We defend each answer with an explanation based on citations from the book. We may quote more content than needed to put our answers into context and to make this quiz a richer learning experience. Citations from the book appear on a yellow background in Times-Roman.

Paragraphs labeled as “Notes” contain supplemental information we think useful but which is not part of the course. Paragraphs labeled as “Comments” are the author’s comments and opinions and may be ignored.

**Recommendation**: If you don’t fully understand any particular question or its answer, we suggest you re-read the section in the book on which the question is based.

**Caveat**: The quiz questions are *much more difficult* than questions on the final. They tend to be longer, use more real estate jargon, and may require you to think harder questions on the final.

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1. **3.2.1: Open Listing**

Under an open listing, the seller retains the right to revoke his listing at any time.

**True** An open listing is the least restrictive of the four principal kinds of listing agreements and is distinguished by the fact that the owner retains the right to revoke the listing at any time, to sell the property him or herself, or to list the property with another broker.

**Note**: The most restrictive of the four kinds of listing agreements is the exclusive right-to-sell (the other three: open, exclusive agency, and net). With this type of listing the seller agrees to pay his broker a commission if *anyone* buys his home during the listing period. Thus, if a seller gave his home to his daughter during the listing period he would owe his listing broker a commission.

2. **3.2.5: Unilateral and Bilateral Agreements**

Open listings are bilateral agreements.

**False** In an open listing agreement the seller, usually a FiSBO, agrees to pay a commission if the broker finds a buyer but the broker promises nothing in return; therefore, the open listing is a unilateral agreement.

**Citation**: An agreement can be classified as either unilateral or bilateral. A unilateral agreement is one in which one party makes a promise to induce some act or performance by the other party, but the latter can act or not act as he chooses. For example, in an open listing the seller agrees to pay compensation to a real estate broker who procures a buyer, but there is no obligation on the part of any broker to do so.

**Note**: In a bilateral agreement, the two parties exchange promises. Marriage is a bilateral agreement (at least it should be) and so is a listing agreement. In a listing agreement, an agent promises to do his best to sell the owner’s home and the seller agrees to pay the agent a commission should he be successful.
3. 3.4: Ostensible or Implied Agency

Betty shows Bob six homes. She writes for Bob an offer on one of the homes but it is rejected. Her second offer is accepted. Although Bob did **not** sign a representation agreement with Betty, Betty is Bob’s agent.

**True** Betty’s actions on Bob’s behalf: showing property, writing, and negotiating purchase offers; are the actions of an agent. Since no formal representation agreement was signed between Betty and Bob, Betty is Bob’s ostensible agent (aka, “implied agent”).

**Citation:** Agency relationships created from the actions or conduct of the parties are known as ostensible or implied agencies.

**Note:** Yet another term for an implied agency or ostensible agency is “accidental agency.” Accidental dual agencies are one of the leading causes of malpractice law suits against brokers.

This accidental form of agency often begins when the listing broker makes some inadvertent comment which leads a buyer into believing that the listing agent is working **for** the buyer and not just **with** him. Typical verbal slips are “*I’ll take care of everything*” and “*Trust me, I’m sure the seller won’t counter.*”

NAR® has provided examples of activities which a listing broker may perform without becoming an accidental agent of the buyer (**source**):

1. Show the buyer listed properties meeting the buyer’s criteria concerning location, price, and size.
2. Describe a property’s amenities and attributes and make factual representations about the property’s condition and status.
3. Complete a standard “Offer to Purchase” form for the buyer by inserting the terms of the buyer’s offer in the blank spaces on the form.
4. Transmit any offers made by the buyer to the seller or the listing broker on a timely basis.
5. Inform the buyer about the availability of financing, legal services, home inspection companies, title companies, or other related services desired or required by the buyer to complete the transaction.

Although there are many advantages to avoiding dual agency (these will be described in our *Risk Management* course), it should be remembered that it’s not so much what you do for the buyer that determines if you are his agent but rather if the buyer *believes* you are his agent.

