

Tips from the Bar

Use of Disclosures When Representing Buyers in Purchase and Sale Transactions

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During the home buying process, and shortly after closing, real estate agents may receive glowing praise and gratitude from their clients. Over many years of representing real estate agents, it has been common to find text messages from a client to a

real estate agent, such as “you’re the GREATEST”, or “we never could have done this without you!!!”, and many other accolades. Thus, it is easy for a real estate agent to think that such a client would never bring a claim against them. Unfortunately, that is not the case when something goes wrong. A buyer may suffer from buyer’s remorse if a problem with the home or property arises.

Suddenly, the once happy buyer may accuse his or her real estate agent of failing to disclose potential problems in the home or property.

For instance, despite a real estate agent’s recommendation to retain an inspector, home buyers may decline retaining an inspector due to the expense. Subsequently, those once happy buyers may claim they would have gladly paid for the inspection if they had known they could have inspected for those potential problems and

potentially located the defect. The real estate agent may have some text messages with her clients which address the agent’s communications and recommendations. A “disclosure” documenting the real estate agent’s recommendations for pertinent inspections and other issues which may be appropriate can be invaluable if a claim arises. Such a document should list potential inspections and services that are available and recommended and should explain why they are important. Most importantly, the document should be signed by the buyers during the agent’s discussions with them. Examples of inspections/services that an agent should include in a comprehensive disclosure document include: radon, mold, siding, polybutylene piping (PBP), appraisals, and surveys. If the client does not want inspections and surveys that are common, the real estate agent should document that extensively and remind the client again why it is important to obtain them.

Also, if the real estate agent is aware of a particular issue or defect, she should be sure to describe the issue/defect, what possible harm it may cause, and why it is, or might be, a potential problem. Even better, the real estate agent should provide her client with a list of websites that include even more information about the recommended inspections and services the agent has listed, and any issues which the agent has brought to their attention. For example, after describing radon related problems,

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ending with “for more information, please visit the [North Carolina Radon Program site](#)” (note that the most applicable national or state-specific website would be best to use). Additional factors to consider and for the real estate agent to advise her clients (where applicable) may include airport noise, highway development, flood potential, sex offender registries, and even nuclear power plants in the vicinity. The list should be as expansive as possible.

It can be difficult to discern specific issues to disclose, and how to do so. If the real estate agent thinks of additional issues which are commonly found in her area, she should add those issues to her disclosure list of recommended inspections/services that she provides to her client. She should be sure to obtain her client’s signature acknowledging receipt of her disclosure list. If disclosures are made, and a problem later arises, the real estate agent can correctly point out that the issue was in fact disclosed. The best advice is to document any issue that has arisen in a transaction and how it was resolved. Even a text can be adequate documentation if written in a manner which can one day be used in court to defeat a claim regarding that issue. When documenting such issues via text, be sure to use plain language -- a thumbs up or smiley face is not adequate documentation that the issue has been resolved to your client’s satisfaction!

I handle many claims against agents and I have discovered that no matter how well an agent does their job, an unhappy homebuyer will find a way to assert a claim against her. Innovative attorneys will always find new and clever ways to bring lawsuits

for disgruntled buyers. In addition, clients often claim their real estate agent should have known a particular issue was important to the client, even though the client did not raise the concern when buying the house. Even if there is no merit to a claim, it is still a nuisance to deal with and may take an agent away from the much more productive work of helping his or her clients buy and sell homes. It is impossible to prevent all claims, but using disclosures that are clear cut, comprehensive, and signed by the buyer acknowledging that they have been advised about the issues, will give the real estate agent strong arguments to rebuff many claims.