

PART TWO: Two Essay Questions**Suggested Time: 1 hour for each Essay Question****QUESTION I**

David Beck ("Seller") owned property at 88 Morton Drive, County Y, State X (the "Property"), which he occupied as his principal residence and which he wished to sell. He agreed to pay Barbara Sloan, d/b/a Evergreedy Realty ("Barbara") a six percent (6%) commission if Barbara were successful in finding a buyer. The agreed to listing price was one million dollars (\$1,000,000.00). While holding an open house, Barbara met John and Sally Buyer (the "Buyers"), who were not represented by another broker. The Buyers immediately fell in love with the Property and wanted to make an offer. They asked Barbara whether she would assist them in filling out the standard form purchase agreement used in County Y and assist them in presenting it to the Seller. Barbara agreed to help them. The Buyers asked Barbara how long the Property had been on the market and how many offers the Seller had received. Barbara told them about three months and that no offers had been received. They told her that the asking price for the Property was too high and they asked her whether the Seller would take less. Barbara told them that the Seller was motivated to sell, but she didn't know what he would take. The Buyers decided that they would offer eight hundred thousand dollars (\$800,000.00) all cash. They told Barbara they didn't need to get a loan as they would receive adequate funds from the sale of their current residence, which was under contract and was due to close in about two weeks. After reviewing current inspection reports, the Buyers decided they were willing to waive getting their own inspections and Barbara completed a Purchase Agreement for \$800,000.00 all cash with the only contingency being the sale of the Buyers' current residence. The Seller accepted the offer on March 15, 2009 and Barbara deposited the Buyers twenty four thousand dollars (\$24,000.00) earnest money deposit with Escrow Shop, Inc, ("Escrow Agent") a licensed escrow company, owned by Jeff Madoff ("Jeff").

Jeff told the Buyers he had a working relationship with National Title Company ("National") and Jeff engaged National on the Buyers' behalf. National delivered a Preliminary Title Report ("Report") to the Buyers. The Report showed title vested in David Beck and showed an easement recorded in the public records of County Y on February 25, 1980. On March 30, 2009 the Buyers' current residence was sold and \$800,000.00 in good funds were wired to Escrow Agent.

Because the closing of the Property was not to occur until April 10, 2009 and the Buyers had to move out of their residence on March 30, 2009, the Seller and the Buyers agreed that the Buyers could take possession as soon as the Seller moved out. The Seller informed the Buyers on April 3, 2009 that he had moved out and keys were delivered to the Buyers. The Buyers' moving truck broke down and their move in date was rescheduled to April 7, 2009. On April 6, 2009, a fire totally destroyed the home located

on the Property. The estimate for repairing the fire damage was four hundred fifty thousand dollars (\$450,000.00). The Seller carried fire insurance on the Property's improvements but with a maximum coverage of three hundred thousand dollars (\$300,000.00). The Buyers carried no fire insurance on the Property. The Buyers want to rescind the transaction and get their money back. The Seller wants the Buyers to go through with the deal. Because of the dispute between the Seller and the Buyers, the closing did not occur on April 10, 2009. On April 12, 2009, Jeff withdrew all the funds that had been deposited in Escrow Shop's trust account which came to over five million dollars (\$5,000,000.00). Thus far, the authorities have been unable to locate Jeff or recover any of the missing funds.

The Buyers want rescission and the return of their \$824,000.00; The Seller is demanding that the Buyers close and pay him \$800,000.00. Barbara has invoiced the Seller for her commission.

Please discuss the rights, obligations, theories of liability, and defenses that may exist between the parties: Seller, Barbara, Buyers, Escrow Agent, and National.

END OF ESSAY QUESTION 1

QUESTION 2**Suggested Time: 1 hour**

You work for the law firm of Bigmouth, Straightshooter and Whitelie ("B, S, & W") One of the partners in the firm represents Bill Homeowner ("Bill"). Bill and his wife, Elizabeth Homeowner ("Elizabeth"), own a single family residence located at 123 Windemere Street, County Y, State X which they occupy as their principle residence. The Homeowners have decided to sell their home and have selected Shadybrokerage, Inc. ("Shady") to employ as their broker. The partner for whom you work has given you a draft "Residential Listing Agreement" (the "Agreement") prepared by Shady. She has asked you to review the Agreement so she can explain to Bill his rights, obligations, and liabilities under the Agreement. She has also asked you to provide suggestions as to what changes you would make to better protect the Seller. The Agreement provides as follows:

Residential Listing Agreement

In consideration of the services of Shadybrokerage ("Broker") the undersigned (the "Seller") hereby employs Broker exclusively and irrevocably for a period of two hundred seventy (270) days beginning May 10, 2009 (the "Listing Period") to sell property situated in County Y, State X commonly known as 123 Windemere Street and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

Included in the purchase price shall be all tacked down carpets, drapes, window treatments, all built-ins, all light fixtures, and all appliances. Seller represents and warrants that all appliances are currently operational and all appliances shall be operational at the closing.

