

ONTARIO REAL ESTATE EXAMS

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2

REAL ESTATE

LICENSE EXAM

STUDY NOTES

TREASURY

**RESIDENTIAL
TRANSACTIONS**



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MiniCram® Real Estate Exam Study Notes
Course 2 – Residential Real Estate Transactions

Updated – TRESA 2002

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INTRODUCTION

Dear Reader,

Congratulations on purchasing our **MiniCram®** for Ontario Real Estate License Exam preparation. The purpose of this book is to provide you with last minute review of important theory and math concepts for the exam. **MiniCram®** has compiled this booklet so that you can focus on key areas of study as well as prepare to overcome the most common mistakes that students make on the actual test day.

How to Use This *MiniCram®*

We understand that you do not have enough time for studying the online content of the official real estate courses. This **MiniCram®** booklet is designed in such a way that your review for the exam is fast paced. It is suggested that you go through each topic one by one. However, it is assumed that you have already covered the official course content in either the actual class or by self-study.

We Want to Hear from You

This book is written by a practicing Real Estate Broker who is also a trained adult trainer. If you have any feedback for the author, need more information, or have general comments, please send an email to minicram@outlook.com.

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**ONTARIO REAL ESTATE
LICENCE EXAM PREP**

TRESA 2002

UPDATED & REVISED STUDY MATERIAL

COURSE 2

RESIDENTIAL REAL ESTATE TRANSACTIONS

SELF-STUDY NOTES

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1. AGENCY AND REPRESENTATION

1.1 Agency Relationships

Terminology

- The *Trust in Real Estate Services Act (TRESA)* is a special type of the *Agency Law*.
- Agency: A *common law* relationship between two parties in which one party (*agent*) represents the other party (*principal*) for dealing with a *third party*.
 - Under TRESA, this relationship is known as *Representation Relationship*, wherein the brokerage is the *agent*, and the seller or the buyer is the *principal*.
- Agent (Brokerage): An *agent* represents the *principal* (seller or buyer) in a business transaction with a third party.
 - Salespersons and brokers are considered employees of the brokerage for trading purposes.
 - After an agency relationship is created, all salespersons and brokers of the brokerage owe the agency duties to the principal.
- Principal (Client): This is the party (seller or buyer) which authorizes an *agent* to act on his/her behalf.
 - It is the party with whom the *brokerage (as agent)* has signed an *agreement*.
 - Under TRESA, the equivalent term is *client*, who may be a seller client or a buyer client.
- Third-Party: This is the party which is not directly connected with the transaction between an agent and a principal but may be providing professional services to the clients.
 - Under For example, a home inspector, a mortgage broker, an appraiser or an environmental assessor.
- Self-Represented Party: Any party (buyer or seller) who, with respect to a trade, is not a client of a brokerage and has not entered into an agreement with the brokerage for services or representation.
 - Salespersons and brokers are prohibited from providing services, opinions, and advice to a self-represented party.
 - However, salespersons and brokers may provide '*assistance*' to self-represented party which is only general information but not a service, opinion or advice.

Note: *Customer Service & Service Only* agreements are not permitted under TRESA.
- Dual Agency: This refers to a situation when an agent works for more than one party in a business transaction, which creates a conflict of interest between the interests of two clients.

- In real estate, dual agency is known as *Multiple Representation*, which occurs when the same brokerage represents more than one client in the same transaction. (****More details on Page 12**)
- *Imputed Knowledge* refers to a legal *assumption* that knowledge of confidential matters about clients is transferred (*imputed*) to all salespersons/brokers of the brokerage.
- *Implied Multiple Representation* mostly happens in open houses when a third party believes that an agent is working on its behalf.

Obligations and Authority

- In real estate, the agency relationship is created when a brokerage signs a *Seller Representation Agreement (Listing Agreement)* with the seller or a *Buyer representation Agreement* with a buyer.
- The brokerage and all its salespersons and brokers owe *Fiduciary Duties* to the seller or buyer client when the representation agreement is signed.
- *Fiduciary* refers to a trust relationship wherein the agent as a *fiduciary* has an obligation to protect and promote the best interests of the principal.
- Similarly, the seller or buyer client grants an *Express Authority* to the brokerage, which may also give rise to *Implied Authority*. (****These duties are covered later in sections 1.2 and 1.3.**)

