

# riskmanagement

## REPORTER

Information and Risk Management Ideas for Real Estate Professionals

### Beware—Before You Buy or Sell Your Own Property Tips for Brokers, Agents, on Staying out of Trouble

Thinking of buying or selling your own property? If you're a real estate agent or broker, beware. If handled improperly and/or without appropriate disclosure and documentation, buying, selling or leasing your own property can cost you:

- Your Real Estate License
- Fines
- A lawsuit

But buying and selling your own real estate doesn't have to be a negative experience. The key when selling for yourself is the same as when representing a client: disclose and document everything:

- Disclose who you are
- Disclose your financial interest in the property
- Disclose any other parties to the transaction
- Document, document, document

What follows are some tips to minimize your risk of exposure when conducting a real estate transaction for yourself.

#### Tell Them Who You Are

Most states require real estate agents and brokers who are buying, selling, or even leasing real estate, to disclose in writing to all parties involved in the transaction that they are licensed real estate agents or brokers. This rule is intended to prevent an agent or broker from unfairly using his or her professional

knowledge to take advantage of an unsuspecting public.

State real estate boards and commissions have not hesitated to revoke brokers' licenses and to impose fines on those who fail to make appropriate disclosures—even if that failure to disclose was not intentional. For example, a Georgia court held that a

any financial interest in the property (excluding commissions), however small that interest may be. Equally important, agents and brokers must disclose, in writing, whether they own any part of the property they are buying or selling. Agents and brokers must also disclose to sellers if they intend to purchase a property for themselves. The rationale for these requirements is to protect against

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broker's license was appropriately revoked when the broker failed to include a clause in the sales contract disclosing his interest as a seller, even though the broker had orally disclosed his financial interest as a seller to the buyers and signed the sales contract as the seller. And, in New York, a court suspended a broker's license, assessed fees and required the return of the broker's profit to the buyers because she failed to disclose that she was a real estate broker selling her own property.

#### Explain Your Financial Interest in the Property

Most state statutes also require that agents and brokers disclose in writing to all parties involved in the transaction

an agent or broker making a profit by intentionally withholding information that is pertinent to the transaction.

Courts have consistently held that the licenses of agents and brokers may be revoked when they fail to disclose to all affected parties that they are purchasing properties for themselves or for later resale at a higher price to other third parties.

For example, an Illinois court revoked the license of a broker who advised a seller that her property was worth only \$2,200—but didn't tell the seller that the property had been appraised at almost 10 times that price. The broker purchased the property at a

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## Tips for Brokers, Agents, on Staying out of Trouble

(cont. from front)

reduced price and then resold it for its appraised value (\$19,000).

Brokers have also lost their licenses for failing to advise sellers of higher offers (and then purchasing and reselling the properties themselves) or for using undisclosed straw men or third parties to purchase property on their behalf.

In general, any material information a broker or agent withholds can become grounds for license revocation or civil suits—so disclose everything. Whether you are buying a property to live in, as an investment or to sell to third parties for profit, you need to disclose to the sellers and all other parties involved in the transaction that you're a real estate broker or agent. Similarly, if someone is buying property on your behalf, that person must disclose your status as a real estate broker or agent.

### Disclose All Pertinent Relationships

If you're buying or selling real estate on behalf of your relatives or for your business, you must disclose this as well. Failing to do so could put you in violation of state law and constitute a breach of fiduciary duty to your client. The rationale is that your personal and business relationships are considered *material facts* that can affect the parties' decision to enter into the transaction.

For example, a Florida court found a broker was properly fined for failing to disclose to the sellers that the potential buyer for a property was his mother-in-law. The court ruled that the broker's personal relationship was a material fact the sellers were entitled to know. And a number of courts, including those in New York and California, have consistently

upheld the revocation of brokers' licenses for failing to disclose to other interested parties that they were acquiring a property for their own brokerage firm or corporate account. **The bottom line:** disclose the identities of all the parties to any real estate transaction and the relationships these people have to you.

### Document, Document, Document

It's not enough to make disclosures to all the parties—you must put everything in writing. Having a paper trail describing exactly how a transaction was handled can make all the difference in the world if you find one of your transactions being questioned by a client or your state's real estate commission.

Documenting your disclosures can be as simple as keeping a ledger in your file on a given property that keeps track of what you said, who you made the disclosure to and when you made the disclosure. Or, you can write a letter or e-mail to your client or other interested parties confirming that you spoke with them, the substance of your conversation, and when that conversation took place. In addition, it's a good practice to create a form that discloses your status as a broker or salesperson and the nature of your financial interest in the property for your client to sign or initial.

Finally, make sure your status as a real estate broker or salesperson is clearly reflected in any contracts you sign when you are purchasing or selling property for yourself in a personal capacity or when you are purchasing or selling property on behalf of your firm. Remember, the name of the game here is to disclose, disclose, disclose all information in regard to your personal interests in a real estate transaction.

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