

## SECTION THREE

# SELECTED TOPICS

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| <b>Outline:</b>  |
| <a href="#"><u>Types &amp; Benefits of Surveys</u></a> |
| <a href="#"><u>Duty of Confidentiality</u></a>         |

**Learning Objective:** This Section will remind brokers of the benefits of a survey and review a broker's duty of confidentiality to his/her principal when acting as an agent and how that duty may be breached by the broker's comments or actions.

### TYPES & BENEFITS OF SURVEYS

It used to be that if the purchase of a residential property was being financed by a third party lender, the lender often would require a current survey by a licensed surveyor before extending the loan. In recent years, however, it appears that many lenders no longer require a survey in order for the purchaser to obtain a loan. This may be due in part to the fact that many title insurance companies will now extend title insurance coverage *to lenders only* for at least some matters, such as easements or boundary line disputes, that would have been shown by a survey had a survey been conducted. Whether the title insurance company will afford coverage to lenders for encroachments often is determined on a case by case basis and may depend on the extent and severity of the encroachment. This title insurance coverage for at least some matters that would have been shown by a survey extends *only to lenders*. The borrower-purchaser generally is *not* protected under the owner's policy (if purchased) against defects in title that would have been revealed by a survey. Even if the purchaser's lender does not require a current survey, there are good reasons why the purchaser should consider ordering a survey.

After briefly reviewing the various types of surveys, what each indicates, and who may perform a survey, we will discuss the benefits and costs to a purchaser of ordering a survey and provide a few examples of problems owners later encountered because they failed to have the property surveyed when they purchased it.

### Who May Perform a Survey?

The only persons who may legally perform a valid survey in North Carolina are individuals who are actively licensed by the North Carolina State Board of Examiners for Engineers and Surveyors pursuant to Chapter 89C of the North Carolina General Statutes. Land surveying may encompass a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor may only practice within his/her area of expertise. Gathering information necessary to provide the requested service may be accomplished by conventional ground measurements, by aerial photography, by global positioning via satellites, or by a combination of methods described below.

## Types of Surveys

There are several types of survey, each of which will show differing aspects or features of a property. The various survey forms are listed below. The definitions of each are drawn from information contained as an insert with a publication titled *Protecting Your Biggest Investment, Questions and Answers on Property Surveys* published by the NC Society of Surveyors, Inc. And reprinted with its permission.

- **Boundary Survey:** includes only the boundaries of a property according to the description in the recorded deed and improvements along the boundaries, e.g., fences, drives, streets, etc. It does *not* include improvements inside, but not touching, the boundaries, e.g., buildings, sheds, drives, etc.. A map showing the boundaries and improvements along the boundaries is prepared and any missing corner markers are replaced.
- **Location Survey:** includes everything found in a boundary survey in addition to the location of all improvements inside the boundaries. Typically, this is the type of survey a lender may require or a buyer might want when purchasing property.
- **Topographic Survey:** locates not only all improvements, but also the topographic features of the land, such as embankments, land elevations, contours, trees, water courses, road ditches, utilities, etc. This type of survey might be used with a location survey to prepare a site design map, a subdivision map or an erosion control plan.
- **Site Planning Survey:** uses boundary and topographic surveys as a base from which to design future improvements, such as a residential subdivision, a shopping center, new streets or highways, etc..
- **Subdivision Survey:** frequently includes a topographic survey of land that will be divided into smaller tracts or lots, and may also be used for site design of lots, streets, and drainage to be used for construction and recording.
- **Construction Survey:** stakes out buildings, roads, walls, utilities, etc. and includes horizontal and vertical grading, slope staking and final “as-built” surveys.

- **ALTA/ACSM Survey:** a very detailed survey occasionally required by lenders, the request for which must be in writing and include all of the deeds and easements affecting the subject property, as well as deeds to adjoining properties.
- **GPS Survey:** a very accurate survey utilizing portable receiving antennas to gather data transmitted from satellites that calculate the position of objects on earth, used to locate streets, buildings, utilities, water and sewer systems and may be used for future planning, preservation, and development.

