

Measuring up

We've all heard the term *standard of care*, but do you know what it means for you as a real estate professional? Every occupation has a standard that's deter-

mined by law or evolved by custom. Restaurant servers, for example, are legally required to wash their hands after visiting the restroom. As a restaurant customer, you also expect servers to deliver food in a timely fashion and as expected: Hot food should be served hot, and cold food should be served cold. You've come to expect this standard of care, even though it may not be required by law.

So how do you ensure that you're properly upholding the standard of care for real estate professionals? You need to recognize all of the sources that determine the standard.

■ **Congress.** You're required to comply with federal laws applicable to your profession. Such laws include the federal Fair Housing Act and the Residential Lead-Based Paint Hazard Reduction Act.

■ **States.** State legislatures may add to your standard of care by augmenting federal requirements.

For instance, your state or local fair housing laws may protect additional classes of individuals, or a local law may mandate that you disclose a death that occurred on a property. Congress may also permit states to set rules for carrying out a federal requirement.

Many states also define a general standard of care required of real estate practitioners. Typically, this statement of duty outlines the conduct expected of a reasonably prudent agent based on the requirements and training necessary to obtain and maintain a real estate license. Generally, the definition is intentionally vague to allow for the continual evolution of federal and state legislation and case law.

Some states define expectations of conduct in considerable detail; others don't. California requires that sellers provide a defects disclosure statement on all one- to four-unit residential properties. The agents for the buyer and seller are required to walk through the property and note observations about defects on the sellers' disclosure form. Other states have seller disclosure requirements but impose no obligation on agents to conduct a visual inspection or to sign the form. And Florida doesn't even require a seller's disclosure statement.

■ **Departments of real estate.** Usually, licenses are regulated by a state department of real estate, whose interpretations of conduct under the law also create a standard of care. California's depart-

Understanding your duties

To get a handle on the increasingly complex standard of care for real estate practitioners:

- Review federal and state laws affecting your profession.
- Contact NAR and your state and local associations to learn about publications covering professional conduct. To order NAR's "Property Disclosure Pocket Guide" (#126-343-RM), call 800/874-6500.
- Reread the NAR Code of Ethics, which is regularly updated and appears each January in REALTOR® Magazine. It's also available online at REALTOR.org.
- Use common sense.

Avoid lawsuits beyond all things; they pervert your conscience, impair your health, and dissipate your property.

Jean de la Bruyère,
17th century French writer



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ment, for instance, publishes reference books that explain laws in more detail than the civil code.

■ **Contracts.** The standard of care in real estate is also determined by contracts—the specific promises agreed to between parties as well as the representations or information supplied to parties. For example, an agent has a contract with sellers when listing their property or with buyers when agreeing to represent them in a purchase. In each case, practitioners and the people they represent agree to perform certain acts in good faith.

■ **Individual expectations.** The standard of care in real estate can also be affected by the experience and skill of the professional and the client or customer. A court may find that agents who advertise a certain scope of due diligence for clients or claim a certain expertise on the basis of professional designations have expanded their standard of care. Similarly, a first-time buyer may require a greater level of care than an experienced purchaser.

■ **The Code of Ethics.** The NATIONAL ASSOCIATION OF REALTORS' conduct manual also defines standards of care. In fact, courts often look to the Code to determine the industry standard, regardless of whether a real estate licensee is a member of NAR.

■ **State REALTOR' associations.** By revising purchase contracts and disclosure forms to conform to new laws or events affecting the local area, your state association evolves your professional standards. The CALIFORNIA ASSOCIATION OF REALTORS', for instance, recently added disclosures regarding mold and mildew to the transfer disclosure form.

State associations may also recommend the use of forms and procedures not required by state law, such as seller disclosure statements, recognizing that they are a valuable protection for buyers, sellers, and salespeople.

■ **Local associations.** Issues of concern at the city and county level, such as properties located in an airport flight path or near planned rapid-transit construction, may prompt your local board to recommend forms and disclosures.

■ **Geography.** California mandates disclosures regarding seismic zones, and some Gulf and East Coast states require disclosure of hurricane-prone areas.

It takes work to learn what's required of you in your profession. So do the work now and adhere to those requirements, or you may find yourself learning about standard of care in court. EM



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