

Getting Sued: It Can Happen To You

Buyers and sellers are getting increasingly more creative about what they will sue you for. Could you defend yourself against claims like these? —By Ken Reko

Whenever I meet with a group of real estate brokers, I'm always amazed at how many of them tell me they've never carried errors and omissions insurance. Worse yet, some have told me that they've gone 10 or 15 years without any type of insurance coverage. My first reaction is to say, "Congratulations! You've been lucky."

Then I usually ask them, "Don't you worry about putting everything you've worked so hard to earn—your status as a professional, your financial stability and your good name and reputation—at risk?"

Generally, what follows is thoughtful silence as the broker begins to consider what it would mean to be threatened with a lawsuit and not have an insurer by their side to advise them; hire experienced defense counsel to defend them; and, if necessary, pay damages that result from the claim.

Most real estate professionals have been in business a long time, and do all that they can to meet their clients' needs and serve their interests. But, that doesn't mean they couldn't be sued at some point. Unfortunately, in today's litigious society, chances are good that you or a real estate professional you know will be sued at least once in your careers. And, most who have been sued would tell you they did nothing wrong. Getting sued, it seems, has become almost as inescapable as death and taxes.

The following scenarios—taken from recent claims against both experienced and knowledgeable real estate professionals—demonstrate just how easy it is to be the target of a lawsuit.

Water in the Basement

Soon after the buyers purchased their home, they discovered water in the basement after a heavy rain. In spite of disclosure from the seller stating "dampness in basement after rains," and a home-inspection report prepared for the buyers prior to closing that "expressed concern about the basement," the buyer sued their real estate broker seeking \$46,000 in payments for damages resulting from repairs to correct the water problem.

Pool Problems

An agent acted as a "dual agent," representing both the buyer and the

seller. The seller was a personal friend of the listing broker. Following the closing, the buyer learned of problems with the swimming pool. Tiles and caulking were loose and missing; the pool pump didn't function properly; and electrical equipment was infested with insects.

The buyer sued the broker claiming damages in excess of \$400,000, and alleged that because of the broker's personal friendship with the seller, the broker knew about the condition of the pool.

Handyman Thievery

A broker listed a home for sale. Repairs were needed, and the broker referred the seller to a handyman to make repairs. During the course of making the repairs, the handyman stole nearly \$40,000 in cash and jewelry, which was not insured under the seller's homeowners' policy. The handyman was later convicted of the crime. The seller brought suit against the broker claiming negligence, consumer fraud, breach of contract and professional malpractice—claims that pointed to negligent referral. The seller's claims of consumer fraud, if successful, entitle the claimant to triple the amount of damages, plus attorney's fees and costs.

House Defects

A broker acted as a "dual agent,"

representing the seller and the buyer in a transaction. The buyer hired a home inspector to check out the property prior to closing. No major defects were found. After taking possession, the buyer learned that the home's heating and air conditioning systems needed repair, and that the home was a "modular home" rather than "stick built."

The buyer sued the broker claiming that he knew of the defects in the heating and cooling system, and that he had intentionally misrepresented the manner in which the home was built. The seller sought damages of \$70,000.

Full Disclosure Lacking

An agent who worked for a broker decided to sell her own home without listing the property for sale through a broker. She advertised the home "For Sale By Owner." The agent was successful in selling her property. Unfortunately, she used the broker's purchase agreement and other forms in the transaction, which made reference to the broker's real estate firm. Soon after the buyer took possession of the property, the basement flooded. The buyer sued the agent for failure to disclose previous water problems. The buyer also sued the agent's broker claiming that they believed the broker was also involved in the transaction because of the various references to the broker in the purchase agreement forms. The buyer sought damages of \$45,000.

Pricing Question

A broker listed a property for sale. An unsuccessful buyer entered into a purchase agreement to buy the property, but before the sale was completed, the seller backed out. Several months later, the broker listed the same property for sale, and sold it, at a higher price than the previous listing. The unsuccessful buyer is now suing the broker claiming that he acted in concert with the seller to back out of the transaction so that they could list the home at a higher price later. Among the allegations are claims that constitute a violation of the Consumer Protection Act, which, if successful,



may result in triple damages. The unsuccessful buyer claims loss of the benefit-of-the-bargain on the increased value of the house. The unsuccessful buyer sought damages of \$50,000.

Yard Work Issues

A broker represented a buyer in the purchase of a condominium. After taking possession of the property, the buyer learned that the condo association didn't handle all outside yard work. Rather, the association handled lawn mowing and snow removal, but not things such as raking leaves. The buyer sued the broker for misrepresentation, claiming the broker told him all yard work was the responsibility of the condo association. The buyer then sold the condominium and purchased another, more expensive, condo where no yard work was handled by the condominium association. The buyer sought damages of \$7,500 to cover moving expenses.

These claim scenarios show that no matter how much preparation or due

diligence takes place before, during and after a real estate transaction, many things can go wrong. That's why agents and brokers need to be prepared to deal with the unexpected, should it occur. Errors and omissions coverage can help protect agents and brokers from potentially damaging claims and lawsuits and should be a key part of your insurance portfolio. ■



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