ARE REAL ESTATE AGENTS PROFESSIONALS OR SALES PEOPLE?

As I grew up, my grandfather, who was a child of the depression, always said to me “get a profession.” To me, that meant an occupation which would require a graduate or post graduate degree.

Many real estate licensees view themselves as sales persons or facilitators. Perhaps this is due to the fact that the educational requirements to obtain a real estate license may in some jurisdictions not require even a college degree. Yet courts in most states view real estate licensees as professionals and failing to understand this can give rise to unhappy clients.

For example, in California, courts have found that a real estate agent’s duties to his client are equal to those a trustee owes to the beneficiaries of a trust. This is expressed in a leading California treatise and adopted by the California Court of Appeals indicates a Fields v. Century 21 Klowden Forness Realty (1998) 63 Cal App.4th 18, that “the broker as a fiduciary has a duty to learn the material facts that may effect the principal’s decision. He is hired for his professional knowledge and skill; is expected to perform the necessary research and investigation in order to know those important matters that will effect the principal’s decision, and he has a duty to counsel and advise the principal regarding the propriety and ramifications of the decision. The agent’s duty to disclose material information to the principal includes the duty to disclose reasonably obtainable material information... the facts that a broker must learn, and the advice and counsel required of the broker, depend on the facts of each transaction, the knowledge and experience of the principal, the questions asked of the principal, and the nature of the property and the terms of the sale. The broker must place himself in the position of the principal and ask himself the type of information required for the principal to make a well-informed decision. This obligation requires investigation of facts not known to the agent and disclosure of all material facts that might reasonably be discovered.”

Another California case, Salahutdin v. Valley of California (1994) 24 Cal App.4th 555 found that a buyer’s broker was liable for damages where he had passed on the wrong lot size information to his buyer without telling the buyer the source of the information and that he had not verified the accuracy thereof.

Of course some states, such as Florida, have created statutory relationships, defined as “transaction brokers” which allows a limited form of representation to a client, short of a fiduciary relationship. Instead, their duties are similar to those in most states where there is no fiduciary relationship namely: (1) dealing honestly and fairly; (2) accounting for all funds; (3) using skill, care and diligence in the transaction; (4) disclosing all known facts material that materially effect the value of residential real property and are not readably observable to the buyer; presenting all offers and counter-offers in a timely manner, unless instructed otherwise; (5) keeping limited confidentiality which prevents disclosure of what the seller will accept and what a buyer will pay.
So, what does the above mean in your day to day practice? Bottom line; real estate licensees should consider themselves professionals. As such, they should spend the time to educate themselves by taking regular classes on issues which are pertinent to their practice. They should endeavor to read the forms that they use, so that they can explain them to their clients. By definition, a professional should be someone that the client can rely on to provide knowledge and insights which the client doesn’t have. In addition the client should know that they can trust their agent, acting as a fiduciary, to look out for their best interest. This may mean that the agent must read all the documents that are provided to the client to check for red flags or at least explain to the client that they need to read the documents carefully themselves. In addition the licensee should advise the client that they may need to seek advice from other professionals. For example, if there are issues in a title report, the agent should not take it upon themselves to explain what may be a legal issue, but instead refer the client to a title expert.

Although a real estate licensee must deal with a complex transaction with many moving parts, it is not expected that they know everything about all aspects of the transaction. An agent meets their fiduciary duties and act in a professional manner by:

1. Assuring that your client is advised to obtain all investigations available for a particular property (not all investigations may be necessary, such as one may recommend a survey for rural property, but not necessarily for a tract home);

2. Make sure your client listens to the advisors that they retained, and follows up on recommendations made by said advisors (if a home inspector recommends a geological report, then question your client as to whether they plan to follow this advice, and document their response);

3. Notify your clients that you are not the source of the information you are providing and you have not independently verified it;

4. Put yourself in your client’s shoes and ask yourself whether you would want to know something about the property involved in the transaction.

Ultimately you will find that through your increased education and professionalism, your reputation as a experienced knowledgeable real estate licensee will grow, along with referrals and income.

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