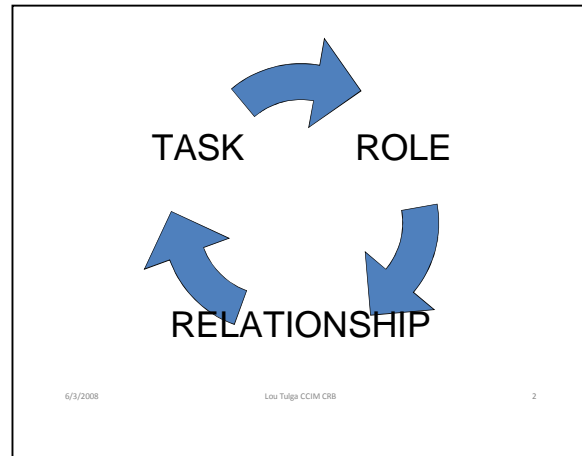


AGENCY

4 Education Credit Hours
Presented by Lou Tulga CCIM CRB



I. AGENCY DEFINED

A. Common Law:

“Agency is a consensual fiduciary relationship between one person—the agent—who agrees to act *for*, and under the direction and control *of*, another—the principal” (Restatement, Second, Agency #1)

B. New Mexico Appeals Court Opinion: **Robertson v. Carmel Builders Real Estate, Opinion Number: 2004-NMCA-056**

“An agent is a person who, by agreement with another called the principal, represents the principal in dealings with third persons or transacts some other business, manages some affair or does some service for the principal, with or without compensation.” Madsen v. Scott, 1999-NMSC-042, ¶ 8, 128 N.M. 255, 992 P.2d 268 (quoting UJI 13-401 NMRA 1999).

“Defining an agency relationship presents a mixed question of law and fact requiring application of the substantial evidence standard for review of the facts and then a *de novo* review of the trial court’s application of the law to those facts. State v. Reynolds, 119 N.M. 383, 384, 890 P.2d 1315, 1316 (1995).

“However, where the material facts are undisputed and susceptible of but one logical inference, the existence of such a relationship becomes a conclusion of law. Madsen 1999-NMSC-042...”

C. New Mexico Uniform Power of Attorney Act of 2007: **HB 231**

"Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact or otherwise. The term includes an original agent, co-agent, successor agent and a person to which an agent's authority is delegated”

“An agent's authority terminates when: (1) the principal revokes the authority; (2) the agent dies, becomes incapacitated or resigns; (3) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or (4) the power of attorney terminates”

“A principal may designate two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently”

D. New Mexico Real Estate License Law: 61-29-2 NMSA 1978

Agency Relationship “ means the fiduciary relationship created solely by an express written agency agreement between a person and a brokerage, authorizing the brokerage to act as an agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission;”

Agent “means the brokerage authorized, solely by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker’s qualifying broker;...”

Brokerage Relationship “means the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission”

Transaction Broker “means a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship”

E. New Mexico Real Estate License Law: 61-29-10.1 NMSA 1978

- A. “For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord or tenant or licensee, or created orally or by implication”
- B. “A brokerage may provide real estate services to a client pursuant to an express written agreement that does not create an agency relationship and no agency duties will be imposed on the brokerage”
- C. “A brokerage may provide real estate services to a customer without entering into an express written agreement and without creating an agency relationship and no agency duties will be imposed on the brokerage”

F. New Mexico Commission Rules 16.61.1.7 Part 1, Definitions

VV. “**Transaction Broker:** the non-fiduciary relationship created by 61-29-2A 14 NMSA 1978, Wherein a broker or brokerage provides real estate services without entering into an agency relationship”