

AI Gage Report

June 2023

A Carload of Duty!

One of the big fancy words that we learned in real estate school was the word “fiduciary”. If you look it up in Webster’s, you get a definition that includes the word. I have had an aversion to such definitions since Miss Ludlow scolded me in the 4th grade at Avondale Elementary. In searching around, I did find a definition that fits. A fiduciary is “a person to whom property or power is entrusted for the benefit of another.” As real estate agents, we have such a fiduciary responsibility to our clients. A trust if you will! It is very important to earn your trust as a client in both the legal and common meanings of the word.

As part of this responsibility, our legal obligations as agents are outlined by the mnemonic CARLOAD. I will talk about each briefly.



The C is for Confidentiality. We, as agents, are not allowed to share the details of your situation with others, especially if they might at some point be negotiating on the other side. Suppose an agent has a home listed for \$500,000 and while out to dinner after a few drinks says that yes, its listed for \$500k, but they have only had one showing and will accept \$450k. Unbeknownst to them, the one realtor that had shown it is sitting at the next table and recognizes the agent from all of their marketing materials. They submitted an offer the next day for \$445,000. This agent has unknowingly violated their duty.

CONFIDENTIAL

The A is for accountability and this one is very straight forward. I have to be accountable for the funds that you



entrusted me with. This one is largely not a problem, because we as agents rarely handle any funds. Most transactions are done via wire. Protecting you from wire and other types of fraud falls in this area as well, but that is an entirely different article.

The R is for Reasonable Care and this definition has both a legal meaning and a common meaning. The legal definition means that an agent must ensure that your rights are protected.



They do this by promoting inspections, disclosures, above-board negotiating, and caring for the clients possessions as if they belonged to the agent. For the common meaning of the words, it is the little things. If I get feedback that the property was horrible, stank, was dirty, “is the seller colorblind” or “I wouldn’t buy that house in a million years”, which we do, it is acceptable to soften those blows a little bit before we deliver them to the client.

The L is for my favorite duty, loyalty. I am as loyal as a Labrador puppy. This is one where the legal sense of the word is different from the common version.



Loyalty in this instance means that an agent must put the interest of the client ahead of their own interest, to a point. We as agents obviously are not required to work for free and are under no



obligation to negotiate for a lower fee. Let me give you a real-world example of this concept that recently happened. While on a listing appointment, the client

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brought to my attention the fact that the house across the street was larger and was recently listed for less than what I was recommending. They wanted to sleep on the decision. They called in the interim concerned that the price was not right compared to the other listing. I again stated that I thought the other home was underpriced. When we met, they again brought up the home across the street. At that point, there was an ethical bridge to cross. I could accept their argument that the house was worth less, which would have meant less work for me or stick to my belief that the home was worth more. No one would have known! Except me! I insisted that they list at my price instead of a lower price. The home sold at the price and terms I quoted in just under a week.



The O is for Obedience. To stick with the pet analogies, this is the opposite of what your cat does. Many would argue that I was not obedient to the client in the previous example. If they had insisted, I would have obeyed and listed the home for less money and it likely would have been bid up to almost the same amount. Obedience means following the direction given by the client even if it might be detrimental to the transaction. An example of this level of obedience harkens back to one of my very first real estate transactions. I was working with a family friend that was incredibly wealthy and bought and sold hundreds and hundreds of properties before flipping was popular. I was very green in real estate, and he was writing an offer for me on a piece of property in Cashion. He said to offer them a certain amount “cash” and I protested quite a bit that there was no way



they would accept such an offer. He eventually told me to just go present it and sure enough, the offer was accepted.

Some of these have been quite fun. The price will date this story somewhat, but I had a home listed for \$159,500. We received an offer for \$100,000 which really made my seller upset. I was not really happy either. The seller directed me to counter at \$159,499.50 which I gleefully complied with. To our surprise, they accepted the offer and proceeded to close.

There are limits to the level of obedience that an agent must comply with. The client cannot require the agent to accept a different fee than what was originally negotiated in the listing contract. A client cannot compel the agent to do something illegal or unethical. Sometimes, this is not as simple as it sounds. If the client asks me a seemingly innocuous question such as “Are there children in the neighborhood?”, I am not permitted to answer that question, because it is likely a fair housing violation. To discourage any form of discrimination, I never answer questions such as “what do you know about the buyer?” or “where is the buyer from?” since it could potentially be discriminatory. Any overt form of discriminatory language or behavior is an automatic end to our relationship. I also discuss the details of the offers and generally get agreement before presenting the buyer’s names to the seller for the same reason. If the buyer asks for me to present a buyer letter or other documents, I certainly will.