### **What is the Cost?**

The cost of a survey will vary and is influenced by factors such as the size and shape of the property, the site conditions (e.g., heavily wooded, dense underbrush, waterways, or relatively open), the type of survey desired, and when and who last surveyed the property. A location survey of existing construction in an established neighborhood should cost less than a topographic survey of a 300 acre tract. Whatever the cost might be, the survey expense typically pales in comparison to the amount the purchaser is investing to purchase the property — often less than one-half of one percent of the purchase price. A worthwhile investment? A question each buyer must answer for himself or herself.

### **Use of Surveys**

To whom does the survey belong? That is a difficult question involving rather complex legal concepts which most licensees have no real reason to know. Some would argue that surveys are subject to copyright protection; others argue that it is a work for hire which may be original, but generally it is not *creative* and thus not subject to copyright. It could well be mixed, with some types of survey eligible for copyright protection while other types are not. Either way, copyright protection is not automatic; it must be asserted. Thus, a survey which does not have the © symbol and date on it is not protected as no copyright interest has been claimed. Recording a survey in the register of deeds allows anyone to copy the survey as a public record, but not necessarily to profit by selling copies.

While a seller could show prospective buyers a survey the seller ordered when s/he purchased the property 15 years earlier, it would be totally inappropriate for the buyers to use a copy of the seller's old survey, in conjunction with an affidavit from the seller that s/he has made no changes to the property, to submit to the buyer's lender in lieu of a new survey. While it is doubtful that a lender would accept or rely on the old survey, it should be clear that the original surveyor has absolutely no liability to the buyer or lender in the event there is an error in the survey, as there is no privity of contract between the surveyor and the current parties. Whether a property owner may use his/her old survey coupled with an affidavit when refinancing his/her mortgage or obtaining a home equity loan will depend on the lender. One way to resolve the issue of permitted uses is to address it in the employment contract between the surveyor and the person ordering the survey. For example, the contract may say that the property owner may make copies for his/her own use and benefit but may not allow others to use the survey for lending purposes.

Licensees may wish to suggest that a person consult an attorney if the individual has questions about what s/he may or may not do with a given survey.

### **Why Have a Survey?**

Surveys are like appraisals in the sense that they only reveal the property's condition at the point in time when the survey or appraisal is performed. As noted in an article by the Surveying Committee of the NC Board of Examiners for Engineers and Surveyors (NCBEES) titled *Beware of Use of Existing Surveys* that was reprinted in the May 2012 *Real Estate Bulletin*, Vol 43, No. 1:

... The accuracy of any survey plat, as a snapshot in time, is only assured by the licensed surveyor on the date of performance of the survey. At any time afterward, changes can occur, including, but not limited to:

- Alteration of property corners
- Encroachment of buildings or fences or other structures
- New easements
- Violations of current zoning laws
- Revised buffer and flood zones
- Sale of part of the property
- Reshaping of impervious surface area

Relying on plats that do not reflect changes occurring since the last survey has the potential to harm the purchaser of the property and the public....

Buyers who order a survey pay a relatively small price for peace of mind. Rather than relying on the seller's statements concerning boundaries or improvements added to the property since a previous survey was done, a buyer who invests in a survey will obtain written verification from a licensed professional of the boundaries and location of all improvements affecting the subject property. The buyer may hold the surveyor accountable for the accuracy of his/her representations. A location survey will identify any encroachments, whether fences, driveways, landscaping, outbuildings, or easements, and will identify any issues such as minimum building lines or setback violations or whether any part of the property is in a flood zone. A current survey will allow the buyer to knowledgeably determine where s/he may wish to locate certain improvements or build fences or landscape without violating an adjacent owner's property rights.

### **Plats versus Surveys**

Do not confuse recorded **plats** with the surveys discussed in this section. As noted above, surveys, like appraisals, represent the opinion of one licensed individual regarding that specific parcel at that point in time. The survey may or may not be recorded and is not approved or confirmed by anyone other than the licensee who prepared it.

Plats, on the other hand, are basically maps of proposed subdivisions or other precursors to land development that typically arise by local ordinance. For example, state law (G.S. 160A-372) allows local counties or cities to enact ordinances as follows:

The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

A number of statutes set forth the minimum requirements and standards for land plats presented to the Register of Deeds for recording. There is a multi-stage process through which plats must pass, including sketch plans, preliminary plans, review by the local Planning Board and other agencies, and submission of a final plat, before a plat will finally be approved for recording. Once recorded, the plat may be relied upon in legal descriptions and for other purposes unless and until revised or superceded.