4. 3.5: Compensation

Ava helps her parents buy a home. She shows her mother and dad listings, helps them make a selection, negotiates with the seller, arranges financing, and helps her parents through escrow. Because Ava expects nor receives compensation from anyone involved in the transaction, she need not be licensed.

**True** Under the Real Estate Law, one who acts as a gratuitous agent does not need a real estate license. However, in any transaction subject to the Real Estate Law and where there is an expectation of compensation, regardless of the form, time, or source of payment, a license is required.

**Note #1:** Even though the “gratuitous agent” receives no financial compensation in any form and even though he may not be licensed, he is still liable for professional negligence and susceptible to legal sanctions for violating the Real Estate Law. So if a gratuitous agent steered his daughter to Hispanic neighborhoods, he would be putting his license into jeopardy for having committed a fair housing violation.

**Note #2:** Suppose Ava began helping her parents without expecting to receive compensation but later succumbed to temptation and accepted $2,000 in Bitcoins from the seller’s listing agent. If Ava were unlicensed (or had an expired license), she would be in violation of BPC §10131 for engaging in activities requiring a real estate license. If she failed to disclose her acceptance of the Bitcoins to her parents, then mom and dad would have an actionable claim against their daughter for breach of fiduciary duty.

If Ava were licensed as a salesperson but not affiliated with a broker, the listing agent could pay her a referral fee (not a commission) providing he disclosed this to his seller and Ava disclosed this to her parents (BPC §10176; prohibition against taking a “secret profit.”).
If Ava were licensed as a salesperson and was affiliated with a broker who supervised the transaction, then the seller’s listing broker would have to make the Bitcoin payment through Ava’s broker (BPC §10137) who would then disperse some or all of the Bitcoins to Ava.

If Ava received compensation from a settlement service provider and if her parents mortgage was federally insured or guaranteed, then Ava could possibly in violation of the California Real Estate Law and RESPA (see this article for details).

5. 4.8: Power of Attorney

A broker who obtains an executed listing agreement is an “attorney in fact.”

**True** A power of attorney is a written instrument giving authority to an agent [e.g., a listing agreement]. The agent acting under such a grant of authority is generally called an “attorney in fact” [e.g., the broker].

**Note:** Suppose Sally writes on a napkin, “I authorize Bob to buy my groceries on my account.” Then the napkin would be a “power of attorney” and Sally’s “grant of authority” would make Bob an “attorney in fact.”

6. 4.9.1: Check

California law considers a post-dated check a promissory note.

**True** A post-dated check is not cash but a promise to pay at a future date.

**Citation:** California law has held that a post-dated check may be considered the equivalent of a promissory note.

7. 4.9.3: Escrow Depository

If buyer and seller perform as agreed, the escrow holder becomes the agent of the seller as to the deed and the agent of the buyer as to the purchase money.

**False** It’s just the opposite.

**Citation:** If buyer and seller perform as agreed, the escrow holder becomes the agent of the seller as to the purchase money and the agent of the buyer as to the deed.

8. 4.13: Disclosure of Agency Relationships

The selling agent must complete the Agency Disclosure Form only when he represents the seller.

**False** The selling agent (i.e., the person who finds the buyer) is legally required to complete the Agency Disclosure Form regardless of whether he represents the buyer, the seller, or both.

**Citation:** As soon as practicable, a selling agent must disclose to the buyer and seller whether the agent is acting exclusively as the buyer’s agent, exclusively as the seller’s agent, or as a dual agent representing both the buyer and seller.

**Note #1:** The term “selling agent” as used in the Agency Disclosure Form is misleading (the wording of that form is mandated by CC §2079.14(d)). “Selling agent” infers that the person who finds the buyer owes the buyer fiduciary duties. This may not be the case as when, for example, a listing agent finds a buyer during an open house and carefully deftly avoids forming an accidental dual agency by rendering the buyer little or no assistance (see the note for question 3 above).