Agency Creation

- *Express Agreement*: An agency relationship is created when there is a definite understanding between the agent and the principal.
 - As such, the agency can be created in writing, verbally, or can be *implied*.
- *In Writing*: As per TRESA, the brokerage must have a written agreement as evidence to claim remuneration.
 - For example, a buyer signs a *Buyer Representation Agreement* with a brokerage, or a seller signs a *Seller Representation Agreement (Listing Agreement)* with the brokerage.
- *Implied Agreement*: This is created *unintentionally* based on words and/or actions of sellers, buyers, or salespersons.
 - The parties may be acting in such a manner which exhibits that an agency relationship exists between them.
- *Ratification*: When the agent acts either without authority or in excess of authority granted and the principal accepts the benefit of agent's unauthorized act.
 - For example, a salesperson shows a seller's property to a buyer without authority and brings an offer.
 - The seller accepts the offer, and this *ratifies* the agency relationship.
- *Estoppel (Conduct)*: When the principal gives an *impression* to a third-party that someone is representing them (is their agent) in a transaction.
 - In real estate, a seller or buyer may give an impression which leads a third-party to believe that they are represented by a brokerage.

- It is very uncommon but is legally possible in real estate.
- By Law: A court may appoint an agent for a principal/client when it becomes a necessity.
 - The agency duty created by circumstances or necessity is imposed on an agent to act on behalf of a principal.
 - It is rare in real estate but may occur in emergency situation.

Agency Termination

- By mutual agreement of the agent and the client.
- When the agency is revoked by the principal/client. If revocation is unlawful, the principal may be liable for damages.
- When the agreement expires.
- When the job is performed or completed (e.g., property is sold, and the title is transferred).
- When it is impossible to complete the job (e.g., the property is damaged in fire).
- Death or mental incapacity.
- Bankruptcy of brokerage or cancellation of brokerage registration by RECO.
- Continuation of Duties: Termination of an agency relationship does not impact the obligations of the either party or the rights associated with the agreement, unless otherwise agreed.
 - As such, the agent must continue to maintain loyalty, protect the confidential information, and the best interests of the client.

Disclosure of Interest

- Registrants must disclose any *existing* interest (sale) or a *contemplated* interest (purchase) in real estate.
- The disclosure must be in writing and signed acknowledgement must be obtained at the earliest practical opportunity but before an offer is made.
- The disclosure statement must include -
 - That the party selling or buying is a registrant under TRESA.
 - That the registrant is a Salesperson, Broker, or a Brokerage.
 - Whether the interest in property is direct or indirect.
 - The material facts about the property known to the registrant that may affect the value.
- The registrant must also disclose details of any agreement for subsequent sale of the property to a third party.

1.2 Brokerage Authority and Client's Duties

Authority Granted to a Brokerage

- In real estate, an *Authority* is a right or permission granted by a seller or a buyer to the brokerage to represent them in a real estate transaction.

- Express Authority (Actual): This authority is granted in the *Listing Agreement* or the *Buyer Representation Agreement*.
 - The seller grants *Express Authority* to the brokerage to offer their property for sale, place a *For Sale* or *Sold* sign, allow the buyers to fully inspect the property, and make marketing decisions.
 - Similarly, the buyer grants *Express Authority* to the brokerage to seek out suitable properties, receive remuneration paid by the seller, and provide information to third parties to assist the buyer.
- Implied Authority: These are typical extensions of *Express Authority* granted by a client that enable the brokerage to take actions and make decisions, which are not specified in the agreement.
 - The seller grants *Implied Authority* to the brokerage to take decisions regarding marketing and advertising the property, delegate its duties to salespersons, assist the seller in negotiations, keep the deposit money in real estate trust account, and send and receive notices on seller's behalf.
 - Similarly, the buyer grants *Implied Authority* to the brokerage to delegate the duties to salespersons, obtain and present relevant facts, negotiate on behalf of the buyer, and send and receive notices on buyer's behalf.

Limits on the Authority of Brokerage

- The authority given to a real estate brokerage is limited.
- The brokerage cannot sign contracts (offers) on behalf of the client. However, the brokerage or its representative can sign the contract only as witnesses.
- The agency relationship cannot be delegated to other brokerages without express consent of the client.
- The brokerage can only receive a deposit related to purchase.
- The brokerage cannot incur expenses on behalf of the client without express authority.

