
2018 MANDATORY COURSE

Real Estate Best Practices

Instructor Guide



Prepared for the Louisiana Real Estate Commission by

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Course Syllabus

Instructors: A copy of the syllabus and the course material must be provided for each student in each of your classes. You must modify to include your personal qualifications and background and vendor information.

Instructor Qualifications and Background

Instructor: Brent Lancaster

Brent Lancaster, ABR, GRI, SRS, AHWD, BPOR, CDEI, e-PRO, MRP, PSA combines his love of the business of real estate with his passion for education. He offers a variety of solutions to the challenges that agent's face in today's real estate environment. He believes in delivering tools agents can use immediately to improve the quality and efficiency of their business.

In 2005, he became the broker/owner of his own real estate company, Brent Lancaster and Associates, LLC.

For the last 14 years, Brent has been delivering high quality course content as President/CEO of one of the nation's oldest real estate schools – Bob Brooks School of Real Estate. Since 1971, Bob Brooks School has trained many generations of real estate agents.

Brent lives in Baton Rouge, Louisiana with his wife of 14 years Laura and his two children Leyton (6) and Nate (3).

Instructor: H.L. “Rye” Tuten, III

Born July 12, 1977, in Orangeburg, South Carolina. In 1999, Mr. Tuten obtained a Bachelor of Arts degree, Cum Laude, from Clemson University. While at Clemson, Mr. Tuten was a member of the Kappa Alpha Order, Fellowship of Christian Athletes, and Phi Alpha Theta Historical Honor Society.

In 2003, Mr. Tuten obtained a Juris Doctor degree from The University of Mississippi School of Law (i.e. “Ole Miss Law School”). While at Ole Miss Law School, Mr. Tuten was the recipient of the Julius Owen Moss Memorial Scholarship and Judge W.N. Ethridge, Jr., Memorial Scholarship

In 2003, Mr. Tuten was admitted to the Louisiana State Bar. Mr. Tuten is a member of the Louisiana State Bar Association, Lafayette Parish Bar Associations, Realtor Association of Acadiana, and Acadiana Mortgage Lenders’ Association. Mr. Tuten also serves on the Board of Directors for the Acadian Home Builder’s Association. Mr. Tuten is past co-

chairman of the Membership Committee for the American Inn of Court and past member of the American Bar Association.

From 2003 until approximately 2011, Mr. Tuten's law practice focused heavily on defense litigation with a primary focus on defense of real estate agents and real estate brokers. During this timeframe, Mr. Tuten was admitted to practice in all Louisiana State Courts and Federal Courts for the Western and Eastern Districts of Louisiana.

Mr. Tuten has been involved with numerous lawsuits involving various real estate transactions and up until 2011 was an approved attorney for Rice Insurance Services Company (RISC provides Louisiana Group Errors & Omissions Insurance for Real Estate Agents and Brokers). Up until 2011, if a Real Estate Agent or Broker in Acadiana were sued, it's likely RISC assigned Mr. Tuten to represent them.

In 2011, Mr. Tuten shifted his practice away from litigation and towards real estate closings by founding Tuten Title & Escrow, LLC, a full service real estate closing company. Since 2011, Mr. Tuten has operated Tuten Title & Escrow, LLC, to provide closing and escrow services for residential and commercial purchases and refinances; title curative work incidental to new purchases and refinances; and title insurance.

Mr. Tuten is an accomplished speaker in the area of risk management for Real Estate Agents and Real Estate Brokers having provided risk management seminars to various Real Estate Agents/Brokers throughout Acadiana. In his presentations, Mr. Tuten draws on his many years of litigation experience to educate Real Estate Agents and Real Estate Brokers.

Mr. Tuten is married to Lainey Huguet Tuten and has four (4) children, H.L. "Harrison" Tuten, IV (age 8), A. Camp Tuten (age 6), Hatten Carolina Tuten (age 4), and English Catherine Tuten (age 1).

Course Description

The course focuses on custom case studies, clearly articulated via PowerPoint and reading material that cover each point presented in the 2018 mandatory outline. The scenario involves licensees who are in violation and will be presented with best practices to avoid such situations.

Course Goal

Real estate licensees are taught many laws and rules that can be difficult to understand. Once agents are faced with real-world scenarios, they can better apply those laws and rules, have a true understanding of them, and better represent his or her client.