### **Title Insurance**

As previously mentioned, while title insurance companies may provide title insurance coverage *to lenders* for at least some matters that would have been shown by a survey even though none was performed, the borrower-purchaser generally is *not* protected under the owner's policy against defects in title that would have been revealed by a survey. Typically, the owner's policy (if one is purchased) includes as a *general exception from coverage any defects that would have been revealed by a survey*. Understand that even if the borrower-purchaser has a survey performed and it reveals the existence of easements or encroachments or other defects, all such defects will be specifically enumerated in the title insurance policy as exceptions and excluded from coverage. Thus, *either way, an owner's title insurance policy will except or exclude coverage for defects that are or would have been disclosed by a survey*. The **primary difference** is that *by ordering a survey, the borrower learns prior to settlement of the presence of these matters that may influence his/her decision to proceed with the purchase of the property*.

A purchaser who timely orders a survey at the outset of his/her due diligence period will be able to verify:

- the actual size and shape of the property and the location of all structures, fences, driveways, etc.,
- whether there are any easements or rights-of-way affecting the property, such as railroad corridors, unused utility easements, or a little used easement providing access to an adjacent landlocked tract,
- compliance with any setback requirements,
- the existence of any buffers impacting the property, e.g., stormwater management, water quality controls, vegetation buffers, etc., and
- whether the property is in a designated flood zone.

While the purchaser might learn of some of the foregoing issues from the closing attorney's title search, it generally is too late at that point for the buyer to terminate the purchase agreement without forfeiting his/her earnest money deposit. Additionally, the attorney's title search will not typically disclose problems related to setback requirements or encroachment issues or possibly flood zone matters, and clearly won't indicate the tract's dimensions or the location of all improvements thereon.

### **Comments**

Purchasers of a property that contains or is near a railroad corridor should be aware that while the property owner may own the land underneath the corridor, the actual *right-of-way held*

*by the railroad company extends 100 feet on either side of the tracks.* Where a railroad track is built on the property line between two tracts, each property owner's land extends to the center of the railroad tracks, subject to the 100 foot right of way burdening each tract. An owner who erects an outbuilding within the railroad's right of way could be compelled to remove it.

If any portion of a property is located in a flood zone, then a lender may require flood insurance which can contribute substantially to the purchaser's anticipated ownership costs. The North Carolina Emergency Management Floodplain Mapping Program updates its flood maps every five years. Thus, it is possible that a tract that has never been in a designated flood zone in the past 90 years could find itself in a flood zone. Note too that *FEMA requires a permit for any man-made change to developed or undeveloped real estate in a designated flood zone.*

### **Examples**

Licensees should refrain from attempting to interpret surveys for others, instead redirecting questions to the surveyor. Licensees also should exercise great caution concerning statements they may make when showing property as to various features, improvements and boundaries. For example, a buyer asks his agent where the back lot line is. The agent, holding a copy of an old survey, replies "I don't know. My guess is that it's where that row of trees is planted." In fact, the back lot line is much closer to the house than the row of trees and the back yard thus much smaller than the buyer thought. Should the buyer have relied on the agent's statement? Probably not, phrased as it was. May the buyer try to claim misrepresentation? Possibly, even though there may be no foundation for the claim. What should the agent have done? Why not suggest that the buyer have his own survey or at least talk to a surveyor, if the size of the lot and knowing where the boundaries are is important to the buyer.

In another case, a buyer who ordered a survey learned prior to settlement that 199 out of 200 15-foot tall redtip bushes which formed a lovely hedge buffer shielding the buyer's property from a neighbor's poorly maintained and unsightly property were actually on the neighbor's property. The first bush was on the property line, but the remaining 199 skewed slightly to the right and were planted on the neighbor's land, meaning the neighbor could cut them down, or ask the buyer to remove them, at any point in the future. As it turned out, it was not an issue for the buyer, but at least the buyer was forewarned and aware that the hedge might be removed in the future.

A person built a \$400,000 house 50 feet from an observed power line that crossed the property, assuming that the power line was centered in the middle of the utility right of way. Upon investigation, it was discovered that the power line was not centered in its right of way and that the house actually encroached 30 feet onto the utility's right of way. Similarly, a broker promised to pay for a survey after the buyer purchased the property. The post-closing survey revealed that the developer had sold a small triangular portion of the purchaser's lot to the adjacent property owner to redress a driveway encroachment by the adjacent lot. Unfortunately, the transfer reduced the remaining lot size of the purchaser's lot below the minimum lot size permitted by the zoning ordinances. Purchaser was left to fight that battle on his own, as his owner's title insurance policy excepted all matters that would have been shown by survey.