Principal's (Client's) Duties to the Agent (Brokerage)

- Indemnification: The principal has an obligation to compensate the agent for liabilities incurred when carrying out lawful duties.
 - The client provides indemnity if a damage or loss occurs to the client during the agreement period, except when the damage/loss is due to gross negligence of duties by the brokerage.
 - In real estate, the duty to reimburse the brokerage for expenses typically does not apply because the brokerage is paid *remuneration* (commission).
- Remuneration: The client has an obligation to pay remuneration to the brokerage for the services provided.
- Obligations in the Representation Agreement: The brokerage has the right hold the deposit in *Real Estate Trust Account*.
 - The client agrees to pay the applicable taxes on remuneration.

- The client agrees to refer of all enquiries to the brokerage during the agreement period.
- The client has to pay remuneration if the sale does not close due to client's default.
- Holdover Period: The client has to pay remuneration if a property is shown by the agent during agreement period but is sold privately to the same buyer during the holdover period.
 - The holdover period starts *after* the expiry of the agreement period.

1.3 Brokerage Duties to Clients

General Obligations

- The agent must use *Due Care & Skill* in providing information.
- The agent must perform agreed functions and ensure privacy.
- Agent must be honest and should not mislead the client.

Duty of Care

- Clients: The *Duty of Care* includes everything done for the client.
- Standards: The standards for *Duty of Care* are objective (based on facts) and not *subjective* (no regard to personal interpretations).
- Limited Disclosures: Information related to the *agency relationships* and *material facts* about the property/trade must be disclosed to clients as well as self-represented parties (buyers and sellers).

Fiduciary Duties

- *Fiduciary duties* are based on trust and confidence, best interests, and loyalty.
 - A written agreement is not required for fiduciary obligations.
 - These duties exist even if the brokerage is acting *gratuitously* (free).
- Loyalty: Agent must place the interests of the principal (*client*) above all, *except law*.
- Avoid Conflicts of Interest: Arising from representing two clients in a trade (*multiple representation*) or by having direct/indirect interest in property.
- Disclose Conflicts: At the earliest practical opportunity but before an offer is made.
- Disclose Referral Fees: The registrant must not make secret profits at the expense of the principal.
- Protect Confidential Information: Personal or motivational information of the client must be kept confidential and must not be misused so as to harm the principal.

Regulatory Obligations Under TRESA

- Accountability: The agent must account for, and safeguard money, documents, and property entrusted by the client.
 - The obligation of a brokerage to maintain a *Real Estate Trust Account* is based on this duty.
- Remuneration: The remuneration charged may be a percentage of sale price, a fixed amount (flat fee) or a combination of both.
 - Several percentages may also be used but the percentage must be in descending order as the sale price goes up.
- Promises: The brokerage must not induce anyone into signing a contract or make anyone breach their contract with another brokerage.
 - If a promise is made to a party, it must be in writing and delivered to that party.
- Delivery of Documents: Documents related to trade such as offers, representation agreements, notices, waivers, amendments, etc. must be delivered in a timely manner.
- Agency Relationships: Agreements must have a date of commencement and an expiry date. The forms used by the brokerage must be current.
- Disclosure of Representation: Brokerages must disclose agency relationships to all parties in a transaction before entering into any relationship.
 - Written acknowledgement and consent must be obtained from the parties.

1.4 Representation

Single Representation

- Single Representation: A relationship where the brokerage represents only one *client* (buyer or seller) in a transaction and the other party is a client of a different brokerage or a *Self-Represented Party*.
- Seller Single Representation: The brokerage and the seller sign a *Seller Representation Agreement (Listing Agreement)*, and the seller becomes the *client* of the *Listing Brokerage*.
 - The buyer is usually represented by another brokerage (*Co-operating Brokerage*).
 - The brokerage or a *designated representative* of the brokerage acts as seller's representative, protecting the best interests of the seller, and marketing the property.
 - The brokerage and all its employees must obey lawful instructions of the seller, fulfill fiduciary obligations, and exercise reasonable care and skill.
 - Disclose *material facts* to the buyers and negotiate favourable terms for the seller.
- Buyer Single Representation: The brokerage and the buyer sign a *Buyer Representation Agreement*, and the buyer becomes a *client* of the brokerage.
 - The seller is usually represented by another brokerage (*Listing Brokerage*).