**Note #2:** **History Lesson:** The following is an excerpt from California Real Practice, by Robert L. Herd, Bruce A. Southstone, 2011. It sheds light on how the Agency Disclosure Form came into being and the CAR® forms created in response:

As recently as the late 1980s, all real estate licensees who wrote offers for buyers were actually representing the seller. Buyers had no representation. This was largely because, under Multiple Listing Service (MLS) rules at the time, if the cooperating broker accepted the compensation from the listing broker, the cooperating broker accepted the obligation to be a subagent of the seller along with it. This resulted in an untenable situation when the buyers realized that the licensee they believed was working exclusively in their interest was either not the licensee at all or was, in fact, a dual licensee. As a result, the California legislature recognized the problem by enacting Agency Disclosure legislation in 1988. Licensees are now required to
disclose in writing to buyers and sellers the types of representation available to them (see CC §§ 2079.12 - 2079.24 or CAR’s Disclosure Regarding Real Estate Agency Relationships [AD]. ... In 1989, as a result of the legislation, CAR® changed their model MLS rules to allow listing offices to offer compensation to cooperating brokers without the obligation of subagency, thus creating the possibility for a “buyer exclusive licensee” or Buyer Broker: one who represents a buyer under a contract that allows the broker to be paid by the buyer. CAR® through its subsidiary Real Estate Business Systems (REBSs) publishes three forms to meet this need: (1) Buyer's Representation Agreement – Exclusive (BRE), (2) Buyer Representation Agreement – Nonexclusive (BRNE); (3) Buyer Representation Agreement – Nonexclusive/Not for Compensation (BRNN).

These forms are similar to the exclusive authorization and right to sell listing in many ways. They give the broker authority to act as the buyer's exclusive agent or not. The exclusive buyer's representative does not have a shared loyalty to the seller and looks at the transaction strictly from the buyer's side unless the buyer purchases a property that is listed with the buyer's broker firm, then much care must be taken to obtain the written consent of both principals to dual agency prior to entering into a purchase agreement. The compensation is spelled out in the agreement in such a manner that it can be adjusted to the amount of services that the broker will render. It also allows, as indicated earlier, that any compensation received from a seller be credited toward the buyer's obligation to pay and is adjusted to comply with the terms agreed to in the Buyer Representation Agreement.

Under the Buyer Representation Agreement, the buyer's broker is held to the same fiduciary obligation in services to the buyer as the listing broker owes to the seller. As with other contracts, the Buyer Representation Agreement must have a definite termination date. Although the third form (BRNN) grants the “nonexclusive and revocable” right to represent for one year or completion of a resulting transaction, whichever occurs first, the other agreements are not limited to one year.

9. 4.15: Subagency

Linda is Sam’s listing agent. Without Sam’s consent, Linda appoints Patsy to help her sell Sam’s home. Patsy is also Sam’s agent.

False Patsy is Linda’s agent. Patsy owes fiduciary duties to Linda, not to Sam.

Citation: When another agent is appointed by the listing broker with the express or implied authority of the principal, the second broker becomes the subagent of the principal. On the other hand, where the listing broker appoints another broker without the consent of the principal, the second broker becomes the agent of the listing broker.

Comment: We suppose that if Patsy was negligent, Linda could bring suit against Patsy for malpractice. For example, suppose Linda appoints Patsy to hold an open house for Sam and Patsy does so while obviously drunk. Now suppose Sam is so upset that Linda delegated a drunk to hold his open house that he fires Linda. In this case, we believe Linda would have an actionable claim against Patsy for the loss of her listing.

10. 5.1: Loyalty and Confidentiality

Betty shows Bob four homes. One of the four homes is Betty’s listing. Betty must disclose and secure Bob’s consent to show him her listing.

True Although Betty may sincerely believe her listing is Bob’s best choice, she must alert Bob to the possibility that her personal interest in a “double pop” could compromise her objectivity.

