



TRAINING TIP OF THE WEEK

LAWSUIT: Seller's Disclosures

In a recently litigated and still pending lawsuit in Texas, a buyer is suing the listing broker AND their own agent/agents' team for fraud, deceptive trade practices, negligent misrepresentation and failure to use reasonable care and diligence.

WHAT HAPPENED...

The Buyers purchased a property and afterward discovered improper drainage. They learned that the property had experienced flooding multiple time in past years. The Sellers told the buyers they had disclosed the history of flooding to their Listing Broker and that the Listing Broker himself filled out the Seller Disclosure Form.

STOP... Let's just never do that.

Several of the boxes were left unmarked on the disclosure form. The Buyers representative, which happened to be a brokerage "team" of agents never advised the Buyers that the form had not been filled out completely. In addition to naming the Listing Broker as a defendant, the Buyers are naming their own representation (the entire team) in the lawsuit, for failure to use diligence and care in representing them and for negligently failing to advise them that the seller disclosure form was not property filled out.

The case has been remanded to a trial court to determine liability.

WHAT CAN YOU LEARN FROM THIS CASE???

1. The listing broker should NEVER fill out the seller disclosure form. Ever.
2. The buyer's agent should ALWAYS review the seller disclosure form to determine that it has been filled out thoroughly and completely.
3. Sellers must disclose material defects that affect the value of the property.

Agents should take special care to go over the seller's disclosures with their clients, both when listing a home for a seller and conducting due diligence with a buyer. Seller's agents should explain in detail the ramifications if material defects to the home aren't disclosed but discovered later on. Listing agents should also ensure that statements made by their clients regarding material defects are clearly stated in the seller's disclosures.

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