**Unit 10**

**Lecture Outline**

**LEARNING OBJECTIVES**

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

* Explain the importance of a user-friendly confidentiality agreement that will facilitate an open discussion and exchange among clients and their brokers in order to structure the best possible transactional agreement that is mutually beneficial to the parties.
* Explain that not all transaction analyses end in transactional agreements and wants must be differentiated from needs, how the considerations of the client and the customer (other party) are the primary driving forces in the formation of a transactional agreement, and how the nature of financing and the financial resources of the parties are subject to change.
* Explain how the broker must be able to identify and explain the many viable factors, including how each could play a part in designing and achieving a transactional agreement, and the importance of discussion, dialogue, and conferencing between and among the parties and their representatives.
* Explain that the overall objective is to reach a transactional agreement on fair terms within a reasonable period of time, that a sense must be created that the other party understands and tries to address the concerns of the broker’s client, that the broker must always represent the best interests of the client, that the primary objective of the broker must be to reach a transactional agreement without sacrificing the interests of the client simply to achieve an agreement, and that, if the dual objectives of both parties are prudently addressed by their brokers, the prospects of the individual considerations of each party being folded into a mutual interest of achieving a transactional agreement are considerably enhanced.

**KEY TERMS**

accountability

care

confidentiality

confidentiality agreement

full disclosure

highest and best use

indemnification

loyalty

maintenance

market value

mortgage contingency clause

negotiation

neighborhood analysis

nondisclosure agreement (NDA)

obedience

property analysis

regional analysis

seller concessions

site specific analysis

structural

tenant broker

transactional agreement

vicarious liability

**LECTURE OUTLINE**

**I. CONFIDENTIALITY AGREEMENT**

A. Facilitates an open discussion and exchange with clients and their brokers

B. The inclusion of the fiduciary duty of confidentiality opens the way for necessary incorporation of the other agency duties, especially reasonable care and loyalty

C. A client (a person that hires the broker) is owed the following fiduciary duties (a good pneumonic memory device would be CCLOAD):

1. Care – the licensee must use care and all skills and knowledge to obtain the best terms for the client

2. Confidentiality – the licensee must keep the confidence of the client

3. Loyalty – placing the interests of the client above those of all others, including the licensee’s

4. Obedience – obey the legal and reasonable instructions of the client

5. Accountability – the broker will account for all funds belonging to others and entrusted in the broker’s possession

6. Full disclosure – the licensee must disclose all transaction facts to the client

1. What must be included in the confidentiality agreement to make it user friendly:
   1. Registration and compensation
   2. Address the scope of what is proprietary information
   3. Limitations on what may be considered proprietary or confidential information
   4. Use of the proprietary or confidential information
   5. Reproduction of the proprietary or confidential information
   6. Concerning the proprietary or confidential information, this section may deal with the duty of care
   7. The term of the confidentiality agreement
   8. Ownership of the proprietary or confidential information
   9. In the event the buyer breaches the agreement, this section may discuss the possibility of irreparable damage the seller could experience and that a restraining order and/or an injunction will be placed to enjoin disclosure of the proprietary or confidential information
   10. Language of disclaimer and may discuss that the sale and property condition is “as is”
2. It includes general information such as:
   * 1. that the agreement is governed under the laws of the state where the property is located
     2. a merger paragraph that states that the entire agreement is represented by the proprietary or confidential agreement
     3. that the agreement cannot be amended unless it is writing
     4. other general legal language that may apply to the confidentiality agreement

**II. TRANSACTION ANALYSIS**

1. The purpose of transaction analysis and designing to achieve a transactional agreement
2. Principles of application
   1. Seller
   2. Buyer
   3. Landlord
   4. Tenant
3. Not all transaction analyses end in transactional agreements
4. Wants vs. needs

**III. INDIVIDUAL CONSIDERATIONS**

1. Seller
2. Buyer
3. Tenant
4. Estimating market value is not an exact science while estimating a range of value is necessary. Some of those value considerations include but are not limited to:
   1. Market value – the most common form of valuation, the value obtained by what an informed buyer would be willing to pay and an informed seller, under no duress would be willing to accept
   2. Assessed value – for the purposes of municipal property taxation
   3. Insurance value – in case of loss, value for the purposes of insuring an item for replacement
   4. Salvage value – the value of property improvements that have come to the end of their economic life
   5. Liquidation value – the value that can be derived from a forced or hurried sale.
   6. Value in use – the value of a property whose current use does not reflect the highest and best use of that property
5. Valuation steps
6. Financing and the financial resources
   1. Fluidity of financial market conditions
   2. Limitations based on financial latitudes of each party

**IV. DUAL OBJECTIVES**

1. Creating a sense that the other party understands and tries to address the concerns of the broker’s client
2. The broker must always represent the interests of the client
3. The primary objective of the broker must be to reach a transactional agreement without sacrificing the interests of the client simply to achieve an agreement
4. If the dual objectives of both parties are prudently addressed by their brokers, the prospects of the individual considerations of each party being folded into a mutual interestof achieving a transactional agreement are considerably enhanced

**V. TRANSACTION AGREEMENT**

A. Completing the transaction analysis should produce a transactional agreement

B. Price

C. Occupancy

D. Appraised vs. market value

1. Timing considerations
2. Financial positions of each party
3. Stacking of contingent sales
4. Multiple offers
5. Interest rate deadlines
6. Lawyer’s unconditional approval
7. Home inspection corrections
8. Seller concessions
   1. FHA loans
   2. VA loans
   3. Conventional loans
9. Others
10. How important are discussion, dialogue, and conferencing between and among the parties and their representatives?
11. Listening skills
12. Communicating an “agreement attitude”
13. The value of molding an agreement that is bilaterally beneficial (i.e. a win-win agreement)

**VI. SUMMARY**