**Unit 1**

**Lecture Outline**

**LEARNING OBJECTIVES**

When the student has completed this unit, they will be able to accomplish the following.

* Explain how the law of agency will enable the brokerage to function as a fiduciary entrepreneurship.
* Explain how the application of Article 12A and the rules and regulations (R&Rs) found in 19NYCRR, Parts 175 to 179, advances competence and trustworthiness.
* Explain the legal relationship between the sponsored licensee and the broker, how the licensee earns a commission when the licensee negotiates a “meeting of the minds” of the contract parties, and why licensees must exhibit critical thinking skills to ensure competence in the performance of real estate services for the public.
* Explain which legal business formation will enable the broker to operate a successful fiduciary entrepreneurship, best business practices that will secure a successful fiduciary entrepreneurship, how to develop and regularly revise a business plan to assure legal, ethical, and competent service, as well as business viability and client satisfaction, the required and complementary roles of the ancillary service providers (i.e., mortgage brokers, home inspectors, and appraisers), and the basic principles of economics and discuss what forces, presently in the market place, may positively or negatively affect real property values and to know how to mobilize resources to generate and participate in community debates about the effectiveness of such forces.
* Explain how to design onboarding and continued training programs, as well best practices for broker supervision and use of office managers.
* Explain how to create guidelines for maintaining agent safety and supervision, how to budget and implement a financial management plan, as well as establishing and making publicly available standard operating procedures for prerequisites of service.

**KEY TERMS**

accountability

administrative discipline

agency

agency coupled with an interest

agency disclosure form

agent

antitrust laws

apartment information vendor

apartment sharing agent

Article 12-A

Article 78 proceeding

associate real estate broker

attorney-in-fact

blind ad

broker’s agent

broker price opinion (BPO)

brokerage dollar

business plan

buyer’s agent

change of association/record of association

client

commercial transaction

commingling

commission

confidentiality

cooperating agent

customer

denial

disclosure

dual agency

dual licensure

employees

escrow

estoppel

express agency

fair employment laws

fiduciary

fiduciary duties

first substantive contact

fraud

general agent

group boycott

home inspector

implied agency

independent contractor

informed consent

irrevocable consent

kickback

latent defects

law of agency

listing agent

listing agreement

loyalty

market allocation

meeting of the minds

misdemeanor

misrepresentation

mortgage broker

mortgage banker

multiple listing service (MLS)

net listing

obedience

Parts 175 and 176

pocket card

policy and procedures guide

power of attorney

price-fixing

principal

procuring cause of sale

puffing

ratification

ready, willing, and able customer

reasonable care

residential building

residential transaction

restraint of trade

revocation

seller’s agent

selling agent

self-dealing

special agent

subagency

subagent

suspension

termination

termination of association notice

tie-in arrangements

undisclosed dual agency

undivided loyalty

universal agent

**LECTURE OUTLINE**

**I. LAW OF AGENCY**

1. Parties involved
2. Types of agents
   1. Universal agent
   2. General agent
   3. Special agent
   4. Agency coupled with an interest
3. Creation of agency
   1. Express agency
   2. Implied agency
4. Agency and brokerage
   1. Compensation
   2. Importance of agency law to licensees
   3. Seller as principal
   4. Buyer as principal
   5. Broker as principal
   6. Basic agency relationships
      1. Compensation from more than one party in a transaction
      2. Dual agency
      3. Self-dealing

**II. FIDUCIARY RESPONSIBILITIES**

1. Fiduciary duties
   1. Care
   2. Confidentiality
   3. Loyalty
   4. Obedience
   5. Accounting
   6. Disclosure
2. Breach of fiduciary duties
3. Scope of authority
4. Agent’s responsibilities to other parties in the transaction
   1. Opinion versus fact
   2. Misrepresentations
   3. Environmental concerns
   4. Latent defects
   5. Stigmatized properties
   6. Megan’s Law
   7. Vicarious liability
5. Representation
   1. Exclusive right-to-sell listing
   2. Exclusive agency listing
   3. Open listing
   4. Other forms of listing agreements
      1. Exclusive right to lease
      2. Net listing
      3. Multiple listing
      4. The internet and multiple listing
6. Disclosure requirements
   1. First substantive contact
   2. New York agency disclosure requirements
   3. New agency disclosure law
   4. Signed acknowledgements

**III. AGENCY RELATIONSHIPS—ALTERNATIVES**

1. Subagency
   1. Brokerage without subagency
   2. Disclosure of subagency
2. Dual agency
   1. Informed consent
   2. Undisclosed dual agency
   3. Handling in-house sales
      1. Company policy
   4. Designated agent
3. Single agency
   1. Handling in-house sales
   2. Handling cooperative sales

