

Avoiding 10 Common Mistakes

Webster's dictionary defines "error" as an act or condition of ignorant or imprudent deviation from a code of behavior; an act involving an unintentional deviation from truth or accuracy; an act that through ignorance, deficiency, or accident departs from or fails to achieve what should be done; and something produced by mistake. The dictionary defines "omission" as something neglected or left undone; apathy toward or neglect of duty; and the act of omitting; the state of being omitted.

In the real estate business, as with any business, errors and omissions can occur at any time. Often, they are the result of a lack of knowledge or experience on the agent's or broker's part. But, even the most knowledgeable and experienced people in the business can make mistakes. Real estate professionals who are aware of

It seems like there are 100 things that can go wrong with a real estate transaction. But it's really more a matter of a few problems recurring too frequently. —By Ken Reko

the risks they face and understand how to avoid them have the best chance of achieving success with their customers.

Following are 10 common mistakes real estate agents and brokers make in the course of doing business and how to avoid them.

Nondisclosure

One of the largest categories of claims filed against real estate agents and brokers is nondisclosure. As the agent or broker representing the buyer in the purchase of property, the agent or broker must disclose the facts known about the condition of the property, and do it in writing. Also, in situations where the seller has mentioned circumstances or events that may impact the buyer, such as past discussions by a government body to construct utilities or expand roads that are adjacent to the property, the agent or broker should advise the buyer of such past activities and shift the burden to the buyer to research its applicability.

Conflicts of Interest

As a real estate professional, it's only natural to develop relationships with other professionals who provide related services such as appraisers, mortgage brokers or title agents. In an effort to give good service, real estate agents or brokers may refer customers

to these professionals to assist with a transaction. However, if the real estate agent or broker receives any payment or material gain in exchange for the referral, or if he or she has an ownership interest in any business to which the client is referred, a conflict of interest claim may arise. It's always best to inform the client upfront, preferably in writing, of a possible relationship with the service provider and of any payment or ownership interest. Then, the client can decide where to purchase such services.

Be Responsive and Available

Small problems can turn into big problems if a client can't reach an agent or broker when they need them. It's important to have a phone answering system available to clients so they can leave messages. And, it's doubly important for agents and brokers to check their messages and return phone calls promptly.

At the same time, remember to review e-mail messages regularly, and let clients know about anything that will require an absence for any length of time. Arrange for backup support to handle matters during an absence. Above all, reach out to clients during and after the transaction. Ask them how things are going and whether they have any problems that need to be resolved.

Know Your Limits

Every once in awhile, a deal comes along that may go beyond an agent's or broker's area of expertise yet the potential earnings are too good to pass up. Unfortunately, such deals can be fertile ground for errors and omissions. In these situations, it's best to arrange for someone else with the expertise to step in and take over. The agent or broker may want to use the opportunity as a learning experience by playing a lesser role in the transaction.

Dual Agency Relationship

Agents or brokers who choose to represent both sides of a transaction have a fiduciary duty to both the buyer and the seller. If this becomes a litigious matter, a jury may find that it's almost impossible for one person to represent competing interests. If there is no alternative to this type of relationship, inform the clients in writing. Then, ask the two sides to sign an agreement acknowledging that they understand and accept the dual agency relationship.

1031 Exchanges

IRS Section 1031 provides a means to allow a buyer to avoid capital gains taxes by exchanging certain types of properties. However, the types of properties exchanged and the time allowed to complete the transaction are specific, and failure to meet all the requirements can result in immediate capital gains tax charges and the potential for a lawsuit. Real estate agents or brokers should disclose to the seller that the transaction involves a 1031 exchange and indicate that all parties agree to cooperate in the exchange. Never give advice concerning the eligibility for a 1031 exchange. Instead, suggest that the buyer consult a lawyer or accountant for counsel.

Use of Wrong Forms

Sometimes, an agent or broker is so accustomed to selling certain types of property, such as residential property, that they forget that other types of



property involve unique terms and different forms. Keep standard forms on hand for all types of property transactions and be sure that the form used for a transaction is the appropriate one.

Arranging for Repairs

In an effort to try to meet all the needs of a customer, agents and brokers can take on too much. This is true when arranging for repairs for customers. If the client is unhappy with the repair or the price charged to make the repair, the agent or broker can be caught in the middle. While it's nice to help customers, it's best to let them make their own arrangements when it comes to repairs. Agents or brokers can help by suggesting two or three repair firms to contact, but the customer should make the final selection and negotiate the price.

Lack of Documentation

The dates and details of conversations are oftentimes not important until the content and timing of those conversations come into question. Agents or brokers should practice good risk management by documenting all conversations with customers including the topics discussed and the time and date of the conversation. Obviously, the level of detail will vary depending on the topic, but in the event an agent or broker needs to

defend themselves in a claim matter, the documentation will come in handy.

Playing Messenger

In the course of any transaction, many different parties can be involved, and it becomes necessary to communicate the status of events to the client. This is a very important part of the job. However, playing messenger can get an agent or broker into trouble if he or she is too casual about the delivery process. When possible, communicate messages and information from other parties in writing, so that the client knows the information is being passed along and that the agent or broker is not trying to represent the intentions of the other parties.

Being a real estate agent or broker is an extremely rewarding profession, based for the most part, on developing good relationships with customers. Many agents and brokers know that excellent customer service is the key to success. However, too much customer service—especially in areas where the agent or broker is not knowledgeable or experienced—can be bad for agents, brokers and customers. It's important for agents and brokers to be upfront with customers about their limitations so all parties can work together toward a successful transaction.



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