Course Material

All materials needed for this course are included in this manual. The materials include:

- Course Syllabus
- Timed Course Outline
- Course Content Material (Instructor and Student Manuals)
- PowerPoint Presentation
- Digital versions of all course materials can be found on the LREC website under the Education Tab on the Schools/Vendors/Instructors Only page or by visiting this link: <http://www.lrec.state.la.us/files/2018MandatoryCourseMaterials.pdf>

Course Completion Requirements

Students must be present for the full four (4) hours if a live presentation. Students taking Internet based presentations must complete all quizzes and exams with a score of at least 70%. An identity affidavit attesting to the fact that the student has personally completed the course without assistance must be submitted before a certificate of completion is granted.

Vendor Policies and Regulations:

Prerequisites: There are no educational prerequisites for this course.

Registration: Any attempt to take this course under an assumed identity will forfeit your right to receive a certificate of completion and may result in sanctions by the Louisiana Real Estate Commission.

Attendance: Students attending a live presentation must sign in before the course and sign out after the course; this course is a four (4) hour presentation, and 100% attendance is required to receive credit for completion. Credit shall not be granted for partial attendance. No exceptions!

Tardiness/Absences: Credit shall not be granted for late arrivals, excessive absences, and/or early departures. Students are not allowed to make up missed portions of a course.

Course Participation: Instructors may not, in any venue, answer questions of a personal or legal nature, and students should not interpret any information received from instructors or course content as being legal advice.

Classroom Rules of Conduct: To provide an atmosphere conducive to learning, students must turn off all electronic devices prior to the start of class.

Newspapers, books, magazines, or any other reading materials are not permitted during class presentation. Violations may result in loss of continuing education credit.

ADA Compliance: Upon request, reasonable accommodations will be provided to individuals with a documented disability to assure that an equal opportunity to participate in this course is provided. For further information, contact our office at (555) 555-5555.

Vendor Contact Information: (insert your contact information here)

Phone: (555) 555-5555, weekdays between 8 a.m. and 5 p.m. central time.

E-mail: anyschool@yourschool.com

Address: any town USA

Disclaimer

These materials are to be used for informational purposes and should not be construed as specific legal advice, nor are they designed to cover every aspect of a legal situation or every factual circumstance that may arise regarding the subject matter included.

This publication is for reference purposes only and readers are responsible for contacting their own attorneys or other professional advisors for legal or contract advice. The comments provided herein solely represent the opinions of the authors and are not a guarantee of interpretation of the law or contracts by any court or by the Louisiana Real Estate Commission.

Course Learning Objectives

Recordkeeping

- To understand the LREC recordkeeping requirements specifically regarding electronic messages and text messages.

Required Disclosures

- Review the laws regarding advertising property with written permission.
- Go over details of the required disclosures licensees must provide within the real estate transaction.
- Discuss the required disclosures licensees must provide when they have an ownership interest in a property.

Fair Housing

- Gain knowledge of the Federal Fair housing laws as they pertain to service and assistive animals.

Deposits and Commingling

- Review deposit and commingling requirements in sales and property management transactions.
- Understand what licensees are supposed to do with sales escrow deposit checks coming into their possession.

Improperly Prepare, Present or Annotate an Offer

- Understand the preparations, presentation and annotation of offers. Review the specific lines of the Residential Agreement to Buy and Sell.
- Analyze the correct procedure for presentation of backup offers.

Advertising Law and Rules

- Analyze the laws regarding social media advertising and the proper procedure for the one click away rule.
- Discuss the team advertising rules and laws, as well as “coming soon” advertising requirements.

Giving Legal and Tax Advice

- Discuss how agents may be guilty of unauthorized practice of law
- Discover the pitfalls of giving of tax advice

Confidentiality

- Understand the disclosure of material defects and the laws that can affect the sale.
- Discuss the licensee's role regarding what information can (and should) be kept confidential.

Don't Measure the House, but Check the Measurements

- Look at the agent's responsibility and liability in measuring a home.

Unprofessional and Unethical Conduct

- Review various scenarios where agents are conducting unprofessional and unethical practices.
- Describe the pitfalls of failing to show clients homes listed by certain brokerage companies based on reputation or past experiences.
- Understand the ethical implications of clients and/or licensees taking pictures and recording videos of a property a licensee does not have listed.

"NK" Instead of "No" on the Property Disclosure Form

- Understand the difference in "NK" vs. "No" on the Property Condition Disclosure Form. Analyze the current Louisiana Supreme Court case that addresses this issue.

Timed Course Outline

The PowerPoint provided is designed to accompany the material.

