



TRAINING TIP OF THE WEEK

From the Division's 2nd Qtr Newsletter...

In today's extremely hot real estate market, many buyers are submitting offers that contain terms and language which could potentially place them at financial risk or actually harm them. The Division would like to remind all real estate licensees the importance of informing clients of their options and potential ramifications they might incur when entering into legally binding, yet potentially unsafe, if not precarious, Real Estate Purchase Contracts. Here are just a few representative examples:

1. Agent Speedy has a client that viewed a house that just went on the market. The buyer is excited and wants to make an offer that the seller cannot refuse. Agent Speedy includes in the offer that the \$30,000 earnest money will be nonrefundable upon acceptance and fails to thoroughly explain to his client what that means. When the buyer asks, Agent Speedy replies that it is what the client needs to do to get their offer accepted. The seller accepts the offer, and the client is very happy. A few weeks later the buyer's loan officer tells the buyer that they cannot qualify for a loan. The client goes to Agent Speedy prior to the finance deadline and tells him to cancel the contract due to financing conditions not being agreeable to the client. The client is shocked and dismayed when Agent Speedy reluctantly informs them that they will not be getting their earnest money back since it became nonrefundable upon acceptance.
2. Agent Lax submits an offer for a buyer that includes the buyer waiving the due diligence condition in the REPC, hoping to induce the seller to accept the offer. The seller accepts the offer and fails to disclose a serious known defect with the property. The buyer does not perform any due diligence inspections or testing because they cannot cancel the contract using the due diligence condition. The transaction closes and while moving into the home, a neighbor asks if "...they were aware that the seller went to jail for cooking meth on the property." The client immediately gets the property tested for meth only to find that it is heavily contaminated. *****see note on back**
3. Agent Quick, finds a seller and puts their home on the market. Within the hour, the seller accepts an offer which contains no contingencies. The sellers ask Agent Quick to help them find a new home and they have two months to move out. They spend every day for a month and a half looking for a new home without securing a suitable replacement home or placing another property under contract. The Seller desperately asks Agent Quick if they can cancel the contract and just stay where they are. Agent Quick informs the sellers that if they default the buyer can sue for specific performance on the binding contract.
4. Agent Many has a listing, the property just went on the market yesterday and by 5:00 pm this afternoon received 53 offers. Agent Many is concerned that the seller would be overwhelmed by the multiple offers, she therefore presents "what she believes" are the three "best offers" to the seller and does not mention the other fifty. After going under contract, the seller is contacted by an old friend to see if they received their offer. The seller asks Agent Many about the friend's offer and why it was not presented. Agent Many informs the seller that she only presented three offers.

Agents, your fiduciary duties include looking out for your client's best interests. In fulfilling your fiduciary duties, you should explain and work to ensure that your client understands the potential risks (as well as the benefits) so they can make knowledgeable and well-informed decisions. Failing to help a client understand the ramifications of their decisions could place you in violation of one or more of the following statutes:

61-2f-401 (1) (e) making a false representation or promise of a character likely to influence, persuade, or induce;

61-2f-401 (7) being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;

61-2f-401 (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;

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Please use great care and diligence in helping your clients make complete and informed decisions as to what terms and conditions they are offering or accepting in a purchase contract. The Division suggests asking your broker for help when faced with multiple offers or when the transaction becomes more complicated than usual. Avoid having a complaint filed against you by being one of the agents cited in the above examples. Take good care of your clients and look out for their best interests.

Article Written By: Utah Division of Real Estate

***** Note**

I recently had a discussion with a buyer's agent who was frustrated with sellers who would not allow reasonable access to the property to conduct inspections. When asked if the buyer had waived the due diligence condition of the REPC, the agent replied that yes, they had, but that the buyer still wanted to conduct a formal inspection. Even though many buyers are waiving due diligence, we find that some buyers still wish to conduct inspections to ensure a sound home or to prepare themselves for issues they'll need to address. However, if the due diligence condition is waived, the seller is no longer obligated to provide for "reasonable access" until the final walkthrough inspection (no earlier than 7 calendar days prior to settlement), of which is a very limited type of inspection.

Emily Merkley