

# Back to School

Berkshire Realtors® Real Estate Quiz!

## Pop Quiz Answer Sheet

Quick Chart:

1	F	8	A	15	C	22	A
2	D	9	A	16	A	23	B
3	C	10	E	17	A	24	C
4	B	11	B	18	B	25	B
5	A	12	E	19	B	26	B
6	B	13	A**	20	B	27	E
7	B	14	B	21	C	28	B

\*\* Question changed from e-mail

Did you get...

- 3 or less incorrect - Brilliant! You get an A
- 4 - 6 incorrect - Pretty Good! You pass with a B.
- 7- 10 incorrect - You squeaked by! You get a C/D
- More than 10 wrong – Some guidance is needed. Make sure your broker is there to help you out, use the resources at the Board when issues arise before you take action, and take some classes!

### 1. My agency relationships end....

- A. When the deal closes
- B. If the buyer or seller 'fires' me [although I'm sure this never happens]
- C. When the listing agreement or buyer agreement expires
- D. Agency relationships don't end.
- E. A and C
- F. A, B and C

**Answer is F** – Agency relationships end when you are no longer authorized to represent your client. This occurs when the transaction closes, if the client terminates their relationship with you or when your agreement for representation expires. Representation should not be confused with confidentiality. Your duty to maintain confidential information does not end, expire or terminate but your representation of a party does. Think of it as doing a job for Don Corleone ...even when you're out, ya keep ya mouth shut about what you learned while working for the family, capishe?

### 2. I should check 'Side Agreement' on the MLS input form when

- A. The seller pays a different / lower commission to me if I sell it in-house and there is no cooperating REALTOR®
- B. Some buyers are excluded from my exclusive contract and offer of compensation
- C. There are variable commission rates.
- D. All of the above

**Answer is D** – All of the above. A side agreement on the MLS input form indicates that there are terms in your exclusive right to sell agreement that outline different commission arrangements for different circumstances. Sometimes that circumstance can be when a buyer is 'in-house' and there is no cooperating broker involved, you've agreed to reduce your compensation. In other cases you may have excluded a specific party from your agreement. (most often seen when the seller excludes perhaps a neighbor or family member who expressed interest in the property before you listed it.)

### 3. If I have a listing with a side agreement and a buyer's agent asks me about it, what do I have to say?

- A. Say nothing, it could burn me.
- B. Confirm that there is a side agreement, but do not disclose the details without the sellers permission
- C. Disclose the differential that would result in a sale through an in-house buyer versus a cooperating broker

**Answer is C** – According to the Code of Ethics and our MLS Rules, you have an obligation to disclose the differential that would result from the side agreement. This not only protects the seller's best interest, but also ensures that there is a level playing field for offers between in-house buyers and represented buyers.

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4. If I am a buyer's agent, a side agreement is

- A. Something that I should ask the listing agent about
- B. Critical information needed to fulfill my fiduciary duties to the buyer
- C. Not at all relevant to the buyer, as it deals with commission

**Answer is B** – You guessed it. If you are a fiduciary to a buyer, it is critical you determine all facts that will enable them to make the best offer possible. A differential in commission can have a very real impact on what the seller is willing and able to accept and can make a big difference in multiple offer circumstances.

5. As a listing agent, I should ask cooperating brokers for a copy of their licensee-consumer (agency) disclosure form.

- A. True
- B. False

**Answer is ... tricky, actually. Let's agree that the answer is True.** Sure, it's true you should ask for a copy of the disclosure form. This is especially true if your seller does not consent to sub-agency, and would ensure that the cooperating agent is a buyer's agent or facilitator. That said, **[here's the tricky part]** a cooperating broker has no obligation to provide you with a copy. If they don't, legal counsel recommends that you present your own blank agency disclosure to the buyer to ensure that they are fully aware of whom you represent.

Some offices will accept a statement from the cooperating broker indicating their representation, in lieu of an actual copy of the disclosure. This is the perfect example of why the REALTOR® Code of Ethics begins with the Golden Rule... 'do unto others as you would have done for you.'. And I would want all the i's dotted and t's crossed with some form of written disclosure in my file!!

6. I see a great multi-family listing in the MLS and although I don't want to contact the seller for the listing, I do want to offer my services as a property manager. That's okay because I'm not soliciting the listing.