Lastly, an owner of one lot bought an adjoining lot and ultimately built a residence situated near the middle of the property line between the two lots, which lots the owner did not have resurveyed or recombined. The newly purchased lot was subject to a Deed of Trust. When the owner defaulted in the mortgage payments, the lender went to foreclose, only to discover that the lot on which they held the lien had half a house on it. When the lender ordered a survey, the owner learned that while he owned the first lot free of the lien, he was left with half a house serviced by a well that he inadvertently had drilled on his other neighbor's property.

**Query:** When compared to the purchaser's investment in the property, is a survey not worth the comparatively minimal cost to alert the purchaser during the due diligence period to potential issues for which s/he may be financially liable?

That is a question each purchaser must weigh and answer for him/herself. Not knowing, however, does not mean not responsible or not my problem.

## AGENT'S DUTY OF CONFIDENTIALITY

By definition, any "agency relationship" must have at least two parties, namely the **principal** or *master*, and the **agent** or *servant*. A broker can't be acting as an agent in a transaction if neither the seller, buyer, lessor nor lessee will agree to hire the broker to represent the owner or buyer or tenant. Similarly, when acting as an associated agent of a real estate company, the broker is the agent and the real estate company/firm is the principal. An agent, as the servant of the master, is supposed to place his/her master's needs and desires paramount to the agent's and **always** owes the following fiduciary duties to his/her principal, namely: 1) loyalty and obedience, 2) skill, care and diligence, 3) accounting, and 4) disclosure of information.

The following discussion concerning an agent's duty **not** to disclose certain information about his/her principal to third persons is found in and reprinted from Chapter 8 of the Commission's *North Carolina Real Estate Manual, 2013-2014 edition*, pages 213-214.

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In addition to the agent's affirmative duty to disclose all material facts to his or her principal pertaining to the transaction for which the agent is employed, *the fiduciary relationship between principal and agent imposes a duty on the agent NOT to disclose certain personal information about his or her client-principal to third persons without the consent of the principal.* This duty is referred to by some real estate authors as a separate **"duty of confidentiality"**. Technically, this duty is not a separate duty, but rather is an obligation that arises by virtue of the agent's duty of loyalty and obedience to the principal.

An agent who, without authority from the principal, discloses to a third party information about the principal's personal or business situation and thereby improves the bargaining position of the third party has failed in the agent's duty of loyalty and good faith to the principal. Consequently, no personal information concerning the principal that may adversely affect the principal's bargaining position should be disclosed without the principal's consent.

**Personal Information about Seller-Clients.** This issue most frequently arises with regard to information about a **seller** of property. For instance, a listing agent or cooperating seller's subagent who discloses to a prospective buyer or a buyer's agent that the seller-principal is anxious to sell a property because of ill health, a job transfer, marital separation or an urgent need for money violates the agent's duty of loyalty and obedience to the seller-principal if the disclosure is made without the seller's permission. It should be noted that occasionally sellers are so anxious to sell their property that they will not object to the listing agent disclosing their need for a quick sale and may even authorize the agent to disclose this fact in the advertising for the property. For example, it is not unusual to see property advertisements that say something like "motivated seller" or "seller needs quick sale." Hopefully, the listing agent has secured the seller's permission before including such information in the advertising. Similarly, a seller-client's willingness to accept less than the listing price should be treated as confidential information and should not be disclosed to prospective buyers.

**Personal Information about Buyer-Clients.** It is less common for the issue of disclosure of personal information about a client to arise in connection with a *buyer* of property, but the same rule applies in such a situation. Examples of personal information that, if disclosed, might adversely affect the buyer-client's bargaining position include the buyer's willingness to pay more than the price stated in the buyer's offer, the buyer's motivation for purchasing the property, or the buyer's plans for future use of the property.

*Example:* Sarah Seeker, a stockbroker relocating to Charlotte from Boston, employed Betsy Broker as a buyer's agent to locate a home in Charlotte for Sarah. Sarah informs Betsy that she is temporarily living in a Charlotte motel, that she is very anxious to purchase a home convenient to the downtown area, and that, while she is willing to pay a premium for an older home in the Myers Park neighborhood, she wants to get the best deal she possibly can. She further tells Betsy that she does not want sellers to know that she is tired of hotel living and is eager to buy.