Seller hereby grants Broker the exclusive and irrevocable right to sell the Property for two million dollars (\$2,000,000.00) (the "Listing Price") all cash or on other terms acceptable to Seller and Seller agrees to pay Broker at the closing of the sale a commission equal to six percent (6%) of the sales price.

If the Property is withdrawn from sale, transferred, leased or otherwise made unmarketable during the Listing Period or any extension thereof, Seller agrees to pay Broker six percent (6%) of the Listing Price.

Seller further agrees to pay Broker the compensation provided for above, if within one hundred twenty (120) days of the termination of this Listing Agreement (the "Agreement"), the Property is sold, leased, or otherwise transferred to anyone who was either shown or introduced to the Property by either Broker or any other co-operating broker.

Broker is authorized to cooperate with other brokers and in Broker's sole discretion agree with other brokers as to how Broker's compensation shall be shared. In addition, Seller authorizes Broker to appoint secondary agents and to submit all listing and sales information to any multiple listing services as Broker deems appropriate or desirable.

Seller represents and warrants to Broker that Seller is currently able and, at the closing, will be able to deliver marketable, insurable title to the Property. Seller shall execute a general warranty deed in favor of buyer containing every covenant of title recognized in State X.

Within ten (10) days of the execution of this Agreement, Seller shall obtain a current termite inspection report from a reputable licensed pest control operator. Seller agrees to pay for all corrective work recommended in said report and to provide a buyer with a notice from the pest control operator that all corrective work has been completed. Broker shall not be responsible for inadequate inspection reports or for defectively performed corrective work.

Seller agrees to perform all work that a seller is obligated to perform under any applicable law whether city, county, state, or federal including but not limited to installation of smoke detectors, seismic related work, removal of underground oil tanks, and the installation of water conservation devices. In addition, Seller is responsible for obtaining all necessary compliance reports and completing any required or agreed to disclosure forms and delivering true, correct and complete copies to any prospective buyer.

To the extent of Seller's actual knowledge, Seller shall disclose in writing to Broker any latent defects, any improvements undertaken without a building permit, any violations of existing zoning ordinances, any defects in and/or needed or desirable repairs to elements of the building, including but not limited to the roof, the plumbing, the electrical, and mechanical systems, soil composition, and any other matter that may affect the value or desirability of the Property, including but not limited to neighborhood crime, noise, or other activity, pending or potential lawsuits, the presence of hazardous materials on or near the Property, and written notices received from any governmental entity that may affect the Property.

Seller represents and warrants that title is vested in Seller, that no other person or entity has an interest in the Property, and that Seller is authorized to enter into this Agreement.

Seller understands that Broker may have or will obtain listings on other properties and that potential buyers may be interested in Seller's Property as well as other properties listed by Broker and/or other brokers. Seller consents to Broker's representation of other sellers and buyers and waives any conflict of interest, whether potential or actual. In addition, it may be necessary or appropriate for Broker to act as an agent for both Seller and a buyer and Seller hereby consents to Broker's election to act as a dual agent.

In any threatened, pending, or completed action, suit, or proceeding to which Broker (including its officers, employees, agents, or associated licensees) (collectively "its Agents") was or is a party or is threatened to be made a party, by reason of Broker representing Seller, Seller shall indemnify Broker and its Agents against expenses, attorney's fees, judgments, settlement amounts, actually or reasonably incurred in connection with such proceeding, unless Broker's and/or its Agents' conduct constitutes gross negligence or a breach of a fiduciary duty.

If any action be instituted regarding this Agreement to enforce or interpret any of its terms, the prevailing party in such action shall be entitled to attorney's fees and costs.

This Agreement is entered into as of May 10, 2009 by Seller and Broker.

Seller

Broker
Shadybrokerage, Inc.

Bill Homeowner

By: _____
Jim Cheat

END OF EXAM