sue. But the U.S. Supreme Court ruled that the testers who lived in the local area did have standing to sue, because their home community had been harmed by efforts to interfere with fair housing opportunities.[17]

But an equally interesting Illinois case ruling, with a seemingly opposite outcome, was handed down in 1991. Several southern suburbs (Blue Island, Calumet Park, Country Club Hills, Glenwood, Hazel Crest, Matteson, Park Forest, Richton Park, University Park) enacted ordinances requiring real estate brokers to practice "affirmative marketing," which meant trying to encourage white buyers to move into certain integrated neighborhoods (while not similarly encouraging racial minorities), in order to stem so-called "white flight." Realtors® sued the towns and the South-Suburban Housing Center, on the grounds that complying with these laws would require them to engage in illegal steering.[18] (Civil rights groups also opposed the ordinances; the president of the south-suburban NAACP chapter said the suggestion that a white population base was needed for a strong and stable community was a "monumental insult" to African Americans, stating that people should be able to live where they want to, which could result in concentrations of individuals of the same race because of family ties and shared cultural interests.) But a federal appellate court in Chicago upheld these "integration maintenance plans" as legal (though brokers have some leeway in not directly participating in any particular plan), and the U.S. Supreme Court declined to hear the case on appeal. The two contradictory cases both appear still to be "good law" (their holdings have not been overturned by later rulings), so aspects of the steering question seem to remain unresolved.

A longtime fair housing concern was "*blockbusting*," defined as encouraging someone to buy, sell, or rent specifically to change the racial makeup of a neighborhood. Over time, however, enforcement of the Fair Housing Act has come to focus more on disability or family status, including reasonable accommodations for the disabled. (The Americans with Disabilities Act of 1990, which covers some real estate issues along with employment and other matters, requires newly-built commercial properties to be accessible to the disabled, and requires accessibility to be incorporated into renovation projects.)

B. *Civil Rights Act of 1866*, which prohibits housing (and all other) discrimination based on race. This law applies even to individuals selling their own houses (so, for example, someone selling his own home could discriminate based on a buyer's age, national origin, religion, or gender under Fair Housing Act exceptions, but not based on race because the Civil Rights Act does not allow for any exceptions).

Discrimination in transactions in general often has involved parties refusing to *buy* from individuals in affected groups, particularly their labor (not hiring them). But with housing we know there have been past cases of a refusal to *sell* to people from affected groups, because before the Fair Housing Act's passage it was not uncommon for a covenant or deed restriction to prohibit the subsequent sale of a (usually upscale) house to anyone from specified racial or religious minority groups. (Even earlier, a unanimous 1948 U.S. Supreme Court decision in *Shelley vs. Kraemer* held that racially restrictive covenants violated the U.S. Constitution's 14th Amendment's equal protection clause, such that courts no longer could enforce them.) Question: should unmarried couples constitute a group protected under the fair housing laws? See the reading, "How Far Should the Fair Housing Laws Go?" with Topic 14 on our web site.

IX. *A Few Final Points*

A. Brokers have come to make increased use of assistants who themselves are licensed real estate brokers. A licensed assistant can actually show properties to prospective buyers, represent the brokerage firm at closings, and perform other brokerage duties, while an unlicensed person would be restricted to assisting brokers through office and other support activities. Someone with a broker's license might work as an assistant as a means of getting started in a field whose traditional commission-based compensation can be daunting to newcomers; an assistant can earn a more dependable paycheck (hourly, salary, sharing of commissions, or a combination of these) while getting established in the field and building a stronger professional network. A highly successful broker might maintain her own operation within a large brokerage office, "The Jane Davidson Home Selling Team" consisting of Jane and a few licensed assistants – who tend to leave these teams and work independently after they gain some experience.

B. The idea of buyer's brokerage is not new in commercial real estate transactions. In fact, firms that use a lot of office or other commercial real estate space have long hired leasing brokers to negotiate favorable leases for them. A broker representing a buyer may obtain a buyer representation agreement, such as an exclusive right to represent, similar to the exclusive listing agreements secured by brokers who represent property sellers.

Some observers see a potential conflict of interest when a buyer's broker is compensated with a share of a total commission that is a percentage of the selling price (rather than an hourly fee, for example), since the result would be for the buyer's representative to earn more when the buyer pays more. At the same time, in his book *Freakonomics* (2006, see Chapter 2) economist Steven Levitt suggests that the small number of dollars resulting from a typical commission split can create a conflict for a real estate seller's listing broker, since getting the price up by $10,000 for the seller would involve extra work for the broker and delay the closing, while likely earning that broker only about an extra (.06 ÷ 4) x $10,000 = $150, which then would be further reduced by income tax. A broker's reply to either of those charges would probably be that maintaining a reputation for serving clients' needs effectively is a far stronger motivator than a small amount of extra money or time or effort in a single transaction. Repeat business and referrals from satisfied clients are very important to long-term success in real estate brokerage.

C. An early 2023 news article offers "Fifteen Secrets to Selling Your Home Faster," including: set the right price, remove excess clutter, clean everything, depersonalize the home, let the light in, make your home available, spread the word, repaint in neutral colors, spruce up the entry way and the exterior of your home ("curb appeal"), take great photos, consider 3-D tours, and hire an experienced real estate agent.[19] These observations remind us that …

D. Sellers and the brokers representing them have long known the benefits of presenting a clean, uncluttered residence in a home showing or open house. But in recent years the concept of professional *staging* has gained favor, especially for more upscale properties. Stagers go beyond the traditional broker role of advising that unneeded items go into storage and some essential repairs be made; they may suggest repainting some rooms to different colors, and even having the seller rent furniture and art works expected to improve buyers' reactions to the property. Stagers' professional group, the Real Estate Staging Organization, reports that a few thousand dollars spent on staging reduces time on the market and increases selling prices considerably. Technology has even brought virtual stagings, in which pictures or video clips are electronically edited to show how various changes could make the property suit a particular buyer's preferences – leading to the question of ...