Citation: A broker may not unite his or her role as an agent with his or her personal objectives [to collect a full commission and to please her seller] in a transaction without disclosure to, and consent from, the principal.
### 11. 5.2: Fair and Honest Dealing

By reason of the agent’s status as a real estate broker, the courts have ruled that listing brokers must disclose material facts to the buyer even if specifically instructed by their client **not** to do so.

**True** Even though the agent owes his principal the fiduciary duty of loyalty (and also utmost care, integrity, and honesty) he owes third parties the duties of honesty, fair dealing, and full disclosure. According to *Lingsch v. Savage* as quoted in the book: a real estate broker who is the agent of a principal owes a duty of fair and honest dealing to the other party to the transaction. This duty includes the obligation to make a complete and full disclosure of all material facts. A real estate broker owes this duty of full disclosure even though the broker is **not** the agent and fiduciary of the party to whom the disclosures are made. This is a duty which the courts have held to exist by reason of the agent’s status as a real estate broker.

**Note:** As will be discussed in our fair housing course, an agent must also refuse to illegally discriminate against members of “protected classes” (such as race, gender, and familial status) if instructed to do so by their principal.

### 12. 5.5: Inspection and Disclosures

A broker’s legal requirement to perform a visual inspection does **not** include an inspection of public records pertaining to the property.

**True** The inspection to be performed also does not include an affirmative inspection of areas off the site of the subject property, or public records or permits concerning the title or use of the property. Also, the inspection to be performed does not include areas that are reasonably and normally inaccessible to such an inspection.

**Note:** The visual inspection which CC §2079 requires must be conducted with the standard of care owed by a broker is the degree of care that a reasonably prudent real estate licensee would exercise and is measured by the degree of knowledge through education, experience, and examination, required to obtain a real estate license.

**Comment:** Since the standard of care is “*measured by the degree of knowledge .. required to obtain a real estate license,*” it behooves licensees to use their continuing education requirement as an opportunity to replenish what they may have forgotten about real estate since passing their license examinations.

### 13. 6.1: Warranty and Authority

Even when an agent acts **without** authority his principal is liable for his agent’s act.

**False** If an agent acts in the name of the agent’s principal with authority given by the principal, the principal is bound by the agent’s act. When the agent acts **without** authority or in excess of the agent’s authority, the agent may be held liable for resulting damages for having breached the agent’s implied warranty of authority.

**Note:** As will be discussed at greater length in our risk management course, vicarious liability applies only to the negligent acts performed by subordinates; that is, acts made in good faith and within the scope of agency. Negligent acts are acts which result from a failure to use reasonable care. Lies, frauds, and thefts are **not** negligent acts. The principal is liable for his agent’s intentional fraud, misrepresentations, and concealments **only to the extent that he knows and condones them.**
14. **6.4: Misrepresentation**

Linda lists Sam’s home. George is hired to appraise Sam’s home. George tells Linda that Sam’s home looks like it was designed by Gregory Ain (a mid-century-modern designer of middle-class homes) but Linda hears him say that Sam’s home was designed by Ain. Consequently, she advertises Sam’s home as a “Gregory Ain.” Bob purchases Sam’s home paying a hefty premium for the prestige and caché of owning a home designed by the renown Gregory Ain. When Bob finds out the truth, who can he hold liable?

A. Linda and Sam  
B. George and Linda  
C. Just Linda.  
D. Just Sam.

**A** Misrepresentation may be either fraudulent or negligent. The principal may be vicariously liable in damages for the broker’s misrepresentations even where the principal was not the source of the erroneous information conveyed by the broker acting as the principal’s agent.

**Note #1:** If Sam told Linda that his home was designed by Gregory Ain and Linda advertised his home as such, Linda would not be liable. It is possible, though, that Bob might have an actionable claim against his agent (assuming he was represented) had his agent known of the importance of the claim to Bob and if he did not exercise due diligence in corroborating the claim or, at the very least, warning Bob that he should authenticate the claim.

