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# Watch out for that #\*!@\* tree!

**A** cooperating broker trips on the front steps at your listing and breaks her ankle; a prospective buyer tries to open a jammed window at a vacant house, breaks the glass,

and cuts her hand; a seller's dog bites your buyer; a child grabs the edge of the bowl on a pedestal cement bird bath in the yard, and the bowl falls, injuring the child.

Think these accidents can't happen to you, your clients, or your colleagues? All of these describe actual cases that ended with real estate practitioners defending themselves in court or scrambling for a settlement with the help of their errors & omissions insurance.

Many of the property injury cases brought against practitioners focus on negligence and duty of care. In its most basic form, duty of care means taking reasonable care not to cause damage or injury to another and taking reasonable safeguards to prevent such injury. When a person is considered an expert, as might be the case with a real

estate practitioner showing a property, a more demanding duty of care is imposed. This duty requires that the expert use special skills, knowledge, or abilities to be aware of risks and potential hazards and to inform others of those risks in order to prevent injury.

For example, in a California case (*Merrill v. Buck, 1962*), a renter fell down stairs that had no landing after opening a door she thought led to a closet. The court concluded the agent had a duty of care to warn the renter about any concealed dangers of which the agent was aware and which could be reasonably expected to result in an injury.

Before a sale, a seller's property liability insurance will probably cover injuries suffered on the property, subject to any limitations in the policy. Many carriers are eliminating or severely reducing coverage for some types of incidents. Some insurers no longer cover injuries caused by certain breeds of dogs, for example. In addition, some homeowners carry only fire insurance, not liability coverage. So check with the owners before you take the listing to see what protection their policy can offer you, as a first line of defense.

E&O coverage may help defend you if you're named in a personal injury suit but may not pay settlements or court awards. In some cases, E&O carriers exclude claims for personal injury. E&O carriers have also eliminated or reduced coverage for health-related injuries attributed to mold. It's vital you check with your E&O insurer to determine exactly what liability coverage you have.

## Take action

So how can you protect yourself, your brokerage, and your client?

- Be prepared. Ask sellers about any hazardous conditions, non-permitted modifications, or any health problems attributable to conditions at the

Early and provident fear is the mother of safety.

Edmund Burke, political philosopher (1729-1797)



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property during the listing presentation.

- Examine the property you're listing for potential safety hazards. Post warnings in the property description in the MLS and mark the area with a prominent warning sign, such as "Loose railing on stairs." Better yet, encourage the seller to get any hazards fixed or removed before showings begin.

- If you're the buyer's or co-op agent, check with the listing associate regarding any potential property hazards before you visit with a buyer.

- Advise clients to hold their child's hand at all times at showings and not allow the child to touch anything. If there are too many children to keep track of, suggest they stay with one parent in a single room when you show property.

- Make sure there are arrangements to confine dogs or other pets during showings.

- Ask your listing clients if they have liability insurance coverage and if their dog is covered.

- Open exterior doors for buyer clients yourself and advise them not to open windows.

- Carry a first aid kit in your car to handle small cuts or bruises.

- Put all disclosures of potential health hazards or dangerous conditions in writing to buyers and tenants. This suggestion may sound extreme, but only a written disclosure offers absolute proof you provided a warning. However, you'll have to weigh your potential liability against scaring off buyers.

If an emergency happens,

- Call 911 immediately for any serious injury, such as a fall, cut, or dog bite.

- Don't transport the injured person to the emergency room, unless there's no other option. You risk doing further injury and thus adding to your liability.

- Record the day and time of an accident, the names and numbers of those involved, and what happened and report this promptly to your office and insurance carrier.

- Report any injury at the property to the owner immediately—or to the listing broker if you represent a prospective buyer.

- Follow up with injured parties to check the status of their condition.

Many serious injuries, health problems, and deaths from accidents occur at homes and businesses every year. Your best insurance is to plan ahead and know what to do when an injury occurs. **RM**



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