- A. True
- B. False

**Answer is False** – The Code of Ethics is very clear that you MAY contact a client of another broker to speak to them about entering into a contract to provide DIFFERENT real estate services unrelated to the type currently being provided. However, it is vitally important that we protect the client's privacy when we publish listings in our MLS database. You CANNOT use any information obtained from the MLS database to cultivate potential clients for another service. This is outlined in Article 16 of the Code as well as the MLS Regulations. In a nutshell – if you (or someone you know) provide services other than listing or selling, you must use your own means and resources to develop that side of your business and may not use the MLS information for anything other than its intended purpose – offering property for sale to potential purchasers.

7. I should check 'yes' for the field titled 'INTERNET' on the input form if the property listed can get internet access.

- A. True
- B. False

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**Answer is B- False** - This field is to indicate if this listing should be uploaded to internet sites such as Realtor®.com, BerkshireRealtors.com and our IDX web search. If you want to indicate that a property has internet access (and all properties with phone service have 'access' albeit not always good access, but that's another story) you have some new options in the 'interior amenities' section of the listing. There you can indicate if high-speed service (DSL, cable or satellite) is available.

**8. The Code of Ethics mandates that I have an obligation to not only ask a potential client if the property is subject to a current, exclusive agreement but also to 'make reasonable efforts' to ensure they are not, before entering into an agreement.**

- A. True
- B. False

**Answer is True** – It's not enough just to ask, but you have to make reasonable efforts to determine if a client is subject to a current exclusive agreement before entering into your own agreement. What are 'reasonable efforts'? Well, the best I can recommend is based on advise I once heard... picture yourself in the witness stand with a judge asking you what efforts you made to make sure the legal document you drafted was in fact legal?

If a seller talks about a past relationship with another firm, perhaps asking the seller for the exact date the contact expired is not out of line. A search of the MLS to make sure it is no longer active with another firm is also not unreasonable, right? Still in the MLS? Seems a quick phone call to the Board Office would be in order. See where I'm going with this? Trust me, it is soooo much better to learn that a seller is under contract at the onset of your discussion, rather than after an offer has been accepted or when 2 listings pop up in the MLS and two agencies go to war over whose listing is valid. This is really the foundation of ethics. It's one of those issues that embody what the term REALTORS® stands for – respect the public, respect the process and respect each other. Someone get me a soapbox!

**9. The Purchase and Sale Agreement's standard language indicates that deposit money will be held in what type of escrow account.**

- A. Non-Interest Bearing
- B. Interest Bearing Account with interest to be paid to the buyer
- C. Interest Bearing Account with interest to be paid to the seller

**Answer is A** – A non-interest bearing account is the default language in our agreement. Why? For many reasons, namely accounting and because state regulations stipulate that escrow accounts created by brokers may be interest or non-interest bearing. If you have even a few deposits, you are looking at multiple escrow accounts or a bookkeeping nightmare. There is a considerable amount of record keeping involved in maintaining an interest bearing escrow account, which in many cases only results in pennies of interest. The Board accountant confirmed that most clients operate non-interest accounts and open individual interest bearing escrow accounts, if requested. (For large deposits that will generate significant interest, an expected long closing period, the agreement between the parties, etc..)

**10. Who can determine if an escrow account shall be an interest or non-interest bearing account?**

- A. The Seller
- B. The Buyer
- C. The Seller's Agent

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- D. The Buyers Agent
- E. The Buyer and Seller in mutual agreement

**Answer is E** – The buyer determines the terms of their offer in the Purchase and Sale Agreement. The non-interest escrow account section can be changed to ‘interest bearing’ along with clear direction on who should receive the interest. But, as with any term of the P&S, it is a negotiated item between the buyer and the seller. If the buyer changes the contract to ‘interest bearing’, the seller needs to initial that change, thereby agreeing to the terms. Alternately, the seller can counter any offer with changes of their own, where they can make the same type of alteration.

#### 11. If I use an interest-bearing escrow account for a deposit, I must get a W-9 form filled out by the buyer.

- A. Only if the buyer wants the interest paid to them at closing
- B. At any time before interest over \$10 is paid to the buyer, so that withholdings can be determined and a 1099 can be generated at the year’s end
- C. Before the deposit check is put into escrow
- D. Only if the buyer allows the seller to keep the interest.

