



Courtside *Newsletter*

Risky Business: Avoiding Potential Pitfalls as a REALTOR®

BY: KELLY A. NEAVEL, ATTORNEY AT LAW
ASHLEY A. RICHARDSON, LAW CLERK
CASEY MCINTOSH, PARALEGAL

In a field where miscommunication can go dangerously awry, risk management has always been a hot topic for REALTORS®. This year's California Association of REALTORS® (C.A.R.) Winter Business Meetings proved that things are not changing anytime soon, with a presentation on "Current Issues for Real Estate Professionals." Below are some of the highlights from that presentation, as well as our own takes on what REALTORS® can do to avoid, or at least minimize, liability.

Disclosure Issues

Knowing how, when, or what to disclose can be a murky area for listing agents and their clients. Not only should agents err on the side of caution and disclose any known defects or concerns, they should also know how to disclose to further protect from any liability. Some of the recent issues that have caused REALTORS® concern are outlined below.

When Flips Flop

While perhaps not as popular as it was during the recession (when the market was saturated with foreclosures and short sales), flipping is fraught with disclosure liabilities. So much so, that according to C.A.R., "flipping" is equivalent to another four-letter word in the real estate world.

Just because a seller may not have lived in the home does not mean he or she is immune to disclosures. The Transfer Disclosure (TDS) statement should be filled out to the best of the seller's ability, disclosing all known conditions that may materially affect the value and desirability of the property. The seller should also be prepared to answer additional questions about the home that a potential buyer may ask, such as:

- What condition was the property in prior to the renovations?
- What renovations were made, and were any defects repaired in the process?
- What defects, if any, were not repaired?

- Who made the renovations/repairs? Was it a licensed contractor, or a handyman?
- Are permits available for the work that was completed?

Agents should conduct their own visual inspections, but are not required to check for permits. Rather, C.A.R. recommends stating instead that "seller represented the disclosures, agent did not verify, and buyer to investigate."

Granny Flats

Accessory Dwelling Units ("ADU"), also known as "Granny Flats," or in-law units, are rising in popularity as California faces a housing shortage crisis. ADUs are sometimes detached separate residential units that may be rented to tenants. Depending on the city's zoning laws, ADUs may be constructed in areas slated for single-family or multifamily use. Assembly Bill 494 was recently enacted to revise the laws surrounding the construction of ADUs, which are defined as "additional living quarters... that are independent of the primary dwelling unit." When selling the home, though, they must be sold with it since they are on the same property.

When listing a property with an ADU, it is important for agents to pay careful attention to the language they use. For example, C.A.R. dissuades REALTORS® from stating that the ADU is a "legal separate unit," or from referencing the zoning or permitting of the ADU. Rather, an agent should indicate that the "Seller said 'Buyer to verify.'" Essentially, the responsibility should be on the buyer and seller to prove the validity of the ADU. While, the agent should always conduct due diligence, he or she should not assume facts or make statements that he or she does not know to be completely true. There is an extreme risk of liability in misrepresenting an ADU as permitted when it may not actually be so.

Continued ...

Get ‘Em While They’re Hot

According to a June 2017 Redfin article, 33% of recent homebuyers made an offer sight-unseen, a number that is up 19% from the year before. Given how competitive the current California real estate market is—with low inventory and high home prices—agents could be seeing even more of this trend. Obviously, it is a dangerous practice with a host of potential complications, but there are ways agents can safeguard against potential liability, especially buyers’ agents:

- First and foremost, document everything, including the fact that the client has not seen the property;
- Insist on a home inspection to identify any issues, and have qualified experts go to the property to look at anything that comes up on the report (e.g. roofer, electrician, HVAC professional); and
- The buyer’s agent should personally take video and/or photos of the property for his or her client, so the client can “see” the property without the editing and filtering of the MLS listing photos. Better yet, the agent can arrange for a video tour of the property with the client.

A trustworthy, competent real estate agent should make buying a home sight-unseen a fairly safe practice. So long as the agent makes sure all of his or her bases are covered, it should be smooth sailing into [the buyer’s] home.

Root Issues

As many seasoned homeowners may know, tree roots can become a huge issue—literally and figuratively. Suddenly the roots from that massive, but gorgeous, oak in your front yard is causing cracks in your concrete. Not only is this a tripping hazard (which can lead to other liabilities as a homeowner), it also affects the foundation of your house. This can lead to further structural damage in the form of sinking or cracking walls, or shifting support beams. Since tree roots are constantly seeking out moisture and nutrients, they can also find their way into your septic system and sewer pipes.

Agents attempting to sell a home with leafy curb appeal should also be aware of the potential problems they may cause. They should always get an inspection of the septic system, and discuss any prior issues with the seller. While a backed-up sewage system may slip the seller’s mind, it’s important to jog his memory to avoid future liability.

Hotline Bling

Emails and texts are the way we communicate these days, and real estate communications have proved to be no exception to the rule. California Civil Code § 1624 and Business & Professions Code § 10148 govern what records should be

retained by real estate brokers, and for how long. While CC § 1624(d) effectually states that text messages do not need to be retained as they are of an “ephemeral nature,” C.A.R. recommends saving any text messages that relate to the property or transaction. The same goes for emails, especially since they are not strictly excluded in CC § 1624(d), and are not an expressly non-permanent form of communication. Should a brokerage be audited by the California Bureau of Real Estate, all communications will be submitted with the file and therefore should be available to the supervising broker by his agents.

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Agents should ultimately stay on top of sellers: what they do not know, should not hurt them. Yet, what they should know or fail to disclose could land them—and potentially their agents—in hot water. Risk management is a nuanced topic, with many more facets to be explored. Should you have any questions about any of your brokerages’ practices or anything you may be doing as an agent, you should seek qualified legal counsel. Many REALTOR® associations also offer in-depth risk management courses covering everything from market conditions, duties of disclosure, agent safety, recent case law, and much more.

Calendar

Property Management

Date: April 13, 2018
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Pacific West Association of REALTORS® - Long Beach
 Contact PWR for more info!
www.pwr.net

RPA

Date: April 25, 2018
 Time: 9:00 a.m. – 4:30 p.m.
 Location: Pacific West Association of REALTORS® - Long Beach
 Contact PWR for more info!
www.pwr.net

California Association of REALTORS® Spring Business Meetings

Date: May 2-5, 2018
 Location: Sacramento, CA
 Contact C.A.R. for more info!
www.car.org

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