



TRAINING TIP OF THE WEEK

THE FALL GUY FOR SELLER'S LIES

When the Martinez and her family bought a home in the Seattle area two years ago, she specifically asked about the electrical wiring. “We had been told [by the seller] when we bought the house that there was no knob-and-tube wiring,” Martinez says. This older form of electrical wiring is less resistant to damage and more prone to causing fires. The issue went undetected during an inspection because the electrical work appeared to have been masked, says Martinez, who wasn’t at the inspection. But as soon as the Martinez family moved into their new home, they realized they had been deceived. “We had come to realize that the seller—who is a house flipper and electrician—did a shoddy job hiding the bad wiring and illegally connected dangerous knob-and-tube wiring with [more modern] wiring,” Martinez says. About \$7,000 later, the Martinez family’s electrician completely rewired their home, but they still come across safety issues. “It has been a terrible experience.”

Sellers can be held legally liable under most state laws for not disclosing property defects and material facts, such as leaky basements or knowledge of lead paint. You, too, can suffer legal consequences if you don’t disclose material defects found on the property that you become aware of in the course of serving your client. But if your seller is hiding problems he or she is aware of, and you’re none the wiser about them, can the finger be pointed at you? Legally, you can’t be held liable for property issues you don’t have knowledge of in most jurisdictions. But your reputation as an agent—having even unwittingly represented a seller who lied—could inadvertently take a hit.

Even if you’re selling a property “as is,” which indicates the buyer must accept the home’s condition, the buyer still has the right to know what the problems are. The buyer must have the information available to make an educated decision about whether or not to make an offer.

If you suspect your client is either unaware of property issues or being less than forthcoming about them, and you want to ensure more transparency in the transaction, you could disclose your observations of the property’s condition to the buyer and encourage them to seek further professional advice. For instance, an agent might smell a moldy scent in the basement and see what looks like mold, but the agent is not qualified—nor required to—conclude that there is mold in the basement. The agent could simply disclose a ‘moldy scent’ or a ‘moldy appearance’ in the basement, and advise all parties to engage the proper professionals for further evaluation. Whether a seller acknowledges the issue is not relevant to the agent’s duty to disclose.

Real estate experts suggest another approach, since we can’t force a seller to tell the truth, and sometimes they may not know the truth. The home could have flooded prior to their ownership, so their experience has been that the property has never flooded. Make sure to get the disclosure form, including her notes about her observations of the property, to the buyer before they schedule a home inspection. That way, the buyer can make a more informed decision about how they want to proceed earlier in the transaction. This is tricky because you can’t say a problem exists where it might not, but you would hope and assume that a comment about an odor, for example, would turn on a lightbulb and move the buyer to schedule a mold inspection.

Though you have no duty to search for property defects yourself, it would be wise to pay attention to the home’s condition as you and your client prepare it for market. If you notice a potential problem the seller has not told you about, ask your client questions to gauge their knowledge of the issue and willingness to fix it. Uncooperativeness at this juncture may mean you’re working with an unscrupulous seller—and you’d be better off walking away from the deal. Rather than get involved in deceit, it is a more prudent business decision to walk away from the deal and advise your broker immediately. Be honest with sellers about the importance of a disclosure form at the start of the business relationship. Tell them that this form can be used in court to prosecute them, to be used to prove fraud, which could result in criminal charges. Encourage the seller to conduct a pre-listing inspection of the property and allow buyers to get their own inspections.

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