**IV. THE BROKER’S COMPENSATION**

1. Salesperson’s compensation

**V. ARTICLE 12A AND A BRIEF REVIEW OF REAL ESTATE LICENSE LAW**

1. Who needs a license?
2. Other licenses and registrations
3. Who is exempt from licensing?
   1. Exceptions
4. Who does not need a license?
   1. Exceptions
5. Obtaining a license
   1. Classifications of license type
   2. Broker’s application
   3. Experience requirement
   4. Broker’s examination
   5. Issuing the license
   6. Change of business address, statute, or name
   7. Place of business
      1. Business name and sign
      2. Branch offices
6. Renewal of license
   1. Continuing education/formation of approved courses
7. Part 175
   1. 175.1 Commingling money of principal
   2. 175.2 Rendering account for client
   3. 175.3 Managing property for client
   4. 175.4 Broker’s purchase of property listed with him
   5. 175.5 Disclosure of interest to client
   6. 175.6 Broker’s sales of property in which he owns an interest
   7. 175.7 Compensation
   8. 175.8 Negotiating with party to exclusive listing contract
   9. 175.9 Inducing breach of contract of sale or lease
   10. 175.10 Broker’s offering property sales must be authorized
   11. 175.11 Sign on property
   12. 175.12 Delivering copy of instrument
   13. 175.13 Accepting services of another broker’s salesman or employee
   14. 175.14 Termination of salesman’s association with broker
   15. 175.15 Automatic continuation of exclusive listing contract
   16. 175.16 (reserved)
   17. 175.17 Prohibitions in relation to solicitation and unlawful discriminatory practice
   18. 175.18 Use of trade of corporate name
   19. 175.19 Net listing agreements
   20. 175.20 Branch offices
   21. 175.21 Supervision of salesman by broker
   22. 175.22 Ownership of voting stock by salesman prohibited
   23. 175.23 Records of transactions to be maintained
   24. 175.24 Exclusive listings—residential property
       1. Explanation
   25. 175.25 Advertising
       1. Additional requirements and exceptions
   26. 175.26 Posting of business signs
   27. 175.27 Disclaimer
8. Part 176
9. Part 177
10. Part 178
11. Part 179
12. Responsibilities of licensure
13. Suspension and revocation of licenses
    1. Investigation of complaint and hearing
    2. Penalties
    3. Appeal
    4. Revocation of broker’s license
    5. DOS determinations
    6. Broker’s responsibility to manage and supervise
    7. Screening and selecting licensees
       1. Opener
       2. Closer
       3. Opener and closer
    8. Training programs/procedures
    9. Supervision requirement
14. Employee status
    1. Common law employee, case law, and New York State
    2. Independent contractor status
    3. Tests of employment
    4. Broker employee/independent contractor income-reporting requirements
    5. Termination or changes in association
15. Unlicensed real estate assistants
16. Brokerages and the Americans with Disabilities Act

**VI. DESIGNING ONBOARDING AND CONTINUED TRAINING PROGRAMS**

1. Introduction
2. What is onboarding?
3. Creating good habits and work ethic
4. Maintaining compliance with independent contractor law
5. Keep current in the real estate industry

**VII. BEST BUSINESS PRACTICES FOR BROKER SUPERVISION AND USE OF AN OFFICE MANAGER**

1. Definition and duties of an office manager
2. Establishing policies, rules, and procedures
3. Issues that arise with a lack of oversight

**VIII. THE LEGAL RELATIONSHIP BETWEEN THE BROKER AND SPONSORED LICENSEE**

1. Operating a broker’s office in accordance with license laws
   1. Place of business
   2. Business name and sign
   3. Branch offices
   4. Maintaining documents
   5. Delivery of documents
   6. Care and handling of funds
   7. Obligations to other parties and other brokers
2. TILA/RESPA Integrated Disclosure (TRID)
3. Closing the transaction
   1. Where closings are held and who attends
   2. Broker’s role at closing
   3. Lender’s interest in closing
   4. Homeowners insurance
      1. Characteristics of homeowners packages
   5. Claims
   6. Federal Flood Insurance Program