**Note #2:** If Linda had lied about the home being designed by Gregory Ain, Sam would not be liable (assuming he was not aware of the claim). Sam can only be held liable for negligent acts made by his agent in good faith.

**Comment:** Caveat: Please remember that the civil courts do not dispense perfect justice – far from it! If the seller makes a misrepresentation unknown to his agent or vice versa, both are likely to be named in any action by the buyer and the innocent party will have the burden of proof to show why he was not complicit in the misrepresentation.

15. **7.13: Commission As Negotiated**

Suppose Linda signs a listing agreement with Sam but she inadvertently leaves the commission rate blank. If Linda sells Sam’s home and Sam refuses to pay her commission, her commission claim is legally enforceable.

**True** Linda would be entitled to the customary commission: The amount of commission is set out in a broker’s contract of employment. In the absence of any evidence of incapacity to read or any fraud to prevent the reading of it, the party signing the written contract is bound by its express terms and conditions. Ordinarily, the compensation of the broker is negotiated at a certain percentage of the purchase price obtained by the owner. If no amount of compensation is mentioned in the contract of employment, the law recognizes an implied promise on the part of the owner to pay the usual or customary commission charged in the neighborhood for like services.

**Note #1:** If Sam refused to pay her a commission, Linda could compel Sam to settle the dispute in one of three inexpensive ways short of civil action:

1. If Sam had signed CAR®’s Residential Listing Agreement, Linda could convince Sam to mediate by reminding him that its Mediation Provision (Paragraph 20(A)) bars him from recovering attorney’s fees in any subsequent civil action should he initially reject mediation to settle a dispute.

2. If Sam initialed CAR®’s Arbitration Provision (Paragraph 20B) in its Listing Agreement, then Sam would be compelled to arbitrate.
(3) If Linda’s commission was less than $10K (or if she was willing to settle for that amount) then she could compel Sam to settle the dispute using Small Claims Court. (The Small Claims court will be discussed in the Defensive Real Estate section of our Consumer Protection Reader course.)

**Note #2:** If Sam hadn’t signed a listing agreement with Linda then Linda would very likely be out of luck. This is because the Statue of Frauds (CC § 1624) requires that real estate contracts be written in order to be enforceable.

However, if Linda had been **wrongfully** prevented by Sam from entering into a listing agreement, she might still recover her commission. Her claim would have to be based on Sam’s wrongdoing (based on tort theory) rather than his breach of contract.

For example, in *Buckalo v. Johnson (1975)* a broker brought a buyer to a seller with an open listing. The seller rejected the broker’s purchase offer. Subsequently he sold his home directly to the buyer without paying the broker a commission. The broker sued. The court found the seller liable because he had wrongfully interfered with the broker’s “economic advantage.” *(Note: For open listings, the agreement to pay a commission may be written into the purchase agreement.)*

### 16. 10.0: Unlawful Compensation

A broker may pay a commission to an out of state broker who is not licensed in California.

**True** It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts for which a license is required who is not a licensed real estate broker, or a real estate “salesperson {it should say “licensee” not “salesperson”} licensed under the broker employing or compensating him or her; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

**Note #1:** CalBRE’s explanations of the compensation rules (BPC §10137) can be confusing because they do not distinguish between three types of brokers: (1) an “independent broker” is licensed as a California broker and works without supervision and he may or he may not employ other licensees; (2) the “affiliated broker” is licensed as a California broker and works under the supervision of an independent broker and may only receive commissions from his employing broker; and (3) the out-of-state broker is not licensed in California and so he cannot practice real estate in California.

Now here are the rules restated: Only an independent broker can pay compensation to: (1) another independent broker, (2) any licensee he employs (broker or salesperson), and (3) an out-of-state broker. “Compensation” means anything of value including a Walmart Gift Card and a foot massage.

**Note #2:** You will find a detailed list of activities that a broker may pay an unlicensed person to perform [here](#).