**Answer is B** – If you use an interest bearing account, you will need to issue a 1099 form at the end of the year for interest payments that exceed \$10. The W-9 form (available at [www.irs.gov](http://www.irs.gov)) confirms the party’s name, address and social security numbers and provides a confirmation that you are not obligated to withhold taxes from the money paid. That said, this form is for reporting purposes only and can even be done at closing if need be, after it is determined that the interest will in fact exceed \$10. Nothing should delay getting the money into your escrow account. Further, there should be written instructions on who gets the interest and that is exactly how you must disperse funds – the buyer can’t ‘want’ interest or ‘allow’ the seller to keep it.

#### 12. I need to deliver the following forms to the board office along with the 3 pages of the listing agreement when I take a new listing.

- A. A fax coversheet indicating the documents sent and the number of pages
- B. The Mandatory Licensee-Consumer Relationship (agency) Form
- C. The dual/designated agency addendum
- D. The sub-agency addendum, if signed by the seller
- E. NONE OF THE ABOVE {pick me, pick me. *Please!*}

**Answer is E - NONE OF THE ABOVE** Nuff said, right? Consider the massive amount of papers on your desk and in your files right now, and in your office, and then times that by 150 offices and you can get a glimpse of what we are looking at. Please, Exclusive’s only – if we need something else, we will call you!

#### 13. When I call a listing agent to make an appointment for a showing, I should

- A. State my name, my firm’s name and disclose the relationship I have with the prospective buyer (buyers agent, sub-agent, facilitator.)
- B. All items in answer A, plus my buyer’s name and the amount they are pre-qualified for.
- C. All items in answer A plus the fact that you are accepting their offer of compensation listed in the MLS

**Answer is – A.** Seriously, you really do need to say this stuff. And I would say it all again while I am professionally greeting the agent at the property and making introductions. Perhaps with a handshake and a smile?? Anyways, there are so many REALTORS® and many new faces, it is very, very important you follow this professional rule of thumb. You surely don’t need to tell what your buyers are pre-qualified for - and when

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you make an appointment, you are automatically accepting the compensation offered in the MLS, so you don't need to restate that fact – it's a given.

You have no idea how crazy it makes agents when they show up to an appointment and find out you are not a buyer, but are an agent. (and if you are pulling this stunt because you can't get a response to your request for showing, *please* step up and file a complaint, because it's a clear violation of the Code of Ethics). And the new law requiring seller's written consent for sub-agency means everyone really needs to know the role you wish to play in the transaction before the buyer starts ewwing and ahhing over the property.

**14. As a sales agent I can accept a trip to Fiji as a bonus, but I can't accept commission or referrals without a brokers license.**

- A. True
- B. False

**Bummer, but False.** The state Legal Counsel says that you may not offer incentives to a Salesperson; but you could offer it to their Broker of Record. The broker of record is then free to give the trip to any licensee in the office. Let's hope your broker is cool about it, hun? M.G.L. c. 112, sect. 87RR prohibits a salesperson from accepting a fee, commission, or other valuable consideration, which would include a free trip, from *anyone except their principal broker*. MAR also advises all Realtors® who provide gifts or incentives to consult an accountant regarding tax consequences resulting from this practice. Interestingly enough all referrals of active licensed agents must also be paid to the broker of record, but an inactive sales agent can accept a referral directly because technically they have no broker of record while inactive.

**15. The difference between a customer and a client is:**

- A. A client has a contract with me, a customer does not
- B. A customer has not signed an agency disclosure form yet whereas a client already has
- C. A client is someone I represent, and a customer is someone I work with but do not represent
- D. Potato, Po-tah-to. There is no difference because I have to treat all parties honestly.

**Not D, NOT D – The Answer is C** - A client is a party that you represent and owe full fiduciary duties. A customer is someone you work with in a facilitator or sub-agent role but whom you don't represent. It goes without saying that there is a huge difference in the duties you owe to a client versus a customer. Yes, you have to treat all parties honestly but client relationships go way beyond that. You don't need to have a contract with a buyer or a seller to be their agent (although outlining expectations in writing is always a good idea).

**16. My seller client's septic system has failed the Title 5 inspection and now the buyer is demanding that my seller fix the system. He says that state law requires that the seller upgrade the system before closing. My seller says she doesn't have to upgrade the system and that she told the buyer (and me) that the house is being sold "as is". She also stated that the buyer is free to pay for an engineer come out and design and install the system but that she will not pay for it. Who's right?**

- A. The seller
- B. The buyer
- C. Let the Lawyers figure it out

**The answer is A, your Seller is right** - From our wonderful state legal gurus, they say...Unless the seller-or you as the listing broker-has made some representation with regards to the condition of the septic system,

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there is nothing in state law or regulation that compels the seller to pay for the upgrade. In fact, the Department of Environmental Protection's Q&A on this issue makes clear that the buyer and seller are free to work out financial issues, including who will pay for the upgrade, as a matter of contract. Further, the law does NOT require that the system be upgraded prior to transfer. Title 5 simply states that the system must be upgraded within 2 years of the inspection that indicates failure or sooner if the local board of health determines that a faster upgrade is necessary for protecting public health.