Betsy locates a home in Myers Park with an asking price of \$250,000 and shows it to Sarah. In a subsequent phone conversation with the sellers, Betsy informs them that Sarah is a successful stockbroker who is extremely interested in the home, that she is sick of living in a motel and is anxious to buy, and that she specifically wants an older home in the Myers Park area. Sarah makes an offer of \$240,000, which the sellers reject. Armed with the knowledge about Sarah's personal situation, they inform her that the asking price is firm, and Sarah ultimately buys the home for \$250,000.

Betsy Broker, as the buyer's agent, has breached her agency duty not to disclose information about her buyer-principal which might adversely affect the buyer-principal's bargaining position. While Betsy's intent may have been to convince the Sellers that Sarah was a serious prospect, by informing them that Sarah was sick of hotel life and eager to buy an older home in their neighborhood, she not only contravened her principal's express instructions, she undermined her buyer's bargaining position and gave the sellers the upper hand to reject the initial offer, fairly confident that given her degree of interest, Sarah would respond with a full price offer.

**Reminder:** *Remember that this limited "duty of confidentiality" only applies to personal information about a client-principal that should not be disclosed to a third person. Personal information known to an agent about a third party that might influence the agent's principal in a transaction must be disclosed to the principal.*



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Understand that, in the foregoing example, if Betsy had been working with Sarah as a seller's agent or subagent, then Betsy's duty of confidentiality would be owed to the sellers, even if she had never met them, and she would have been *obligated* to tell the sellers what she knew about the buyer's situation. (However, if Betsy properly reviewed the *Working with Real Estate Agents* disclosure brochure with Sarah and obtained Sarah's acknowledgment that Betsy was acting as a seller's (sub)agent and there was no confidentiality, Sarah may not have shared that personal information with Betsy.)

## **"Material Facts" vs. Facts Material to a Principal**

### **"Material Facts"**

There is a basic level of material facts that a *broker must disclose to everyone with an interest in a real estate transaction, regardless of the broker's agency status*. So what constitutes a "material fact?" In applying the Real Estate License Law, the Commission for decades has broadly defined material fact as any information falling within one of the three categories below, namely:

- 1) facts about the property itself; or
- 2) facts relating directly to the property; or
- 3) facts relating directly to a principal's ability to complete the transaction.

To the extent the duty to disclose material facts may seem to conflict with an agent's duty to preserve confidential information about his/her principal, suffice it to say that if the information falls within one of the three material fact categories above, then it ceases to be considered "confidential information," regardless of how it was learned, and must be disclosed by all brokers to everyone with an interest in the transaction. Thus, even if the owner doesn't want the buyer to know of some defect in the property, the broker is required by both License Law, Commission rules and agency law to disclose the defect to the buyer. However, *if the information about the principal or the property does not fall within one of the material fact categories, then the agent should not disclose that information without his/her principal's consent*.

### **Facts Material to a Principal**

A corollary to an agent's duty to retain confidential information about his/her principal, is an agent's fiduciary obligation to disclose or share all relevant information to/with his/her principal. This duty goes well beyond merely disclosing to the agent's principal information that is a material fact; rather, *for purposes of informing a principal*, information considered material that an agent must disclose is *any fact or information that is important or relevant to the issue at hand or any information the broker has that may influence his/her principal's decision in the transaction*. Thus, the duty to inform one's principal of relevant information is much broader and more expansive than an agent's duty to others, as the agent only owes loyalty and obedience to his/her principals and not to others.

Examples of information that is relevant (i.e., facts that are material) that a broker must disclose to his/her principal, in addition to those that fall within a material fact category, ***include personal information*** such as:

- a party's willingness to agree to a price or terms different from those previously stated (e.g., for a seller's agent, a buyer's willingness to pay more than offered); or
- a party's motivation for engaging in the transaction (e.g., for a buyer's agent, a seller's desperate need to sell quickly for whatever reasons).

In sum, any information about a party or the property that does not fall within the definition of "material fact" should be considered *confidential information* and should not be disclosed to anyone other than the agent's principal. An agent's obligation imposed by the duty of loyalty to protect and not disclose personal information about his/her principal to others came to be known as the agent's "*duty of confidentiality*."

