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Keep thy shop,
and thy shop
will keep thee.

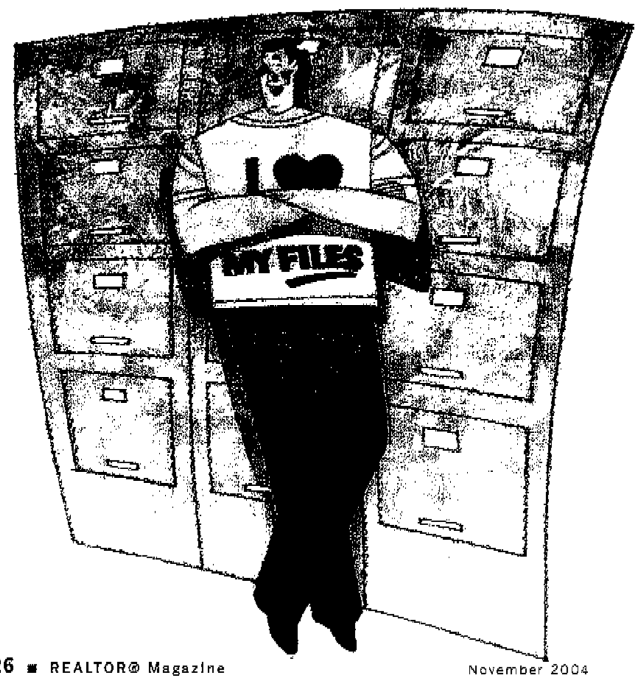
George Chapman
(1559?–1634)

DOCUMENTATION BY BARBARA NICHOLS

Keep it or weep

If you've been in the real estate business any length of time, your transaction files are probably bursting out of their drawers. Even if you need to make room for the next client's pile of paper, don't give in to the temptation to toss or thin out old files. Doing so puts you at a huge legal disadvantage if a dispute arises.

With so many state and federal regulations and statutes governing legal disputes, it's difficult to provide a record-keeping rule of thumb. In addition, because tax laws and regulations such as disclosure provisions usually stipulate a time frame for keeping documentation, which again can vary from state to state, it may be necessary to keep some records longer than others. For example, sellers and their agents must keep federal lead paint disclosure forms for three years after a transaction closes. In many states, time limits for filing lawsuits for misrepresentation can vary from two to four years after a sale is completed. Fraud can be claimed several years after it's discovered, and often the period of time for filing a claim doesn't begin until the alleged fraud is detected. Suits concerning contracts can be filed up to 10 years after a transaction.



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The best advice is to keep all transaction files for at least five years and major contracts, such as the listing agreement, purchase contract, and disclosure forms for 10 years.

An easy test for what to keep and what to throw away is to ask yourself, "If I'm sued and an attorney subpoenas this file, does it contain everything I need to prove I did everything right?"

Among the items that should be retained in your transaction files for at least five years—and longer if possible—are

- The principal documents that are part of the transaction, such as the listing agreement, purchase offer, counteroffers, agency relationship disclosure, property defects disclosure, escrow instructions, and repair agreements.
- State- or area-specific documents and addenda recommended by your state and local association, franchise, or brokerage. For example, California requires an addendum in which an inspector certifies that water heaters in earthquake-prone areas are strapped in place.

Also retain completed and signed documents that your errors & omissions carrier suggests you provide to buyers or sellers. These might include special supplements advising buyers of their inspection rights or notifying buyers that they have the option to investigate for mold.

- Backup documents that demonstrate that the property was priced properly and promoted legally. These include comparable sales data, sales brochures on the property, the MLS listing, property advertisements, and a list of other properties the buyer was shown prior to this accepted offer. These documents can be invaluable if you're charged with a fair housing violation.
- Documents that pertain to the physical condition of the property and land, including land surveys, inspections (current and previous, if the sellers kept them), the preliminary title report, per-

mits, receipts from the seller for repairs made before sale, and current repair receipts for agreed buyer-requested repairs. These types of documentation will be valuable if questions arise about disclosure of known defects.

■ Receipts from buyers that they had received any required disclosure pamphlets on lead-based paint, mold, earthquake safety, flood warnings, and so on.

■ Correspondence, e-mail, faxes, and notes of phone calls and conversations between the principals and the sales associates, as well as with third parties, such as escrow or title agents, inspectors, or repair people. For example, if you received two offers for a property, be sure you have documentation of the date and time offers were received, replied to, and accepted as well as how you presented each offer.

■ Any prior offers and their respective documents and correspondence.

■ A log of transaction activities and forms, with the date each was executed. Also remember to retain faxes and e-mail that reflect when documents were sent.

During the transaction, be sure documents are properly signed and dated. Documents should be signed and dated by all parties—sellers, buyers, and real estate practitioners—affected by them. For example, the listing agreement is a contract between the seller and the listing agent, so both parties should sign and date it. Just before the closing, check your files to ensure no critical document is missing. Keep checklists—one for buyers, one for sellers—so that you won't overlook anything.

Some of the documents you save may overlap, but if you end up in court, you'll quickly learn that repetition is a good thing. Buyers told in three different documents of their option to inspect for mold will have a hard time convincing a jury that they didn't understand that they had that option. Another important point to remember is don't rely on your brokerage office's files for transaction information. Keep your own records, and you'll be sure you have them when you need them.

An added benefit of long-term record-keeping: Buyers move every three to seven years on average. When you call for a listing appointment on a property you've once sold, you'll be ahead of other practitioners if you're able to quickly pull out all the pertinent data. Finally, remember, when in doubt, keep it. RM

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