Based upon the foregoing, the buyer may choose to withdraw based upon the inspection contingency in their contract with the buyer or determine whether they want to pay for the upgrade themselves. It is also possible that a lender may allow them to close prior to the upgrade with a hold back of a portion of seller's proceeds. This would also require acquiescence by the seller.

#### 17. How much do I pay the Board everyday for services?

- A. \$0.46 for Board Dues and \$0.99 for MLS Services
- B. \$12.64 for Board and MLS services combined including tech support
- C. As the commercial says, 'Priceless'

**Answer is A, but extra points if you chose C.** Can you believe it is mere cents a day... for such a huge impact on your business? Not bad! I mean that's \$0.20 LESS than a small Dunkin Donuts coffee. And not the flavored, whipped kind, either. So, let's get this straight... you can buy a small cuppa joe from D & D's on your way to the office everyday or you can maintain membership in the Board AND MLS, and at the end of the year, membership is \$73 LESS expensive than your daily small coffee????? Wow. That's a good deal. We should put a tip jar in the Board Office. And if you serve on a committee, we give you coffee for free!

#### 18. Right after my seller made a counter-offer, I received another offer on the property by a 2nd buyer.

- A. I should present the offer only after the counter-offer is rejected by the first buyer
- B. I should present the second offer immediately
- C. I should call the first buyer and tell them the deal is off the table because another offer came in and they should submit their 'best and final'.

**Answer is B** – Your legal obligation, not to mention your ethical obligation is to present all offers forthwith. All offers must be timely presented to your seller, no exceptions, even if it's the day before closing! That said, you also need to have a serious discussion with your seller about their obligations to any contract that may already be in force. Legal counsel can be a good guide here, if there is question. Although ultimately the seller may want you to ask all buyers to make their final and best offer, an agent can't pull a deal off the table without at least a discussion and presentation of the second offer to their seller or without a full review of the terms of the offer on the table (expiration of offer, etc.)

#### 19. Legally, I must provide to my clients obedience, loyalty, disclosure, confidentiality, accounting, reasonable care and skill, an advertising plan and information about how I am to get paid.

- A. True
- B. False

**Answer is False** – I suppose providing all that information is nice, and maybe the ethical way to conduct your business, but your legal duties can be summed up as 'old car'. Obedience, Loyalty, Disclosure, Confidentiality, Accounting, Reasonable care and skill.

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20. I can act in much the same way when working with a buyer client and a buyer customer, as long as I don't give specific information about pricing to my customer and don't divulge confidential information about my client.

- A. True
- B. False

**Answer B – False. Big Time!** Representing a buyer client involves a considerable amount of work to fulfill your fiduciary duties. Meaning no offense, if you got this question wrong, please stop! Before you begin to offer buyer agency, you need to fully understand the role you must play to provide a legal level of service to your clients. Talk to your broker, [register for classes](#), visit our [website for information on agency](#), seek out [on-line classes](#), but please don't practice buyer agency until this is clearly defined in your practice.

21. My brokerage firm must keep copies of every single agency disclosure form I sign (or as now known, 'Massachusetts Mandatory Licensee-Consumer Relationship Disclosure) for...

- A. Seven Years
- B. What? Hun? A form I sign? Not me, no paper trace is my motto.
- C. Three years.
- D. In a fireproof safe, in the basement, forever.

**Answer C- Three Years.**

22. I just learned information about a seller that could affect the price they would be willing to accept for their home,

- A. I must tell my buyer client
- B. I must tell my buyer customer
- C. I should tell my buyer client, but only if I think if it's really credible
- D. I should tell my buyer customer, but only after if I confirm it is accurate.
- E. Like my mother said, if you don't have something nice to say, don't say anything at all.

**Answer is A** – You must tell your buyer client if you learned information that could affect their ability to purchase the house at the best price. Some of the important duties you owe your buyer are; your undivided loyalty, putting your buyer's interests first and negotiating for the best price and terms for your client. That said, anything that could affect the negotiations should be discussed, and you should advise the buyer on credibility of the information and if you believe it to be a basis for altering their buying strategy. Sometimes the answer will be no!