The second A is for Advocacy. What this means in the real estate context is advocating for your position to the exclusion of all others. This is as straightforward as it sounds, but there are times when this conflicts with the

duty of confidentiality. Sometimes I seek permission to violate this confidentiality for a specific purpose. If I have seven offers on the table for a home, all just a little bit over list price, I will ask permission to be able to disclose the best offer to the other bidders to try to get them to improve their position. I never do this on an offer that is under list price, but will often ask permission to tell other bidders that they are not the best offer. Both of these examples violate the confidentiality of the client, but fall under advocacy for the same client.



The D is for Disclosure, which is where clients may get in trouble. There should be no surprises! You may ask how it can be the agent’s job to disclose material about a property. This duty is twofold: First, it is the agent’s responsibility to guide the client through full disclosure of everything that MIGHT be a material fact which could affect the buyer’s decision to buy. Secondly, the agent is also obligated to pass along any and all information that they possess with three very specific exceptions under the stigmatized property laws.

Long practice and years of experience with these principles is what separates the good agents from the great agents.

If you are looking for an agent that can handle and entire CARLOAD of questions and problems and still perform as the law, but more importantly the Golden Rule, requires give the AI Gage Team a call at 623.536.8200 or email us at al@algage.com.



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Terri's Corner

Flag Day Trivia

1. What day is Flag Day found on the calendar?
 A. June 14th B. September 14th
 C. July 14th D. August 14th
2. Which US president set aside a special day for honoring the flag?
 A. Franklin Roosevelt B. Lyndon Johnson
 C. Abraham Lincoln D. Woodrow Wilson
3. Flag Day is considered a federal holiday.
 A. True B. False
4. Which state became the first to honor Flag Day as a state holiday?
 A. Arizona B. Washington
 C. Pennsylvania D. New York
5. In what year did the first Flag Day parade take place?
 A. 1914 B. 1920
 C. 1909 D. 1937
6. How many red stripes are there and how many white?
 A. 6 red, 6 white B. 6 red 7 white
 C. 7 red, 6 white D. 7 red, 7 white

Trivia Answers:
 1. A., 2. D., 3. B., 4. C., 5. C., 6. C.

featured listings



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Over 1500 Homes Sold in Avondale and Litchfield Park!

Subdivisions	Home Levels	2021 Sales #s	2021 Price/SF	2021 Days on Market	2022 Sales #s	2022 Price/SF	2022 Days on Market	% Change In Price per SF	May 2023 Sales #s	May 2023 Price/SF	May 2023 Days on Market
Cortes Sierra/Sage Creek/Las Palmeras	1	66	211.0	21	31	257.0	26	21.80%	3	225.7	3
Cortes Sierra/Sage Creek/Las Palmeras	Multi	49	174.7	24	29	214.9	35	23.01%	0	0	0
Crystal Gardens, Crystal Ridge, Crystal Point, Upland Park and Donatella I	1	84	212.7	16	53	258.6	32	21.58%	3	238.5	108
Crystal Gardens, Crystal Ridge, Crystal Point, Upland Park and Donatella I	Multi	34	180.1	22	25	215.3	36	19.54%	2	206.9	110
Garden Park, Palm Meadows, Palm Gardens and Donatella Phase 2	1	37	221.6	20	21	251.6	27	13.53%	0	0	0
Garden Park, Palm Meadows, Palm Gardens and Donatella Phase 2	Multi	15	162.4	30	7	203.1	29	25.06%	1	160.2	32
Rancho Santa Fe	1	85	213.9	17	71	257.7	24	20.48%	7	232.1	72
Rancho Santa Fe	Multi	39	184.5	25	16	218.1	23	18.21%	3	201.6	39
Westwind and Glenarm Farms	1	17	218.3	15	12	271.3	23	24.28%	1	259.3	16
Westwind and Glenarm Farms	Multi	12	198.1	27	14	216.4	31	9.23%	0	0	0
Wigwam Creek South and Bel Fleur	1	52	215.9	21	45	252.4	28	16.91%	6	228.0	29
Wigwam Creek South and Bel Fleur	Multi	29	148.6	21	28	178.3	47	19.99%	2	161.5	91