E. Will technology put traditional real estate brokers out of business, as seems to be happening incrementally with real estate appraisers, and with other intermediary parties like travel agents and retail stores? Having a broker who is an MLS member used to be the key to getting a buyer access to the inside of a desired property; now anyone can put a virtual tour of a home or commercial building on the Internet. The reading on buying and selling houses in the digital age tells of Internet firms that will actually purchase the house of someone who buys a new one through their services, with data-driven models guiding all

steps in the process. But real estate markets are local in nature, and a buyer might take comfort in help and advice from a trusted agent who knows the local community (local brokers became adept during the 2020 coronavirus pandemic at showing homes, and even closing transactions, remotely), and traditional brokers seem increasingly open to using sites like Zillow to help buyers find available properties (a summer 2022 news article stated that 234 million people use Zillow's apps every month – though the Zillow stock price had tumbled in recent months, as most visits to the site generate no income for the firm).[20] Ideal Agent, which says it offers full brokerage service for 2% of the selling price, is not an MLS member and thus does not share commissions with brokers helping buyers (the former Real Estate Exchange, Inc. or REX followed the same plan). This business model might lead to compensation arrangements that directly reward buyers' brokers for negotiating lower selling prices. [A real estate brokerage firm with only an Internet presence is called a virtual office web site (VOW).] And the presence of firms like Ideal Agent call further into question the need for the recent lawsuits against NAR and MLS.

Among many benefits of technology might be enhanced personal safety for traditional real estate brokers. There have been cases of brokers being stalked, assaulted, and even murdered while showing homes or holding open houses. The capacity for virtual showings reduces some of the need for brokers to be physically present to show clients homes when doing that might be especially risky, such as at night or in secluded locations.

Then again, life is rarely simple. In a December 2022 radio broadcast, tech commentator Kim Komando cautioned that virtual tours of homes can give potential identity thieves personal information about the owner (like a diploma hanging on a wall – another reason to depersonalize a house before showing it), and can help physical thieves see the property's layout and where valuable items are located.

F. A news article on buying real estate in Paris stated that France has no equivalent to the MLS we have in the U.S., so a home buyer must hire a buyer's agent with deep knowledge of the appropriate market sector. Transaction costs tend to be approximately 7.5% of the price paid. Every transaction is overseen by a public official called a notary (*notaire*).[21] And in England brokers are known not as real estate agents, but more simply as estate agents. •

---

[1] *Dearborn v. Real Estate Agency* (Oregon appellate court, 2000).
[2] Kusisto, Laura and Friedman, Nicole. "Real-Estate Commissions Are Targeted as Unfair Fee." *The Wall Street Journal*, October 19, 2023, B1-B2.
[3] *Glass v. Burkett* (Illinois appellate court, 1978).
[4] *Perfect v. McAndrew* (Indiana appellate court, 2003).
[5] *Capiccioni v. Brennan Naperville, Inc*. (Illinois appellate court, 2003).
[6] *First Church v. Dunton Realty* (Washington appellate court, 1978).
[7] *Nordstrom v. Miller* (Kansas supreme court, 1980).
[8] Levine, Arthur M. "The Dual Agency Trap." *Real Estate Review*, Spring 1985, 109-112.
[9] Corey, John. "The Do's and Don'ts of Dual Agency." *Chicago Agent Magazine*, August 2, 2021.
[10] *Jolma v. Steinbock* (Oregon appellate court, 1979).
[11] Finley, Alyssia. "Home Sellers Take On the Realtors Cartel." *The Wall Street Journal*, October 22, 2023. Also Kusisto, Laura, Friedman, Nicole, and Najmabadi, Shannon. "Realtors Lose Antitrust Suit Over High Fees." *The Wall Street Journal*, November 1, 2023, A1, A2..
[12] Kusisto, Laura and Nicole Friedman. "Realtors Settle, Teeing Up Big Shift on Fees." *The Wall Street Journal*, March 16-17, 2024, A1, A2. Also Friedman, Nicole. "How Home Buying Will Change Under The New Practices." *The Wall Street Journal*, March 16-17, 2024, A2.
[13] *Easton v. Strassburger* (California appellate court, 1984)
[14] *Glisan v. Smolenske* (Colorado supreme court, 1963).
[15] *Nieberding v. Barrante* (Ohio appellate court, 2021).
[16] *Edens v. Laurel Hill* (South Carolina supreme court, 1978).
[17] *Gladstone Realtors® v. Village of Bellwood* (U.S. Supreme Court, 1979).
[18] *South-Suburban Housing Center vs. Greater South Suburban Board of Realtors®* (federal appellate court, 1991).
[19] Thornsby, Devon and Mears, Teresa. "15 Secrets to Selling Your Home Faster." *U.S. News and World Report Real Estate*, February 7, 2023.
[20] Forman, Laura. "Shorting Zillow is Your Best Bet in Housing This Year." *The Wall Street Journal*, August 27, 2022.
[21] Rohwedder, Cecilie. "For American Homebuyers, Paris Has a Certain Je Ne Sais Quoi." *The Wall Street Journal*, December 25, 2019.