



GUIDE TO AGENCY LAW “REQUIRED DUTIES” (IC 25-34.1-10-9.5)

IAR Legal Hotline | 1-800-444-5472 | Monday – Friday | 9am – 5pm ET

Available to assist managing brokers and their designated agents.
Calls are answered in the order they are received, typically by phone, and within 24 hours.

Introduction

Agency duties for REALTORS® are determined by Indiana law, NAR Code of Ethics and MLS rules and regulations. Agency law promotes consumer protection and industry integrity. Most authorities would agree that a key aspect of agency involves assisting the consumer throughout the often-complex negotiation process, especially where the consumer cannot be represented by another broker representing another party due to legal and ethical constraints. Accordingly, this is the basis for Indiana’s agency law which sets forth “**required duties**” that a licensee must perform for the client in a real estate transaction.

Defining “Required Duties”

For clarification purposes, the agency language set forth below does not in any way determine which business models can exist and operate in the marketplace. It does not address brokerage fees, commission issues or discounts to consumers. In fact, 876 IAC 8-2-7 allows for rebates (discounts) and inducements to the prospective client in a transaction with full disclosure in writing to both sides of the transaction at the time of offer and acceptance, subject, of course, to each company’s individual office policy.

The agency language does not affect other existing license laws and regulations for licensees whether commercial or residential professionals. For example, 876 IAC 8-2-4 provides that “the listing and selling broker shall attend all closings.” In other words, an Indiana licensee cannot contract away under any written agreement the attendance at closing requirement.

Agency Law

An Indiana licensee has an agency relationship with, and is representing, the individual with whom the licensee is working unless: (1) there is a written agreement to the contrary; or (2) the licensee is merely assisting the individual as a customer without compensation, as in the case of casual contact at an open house, floor time or social event. In other words, items (1) and (2) carve out exceptions to the assumption “in fact” of consumer representation.

The Indiana agency law (IC 25-34.1-10-9.5) provides that a licensee **must perform at least the following duties under any written agreement:**

1. Be available to receive and timely present offers and counteroffers for the property
2. Assist in negotiating, completing real estate forms, communicating, and timely presenting offers, counteroffers, notices, and various addenda relating to the offers and counteroffers until:
 - A. a purchase agreement or lease is signed; and
 - B. all contingencies are satisfied or waived.
3. Timely respond to questions relating to offers, counteroffers, notices, various addenda, and contingencies pertaining to the subject property.





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Accordingly, under the above language, listing brokers will be prohibited from offering to perform no duties other than placement of the seller’s listing in the multiple listing service or sometimes referred to as a “MLS entry only listing” or “limited listing”. Likewise, a licensee working with a buyer/tenant must perform at least the above “required duties”.

The licensee must perform at a minimum the “required duties” even if such licensee has made the decision to contract away other “extra” transactional duties. For example, a listing broker who is only performing the “required duties” may independently decide to contract away providing extensive marketing efforts, coordinating inspections, appraisal, survey, assisting with miscellaneous referral services if the seller is relocating, assisting with utility changes and filings, conducting extensive buyer follow-up activities, providing helpful demographic material (please see Article 10 issues), analyzing market data, providing extensive information related to other service providers (i.e. title, mortgage, insurance companies, etc.) or any other miscellaneous transactional duties. Thus, a client could agree to undertake some duties himself/herself in the transaction as well as place many calls to facilitate the transaction in order to save costs.

Client v. Customer

It is important to understand the “customer” (defined term by statute) exception along with the language of assisting “without compensation”. In providing “customer” services to a prospect, like at an open house, as opposed to written agency representation, a licensee generally may do the following:

- provide information meeting the prospect’s criteria concerning location, price, size and make factual representations about the property’s amenities and attributes
- deal honestly and not knowingly give false information to such prospect
- inform such prospect about the availability of financing, legal services, inspections, title companies or other related services in the “ordinary course of a real estate transaction”
- disclose to such prospect any “adverse material facts” or “risks” known by the licensee concerning the physical condition of the property.

However, in providing “client” services, a licensee generally may do the following:

- all of the items set forth above; **and**
- disclose any other information that would affect that client’s ability to obtain the best price and the most favorable contract terms.
- complete a standard Purchase Agreement by inserting terms of the prospect’s offer in the blank spaces and submit such offer on a timely basis.
- satisfy all required agency duties by statute, including attendance at closing.



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Limited Agency

If a licensee fails to perform the “required duties”, and another licensee steps in and performs those duties on behalf of or at the request of the consumer, then the performance of those duties by the other licensee does not constitute an agency relationship. Basically, a licensee avoids undisclosed limited agency which is illegal under any circumstances and is generally considered a fraudulent act.

As a reminder, disclosed limited agency is specifically permitted, but only with the written and informed consent of both parties to a transaction. Under Indiana law, there are essentially two (2) types of limited agency, unless a business decision is made to utilize limited agency in a certain situation for risk reduction purposes. Clients can either consent or not consent to the types of limited agency. The first type is where only one licensee represents both the buyer and seller (“me-me”) in the same transaction. The second type is where a managing broker is personally representing a party in the transaction and the affiliated licensee is representing the other party. Since the managing broker is personally involved, there is no “neutral” person available to assist in the transaction when conflicts or concerns arise between the parties. Thus, limited agency applies.

Limited agency consent language is incorporated into the IAR statewide forms for our member’s risk reduction purposes.