

Disclosure, Disclosure, Disclosure - Tips to Avoid Agent Liability



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With houses being sold within hours, the influx of backup offers, and speedy closings, the real estate business is booming. Transactions that once took 45 to 60 days are now closing in 5 to 15. Virtual tours,

showings, and sales have also not slowed down. Many deals are closing without buyers setting foot inside a home. Unfortunately, enthusiastic buyers sometimes morph into disappointed purchasers that lodge claims against sellers and real estate brokers for unidentified defects. It is now more important than ever to ensure complete disclosure of property conditions as well as buyer review and acceptance.

REMINDERS TO AVOID LIABILITY:

- 1 | **Ensure the seller completes the Seller's Property Disclosure Form.** Listing brokers should check the form(s) to ensure complete responses. If not, an inquiry should be made to the seller to provide additional information. It is no less important for you, the real estate professional, to understand what the disclosures are saying so that you can point potential problems out to your clients. If you simply accept the disclosure form or pass the disclosure form along to your client, you could become a target if the buyer finds an issue such as an insect infestation after purchase and sues you. You could be liable for negligence for failing to point out problems.
- 2 | **Look for inconsistencies.** Some transactions require more than one disclosure. For example, the Seller's Disclosure and the Condo Rider are required for condominium sales. Check the forms to ensure there are no inconsistencies such as a problem being described differently on each form.
- 3 | **Watch out for red flags.** Florida real estate professionals are regulated by the Florida Real Estate Commission (FREC). Although you do not have a duty to discover hidden defects, you are obligated to avoid misrepresentation or concealment. Carefully view the property during the showing (virtual or in-person) to identify any observable defects. Point defects or inconsistencies out to the buyers and put them in writing after the showing.



- 4 | **Encourage the use of other professionals.** Recommend the use of home inspectors and other relevant professionals in writing. For example, if a seller discloses prior septic issues, recommend a septic inspection to the buyer. Do not give specific recommendations or directives for the specific company/professional to use. Instead, opt for lists. Empower your client to decide. If buyers insist on waiving inspections, document your advice and their informed waiver in writing.
- 5 | **Protect yourself, and your clients, in writing.** Ensure that the purchase agreement includes an appropriate due diligence period and contingencies like inspections and a final walk-through, if possible. If not, obtain waivers in writing. "Sight unseen" addendums are helpful for virtual sales.
- 6 | **Communicate.** Always send your concerns in an e-mail to ensure you have a record of them. Should a client take a course you advise against, follow his or her instructions (whenever possible), but state in writing that you would recommend against that approach. If the client says, "It is up to you," do not allow it. Your decision may not provide the client the result they expected, and they may hold you responsible. Empower your client to decide and, most importantly, document the client's decisions.

Whether you are a buyer's agent/broker or listing agent/broker, adequate preparations, communication and documentation in connection with the disclosure requirements of a real estate transaction will save you time, money, and a headache. ▣

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