23. If I write up an offer for a buyer client, I'm automatically entitled to compensation.

- A. True
- B. False

**Answer is B, False. False, false, false!** - And just because you have a buyer's agency contract doesn't entitle you to compensation either. As the state's Legal Department writes, 'There is no hard and fast rule which states that either the broker who produced the offer or the broker who first introduced the buyer to the property is automatically considered the procuring cause. An arbitration hearing panel would consider the entire course of conduct in determining who procured the buyer.'

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The National Association of REALTORS® has outlined over 30 factors which a hearing panel would consider, such as who first introduced the buyer to the property; whether the first broker maintained contact with the buyer; whether there was outside interference; who brought the deal to fruition and whether the broker complied with all disclosures, such as the agency disclosure regulation. You can [read all the guidelines on our website](#), but consider that you have to *procure the sale*, and that takes time, work, effort and is rarely in doubt when you operate according to the legal duties you pledged to your client at the onset of the relationship.

#### 24. If I make a mistake in my electronic forms packet, then I must:

- A. Start over with a new form, darn it.
- B. Manually make the change after I print it out
- C. Make sure I tab out of the corrected field to update all of the forms

**Answer is C** – A cause for some confusion.

Also in reference to the electronic contracts & forms - the land P&S in small type has been an albatross on my back BUT, I have finally cracked the Microsoft program and believe it is fixed for good. I've uploaded a corrected version without that pesky 'comments' bubble that shows up on some versions of the program.

#### 25. I can show property in New York as long as my broker is licensed, even if I am not.

- A. True
- B. False

**Answer is B, Sorry** – According to all real estate authorities, you have to be licensed to actively list and sell in the state the property is located. If your broker is licensed, then they must work with the buyers / sellers in that state. Article 12-A of the New York Real Property Law provides that anyone who, on behalf of another and for a fee, 1) negotiates a sale, exchange or rental of real property, 2) collects rent, or 3) negotiates a commercial loan secured by a mortgage must be licensed as a real estate broker. Here is a link to becoming licensed in the named states: [New York](#), [Vermont](#), [Connecticut](#), and [Florida](#).

#### 26. I can tell a buyer that I will represent them on properties listed by other firms, but not on in-house listings so that I never have to become a dual agent.

- A. True
- B. False

**Answer is B, False.** More will be coming from Legal Counsel on this, but the Massachusetts Association of REALTORS® legal department finds a serious flaw in this type of practice. Buyer representation promises serious duties and obligations to your client. If the buyer terminates that arrangement, that's one thing. If you decide, even with your client's consent, that you will terminate that relationship just because it becomes inconvenient for you or your seller, there are serious legal ramifications that could occur. Again, picture a deal going bad, and you on the stand. "But Judge, he knew we weren't going to represent him anymore"



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27. Knowing that dual agency occurs when there is a conflict in duties promised to a buyer and a seller, the only ways to eliminate the potential for dual agency are...

- A. If your office never represents buyers.
- B. If your office never represents sellers.
- C. If your office refers buyers interested in firm listing to another office
- D. If a designated agent refers buyers interested in their own listings to another agent who was not designated to represent the seller.
- E. All of the above

**Answer E – All of the Above.** Even in a Designated Agency office where agents list and sell, there is always a potential for dual agency, or a conflict in loyalty. Think about it; you list a property and a buyer client wants to see it. Do you refer it out to an agent that has no conflicted loyalties? No? That's dual agency. If you practice buyer and seller agency, dual agency is a possibility – so accept it, learn it and be able to clearly discuss it with your clients. And please don't tell me you don't need the dual agency / designated agency addendums... unless you are an exclusive office or refer out all clients when a conflict occurs. 😊

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28. My listing expired and another office re-listed it. Now I have a buyer interested in the property, so I have to be a dual agent because I have confidential information about the property.

- A. True
- B. False

**Answer is B – False** – Remember, an agency relationship terminates when your contractual obligations terminate. In this example, you are a Buyers Agent. You no longer represent the Seller because that relationship was terminated when your exclusive expired. You do not become a dual agent because you no longer represent the seller, ergo, no 'dual' part exists - your sole duties remain with the Buyer.

That said, you should still disclose to your buyer that your firm previously listed the property for sale and you cannot legally disclose confidential information obtained in that capacity.

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