**IX. CRITICAL SKILLS**

1. Market value expertise
2. Four characteristics of value
3. Other characteristics of real estate
   1. Economic characteristics
      1. Relative scarcity
      2. Improvements
      3. Permanence of investment
      4. Area preference
   2. Physical characteristics
      1. Immobility
      2. Indestructibility
      3. Nonhomogeneity
4. Paired-sales analysis
5. Sales comparison approach
6. Comparative market analysis
7. Buyer appeal
8. Market position
9. Assets and drawbacks
10. Area market conditions
11. Recommended terms
12. Market value range
13. The real estate agent’s role
14. Basic principles of value
15. Plottage
16. Contribution
17. Competition
18. Change
19. Cost approach

**X. BEST POSSIBLE TRANSACTION**

**XI. TYPES OF LEGAL STRUCTURE FOR A BUSINESS ENTITY**

1. Partnerships
   1. Partnership property
   2. Dissolution
2. Corporations
   1. How to create a corporation
   2. Management
   3. Terminating a corporation
3. S corporations
4. Limited liability companies and partnerships
   1. Termination

**XII. BEST BUSINESS PRACTICES**

1. Lawful application of teams
2. Advertising requirements: emails, logos, and the internet
3. Unlicensed and licensed assistants
4. Broker oversight
5. Prohibition
6. Maintenance of documents
7. Proper insurance coverage
8. Errors and omissions insurance
9. Fire and hazard insurance
10. Business interruption
11. Contents and personal property
12. Liability
13. Casualty
14. Surety bonds
15. Commercial crime bond (fidelity bond)
16. Boiler and machine coverage
17. Claims
18. Written policy and procedures manual
19. Special required disclosures
20. Antitrust laws and penalties for violations
    1. Antitrust laws
    2. History
    3. Price-fixing
    4. Group boycott
    5. Market allocation
    6. Tie-in arrangement
    7. Penalties for violations
21. Escrow funds
    1. Location and timely deposit
    2. Reconciling the bank balance
22. Misrepresentation and fraud
    1. Opinion vs. fact
    2. Misrepresentations
    3. Commissions
    4. Disclosure of interest
23. Broker price opinion (BPO)
    1. The property facts
    2. Comments and conclusions
    3. Subject property photos of existing conditions
24. Strategies that create a safe environment
25. Advertising regulations
26. MLS and a third party
27. Interaction with other brokerage firms
28. DOS database
29. Financial management
30. Recordkeeping system and data security

**XIII. AGENT SAFETY AND SUPERVISION**

1. How to identify potential threats
2. Showing properties and safety tactics
3. Meeting prospective buyers or renters for the first time
4. Self-marketing on the internet and cyber-security
5. Conducting open houses
6. Unsafe property conditions
7. Environmental property hazards
8. Existence of infestation or wildlife

**XIV. HOW TO BUDGET AND IMPLEMENT A FINANCIAL MANAGEMENT PLAN**

1. Creating a budget
2. Implementing an effective record keeping system and data security

**XV. STANDARD OPERATING PROCEDURES (SOP)**

1. Standard requirements
2. Posting of SOPs in office, websites, and mobile applications
3. Maintain records of alterations or updates

**XVI. DEVELOPING AND REGULARLY REVISING A BUSINESS PLAN**

1. Planning a new broker-owned brokerage
2. Identifying initial start-up costs and capital needs
   1. Estimating start-up capital requirements
3. Projecting income and expenses
   1. Creating monthly and annual budgets
   2. Operating expense control and planning
   3. Calculating the required number of transactions

**XVII. ANCILLARY SERVICE PROVIDERS**

1. What is a mortgage broker?
   1. Mortgage broker vs. mortgage banker
   2. Debt financing
   3. Equity financing (mezzanine financing)
   4. Role of the mortgage broker
   5. Requirements and responsibilities of a mortgage broker
   6. Dual agency disclosure under the banking law
2. Home inspectors
   1. Licensing
3. Appraisers
   1. Licensing and certification
   2. Education requirements
   3. Examination and experience
   4. Application

**XVIII. BASIC PRINCIPLES OF ECONOMICS**

1. Business value
2. Supply and demand
   1. Factors affecting supply
   2. Factors affecting demand
      1. Population
      2. Employment and wage levels
      3. Vacancy levels
      4. Interest rates
3. City/town council
   1. Village board of trustees
4. Adoption of budget and tax rate
5. Subdivision
   1. Planned unit development
   2. Planning board
   3. The master plan
   4. Zoning board of appeal
      1. Zoning variances
   5. Architectural review boards
   6. Wetlands
   7. Historic preservation/landmarks preservation
   8. Buildings department
   9. Planning department
   10. Tax assessor
   11. Receiver of taxes/treasurer
   12. City/town/village engineer
   13. Septic systems
6. Educating people
7. Motivating people

**XIX. SUMMARY**