- The brokerage or a *designated representative* of the brokerage acts as buyer's representative, locates the property and promotes the buyer client's best interests.
- The brokerage must discover and disclose relevant material facts to the buyer.
- Keep the buyer fully informed about competing offers and comply with regulatory requirements.
- The brokerage and all its employees must obey lawful instructions of the buyer, fulfill fiduciary obligations, and exercise reasonable care and skill.

Multiple Representation

- Multiple Representation: This happens when the *same brokerage* represents more than one client for the *same transaction*.
 - Under Brokerage Representation, multiple representation arises when:
 - The brokerage represents both the seller and one or more buyers in the same trade.
 - The brokerage represents more than one competing buyer in the same trade.
 - Multiple representation arises even when each client is working with a different agent employed by the brokerage.
 - When multiple representation does arise, the brokerage and all its agents must treat the interests of each of the clients involved in an objective and impartial manner.
 - Under Designated Representation, multiple representation does not arise if each of the brokerage's clients involved in the same trade are represented by a different designated representative.
 - The designated representatives can continue to actively represent the interests of their respective clients.
 - Multiple representation will only arise when:
 - The same agent is the designated representative for a buyer and seller in the same trade.
 - The same agent is the designated representative for more than one competing buyer in the same trade.
- Limitation to Services: The information that *must not be disclosed* and services not provided include:
 - The amount that the seller may or will accept, which means that the salesperson cannot advise the buyer that the seller may or will accept an amount less than the offered price.
 - The amount that the seller should accept or the amount they should counter the offer.
 - The buyer must not be advised on the amount of offer price or the counter offer price.
 - The terms of any other competing offer including the amount, terms, conditions, closing date, etc.
 - The personal or motivational information of the seller or the buyer.

- Disclosure Before Agreement: The *Code of Ethics* requires that the brokerage must disclose before signing the representation agreement that the brokerage may enter into a representation agreement with another party for the same trade resulting in a multiple representation situation.
 - However, the brokerage will do this only with written consent of both parties.
 - This disclosure and consent are typically included in the standard agreements with buyers and sellers.
 - Clients do not have to consent to multiple representation.
 - They may choose to select a different brokerage or enter into a *designated representation* agreement with a different agent of the same brokerage.
- Disclosure Before Offer: Since multiple representation occurs *during* the offer process, a disclosure and written consent of both parties are required *before* the offer is made.
 - Under TRESA, both seller and buyer clients use separate forms to provide consent for multiple representation.
 - This disclosure and consent provision are typically included in the standard *Confirmation of Co-operation and Representation*.

1.5 Service Options for Sellers and Buyers

Advantages of Working with a Salesperson/Brokerage

- Registered salespersons and brokers have completed the requisite education requirements and have the required knowledge and skills to provide competent services.
- Salespersons, brokers, and brokerages are required to comply with consumer protection provisions of the *Code of Ethics* and are accountable to RECO for their actions.
- The *Deposit Protection* Insurance is an assurance to buyers that their deposit amount will be protected against any loss.
- The *Errors and Omissions* insurance may protect the registrants for their negligence, depending on circumstances.

Information Before Representation Agreement

- *TRESA Code of Ethics* requires that certain information must be provided to the parties at the earliest practical opportunity but before an offer is presented.
- Minimum Information Before Agreement: The brokerage must provide information on service alternatives available to a seller or a buyer.
 - The services that the brokerage will provide under the agreement.
 - Circumstances could arise when the brokerage could represent more than one client in a transaction, and if that happens, the brokerage will obtain written consent from all clients.
 - The obligations of the brokerage in case it provides services to more than one client in the same transaction.
 - The brokerage must make its best efforts to obtain a written acknowledgment at the earliest practical opportunity but before an offer is made.

Agreements in Writing

- All agreements related to trading in real estate must be in writing to be effective.
- The *Real Estate Council of Ontario (RECO)* does not provide any representation forms.
 - A *Seller Representation* relationship is created when a *Seller Representation Agreement (Listing Agreement)* is signed.
 - A *Buyer Representation* relationship is created when a *Buyer Representation Agreement* is signed.
- Minimum Content: The agreement must include information such as the *Effective Date (date of commencement)*, one definite *Expiry Date*, services to be provided, total remuneration, remuneration to co-operating brokerage and how the remuneration is to be calculated.
- More than 6 Months: If the agreement is for a period of more than six months, the party must give their consent using initials on the first page of agreement.
- Copies of Agreements: Copies of representation agreements must be delivered *immediately* upon signing.

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