## Considerations in Protecting Confidential Client Information

A broker's duty to protect the principal's confidential information doesn't extend just to the broker's comments, but to the broker's *records and transaction files*. A broker should consider the following questions.

- What procedures are in place to protect a client's personal documents that are in the broker's possession, such as paycheck stubs, income tax returns, profit and loss statements, bank statements, bank routing numbers, credit reports or histories, HUD-1 statements, etc. from being viewed and possibly copied by anyone in the office? Are such personal records left in the transaction file or stored separately while the transaction is pending?
- What happens to these records when the transaction file is closed and goes into storage for the three year record retention period? Are client's personal records returned to the client? Are the broker's copies merely discarded or are they shredded?
- What arrangements or instructions has the broker left regarding record retention and disposal in the event of the broker's death?

Other considerations in protecting a client's (principal's) confidences include:

- the privacy of the venue when discussing personal information, whether by phone or in person;
- office procedures pertaining to the opening and distribution of mail, receipt and distribution of facsimile transmissions, and access to a licensee's email account;
- are there office policies that forbid anyone associated with the company, whether licensed or unlicensed, from discussing the company's transactions, clients or customers with any person outside the real estate company?

Does the listing broker counsel the owner against leaving open mail around the house in case the property is shown unexpectedly? Is there certain artwork or memorabilia that should be removed prior to marketing the property because it might reveal too much about the owner's identity or financial health? To what extent does the broker screen prospective buyers or tenants concerning their financial ability before providing access to the property? Does the listing firm permit prospective tenants or buyers who either have no agent or are using a broker who is not a

member of the listing company's MLS to tour the property without an agent from the listing firm being present?

These are but a few matters a broker might consider in assessing how well they fulfill their duty to protect client confidences. Weaknesses should be evaluated and procedures implemented to eliminate potential leaks.

## **Confidentiality After Termination of the Agency Relationship**

The general rule under agency law is that *an agent has no continuing duty to his (former) principal after the termination of the agency relationship, absent some agreement to the contrary or other unusual circumstances*. This is true whether the relationship ended because the agency agreement expired or because the transaction was successfully concluded. While an agent may not have any ongoing fiduciary obligations to his/her former client, the agent nonetheless should retain in confidence any personal information acquired about a client while representing that client even after the agency relationship has terminated, *unless* disclosure is required by law or rule. However, there are situations where an agent's duties to a current client may supercede his/her now expired obligations to a former client.

One example is where a company/agent has a listing, but the listing does not sell during the six months that the company's listing agreement is in effect and the seller now hires a different company to list his/her property. While the property is listed with the second company, the former listing agent is working with a buyer client under a written (or oral) buyer agency agreement and that client wishes to see the property. The buyer agent no longer has any fiduciary obligations to his/her former seller client, but does have current fiduciary obligations to his/her current buyer client to disclose any and all information about his/her former seller or the property that may influence the buyer's decision to purchase and how much to offer. While some may view this as unfair, the seller ultimately holds the cards, as the seller may reject any offer presented by any buyer represented by the seller's former listing agent, if the seller feels the buyer has an unfair advantage. On the other hand, the buyer may extend an offer to the seller that the seller is inclined to accept, notwithstanding what the buyer may know about the seller.

Similarly, an agent who previously was a buyer/tenant agent, but who was later discharged by that buyer/tenant, and who now is a listing or leasing agent for a property owner for property on which the former buyer/tenant client wants to make an offer must reveal whatever s/he knows about the buyer/tenant to the property owner who is the agent's current principal. The identity of the agent representing the property owner should be obvious to the buyer/tenant. Whether the buyer/tenant chooses to make an offer is up to the buyer/tenant. The buyer/tenant is not coerced to make an offer to purchase or lease the property now managed by the former buyer/tenant agent. It is totally the buyer/tenant's prerogative.

In sum then, *brokers generally should maintain as confidential any personal information they may acquire about a client while representing that party. However, if the broker later is acting as an agent for a new client who is interested in a former client's property, then the broker has a current fiduciary obligation to disclose whatever s/he knows about the former client that may influence the current client's decision, because the broker owes his/her loyalty and*

*obedience to the current client and his/her current duties supersede now terminated duties previously owed to others.*