

DOING BUSINESS

The Law & You



Ten ways to land in court

Learn to soar past these common legal pitfalls.

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Hindsight, they say, is 20-20, but it is possible to improve your foresight. You can steer clear of legal trouble if you understand how other practitioners have landed in court. Here are 10 legal pitfalls and how to avoid them.

- 1. A poor inspection.** Most lawsuits start here. When inspections go wrong, real estate professionals are sometimes sued, even when the buyers selected their own inspector. Advise buyers in writing to look for certain minimum qualifications by asking inspectors: Do you belong to the American Society of Home Inspectors? How many inspections have you performed? Are you licensed (if applicable in your state)? Do you have E&O insurance? The more qualifications the inspector has, the stronger position you're in if you're ever sued.
- 2. Failure to refer and defer to experts.** At any hint of problems with property condition, recommend in

writing that buyers consult an expert. If there's a recent history of roof leaks, strongly recommend an inspection by a licensed roofer, and request a certification stating that the roof isn't leaking now. *Never* tell a client, "Don't waste your money," or "That inspection isn't really necessary." Especially important is following up on inspections recommended in the general inspection report, such as chimney, drainage, or foundation inspections. Request an extension of the inspection period if necessary.

- 3. Engaging in casual dual agency.** Even if your buyer and seller clients sign a dual agency agreement, dual agency increases your risk of being sued, compared with single agency. A buyer who finds fault with the property or transaction may claim that you preferentially represented the seller. It's a tightrope walk to balance the seller's desire to get the highest price and the buyer's to get the lowest price. If you attempt dual agency, put

everything in writing, communicate with both sides equally, provide good comps to the buyer, negotiate objectively, and disclose everything you should and nothing you shouldn't.

- 4. Not putting it in writing.** No one wants to add more documents to the transaction, but keep saying to yourself, "This is evidence, and I don't want to be sued." Keep a log of conversations and events. Put in writing all agreements that refer to schedules and property repairs; all agreements should be signed by the buyer and seller. Send copies, as appropriate, to all parties. Date all documents.

- 5. Not checking for permits.** Some salespeople think a permit is needed only for a room addition. But, in Los Angeles, for example, a permit is required on certain work costing as little as \$500, as well as more extensive work like replacing a patio surface around the perimeter of a house or gutting a kitchen. The work may look fine but may conceal dangerous problems like poor drainage or wiring. If you represent a buyer who is told a house was "all updated" or "completely redone," a warning light should go on. Ask the seller for the permit. If the seller says, "We didn't need one," ask for written confirmation from the seller or verify with the city that no permit was necessary. If permits were required, request copies. Don't assume that an inspector will find everything; many don't cover code compliance.

- 6. Letting issues dangle at the closing.** The seller hasn't completed repairs, some documents aren't signed, and the closing is tomorrow. Sound familiar? What do you do? Forget verbal agreements, as everyone will remember them differently. Agreements should be written and signed by everyone before the close.

Complaints often stem from sellers making cheap repairs or doing the repairs themselves. A better approach is to get quotes from reputable licensed vendors, get the parties to agree on the cost, and then provide a credit to the buyer at closing. For unfinished repairs, have the seller leave an agreed-upon sum in escrow.

7. Improper termite work. If you recommend termite companies, inquire about length of time in business, complaints registered, and license status. Be sure they guarantee no termites for at least one year, and have insurance for any damage they cause. Always offer the client more than one company to choose from.

8. Improper disclosure. Whether or not your state requires property condition disclosure, if you know some-

thing about the property or neighborhood that could adversely affect its value, inform the buyer in writing. Never believe it won't be discovered. It will, and in most states you can be held liable if the buyer can prove "you knew or should have known."

9. Not asking about roof leaks, window leaks, drainage. The seller repainted, so how are you supposed to know? Regardless of your state's property condition disclosure rules, ask specifically about recent problems or repairs related to leaks and drainage and whether the repairs are under warranty. Put the seller's answers in writing, stating that you haven't verified them and that the buyer should consult appropriate experts.

10. Not asking about mold, fungus, and mildew. Damp, humid climates

have long been plagued with these problems. But mold is now a hot issue nationwide. As new homes are made more airtight and energy efficient, microorganisms that once dried up or dissipated are being held inside. You're not a chemist and aren't expected to rate air quality; but where there's moisture, there's often trouble. Ask the seller about any water intrusions or leaks and how the wet wood, drywall, or flooring were treated and dried. Alert buyers to this information and suggest—in writing—that they investigate further.



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