I. Recordkeeping (10 minutes)

Case Study – Text Messages

II. Required Disclosures (30 minutes)

Case Study – Written Permission to Advertise a property for Sale

Case Study – Agency Disclosure Form

Case Study – New Construction

Case Study – Purchase Agreement

Case Study – Disclosure of Ownership

III. Fair Housing (10 minutes)

Case Study – Service and Assistive Animals

10-minute break

IV. Deposits and Commingling (25 minutes)

Case Study – Escrow Account Maintenance

Case Study – Property Management

Case Study – Sales Deposit Checks

V. Improperly Prepare, Present or Annotate an Offer (20 minutes)

Case Study – Presentation of Offers

Case Study – Back-up Offers

10-minute break

VI. Advertising Law and Rules (25 minutes)

Case Study – Advertising on Social Media

Case Study – Team Advertising

Case Study – “Coming Soon” Advertisements

VII. Giving Legal and Tax Advice (15 minutes)

Case Study – Are you Practicing Law?

Case Study – Unauthorized Practice of Law

Case Study – Giving Tax Advice

VIII. Confidentiality (20 minutes)

Case Study – Material Defects

Case Study – Disclosure of Confidential Information

10-minute break

IX. Don’t Measure the House, but Check the Measurements (10 minutes)

Case Study – Duty to Measure

X. Unprofessional and Unethical Conduct (20 minutes)

Not Returning Phone Calls and Emails

Not Having All Paperwork With An Offer

Buyer's agent does not show homes with lower-than-typical cooperating compensation offered by listing broker.

Buyer's agent does not show clients homes listed by certain brokerage companies based on reputation or past experiences.

Listing agent accepts listing with an unrealistic asking price for the marketing opportunity.

Taking pictures and recording videos of a property you have not listed.

XI. “NK” Instead of “No” on the Property Disclosure Form (15 minutes)

Case Study – “NK” Instead of “No” on the Property Disclosure Form

10-minute break

Instructor Notes

Slide 2

Section One – Recordkeeping

Slide 3

I get a ton of text messages from clients each day. Do I need to keep all of these text messages? If so, how do I store them?

Analysis

Slide 4

The simple answer to your question is “Yes” and there are legal and practical reasons for the answer.

Slide 5

According to Louisiana Revised Statutes 37:1449(D)(1) Individual real estate brokers **shall retain all of the following records**, readily available and properly indexed, for a period of five years:

(a) Bank statements, copies of deposit slips, and cancelled checks on all escrow or trust accounts.

(b) **Copies of all documents that pertain in any way to real estate transactions** wherein the individual real estate broker or licensees sponsored by the individual real estate broker have appeared in a licensing capacity.

According to Louisiana Revised Statutes 37:1449(D)(2) The requirement regarding copies shall not be altered by the transfer of a broker to that of an associate broker, an unlicensed person, or an inactive licensee.

Slide 6

Yes, the statute makes this requirement applicable to “Brokers,” but how do Brokers get a copy of these documents? Answer: from the individual real estate agent.

So, a liberal and practical reading of the above statute dictates that real estate agents must, first, keep a copy of all records pertaining to each individual real estate transaction and then, second, provide a copy of those records to their Broker.

But does the above statute contemplate “text messages”?

Again, the answer is “Yes.”

Instructor Notes

An engaged real estate agent is more likely to provide top notch representation to their clients.

The words “shall” and “all” and the phrase “all documents that pertain in any way to real estate transactions” contained in the above statute is very broad and all-encompassing and would include “text messages” since text messages could be construed as a written document in a similar way that emails can be construed as a written document.

So, the above discussion outlines the legal reason to keep a copy of all text messages (i.e. because there is a Louisiana Statute that mandates real estate agents keep a copy of all documents, including text messages).

There are also practical reasons to keep a copy of all documents in each real estate transaction, including text messages.

First, keeping track of all conversations will keep the real estate agent “engaged” with their clients and keep the conversations between the real estate agent and client fresh in the real estate agent’s mind. An engaged real estate agent is more likely to provide top notch representation to their clients. Additionally, an engaged real estate agent most likely won’t appear “aloof” or “forgetful” (you’d be surprised how many agents are depicted by their clients as “not engaged,” “aloof,” “forgetful,” etc.)

Secondly, what happens if the real estate agent is sued by the client for failure to disclose an item?

Is the real estate agent going to remember every conversation they had with their clients in the absence of written documentation of the conversation? (Answer: most likely not)

And even if the real estate agent does remember every conversation they have with their client, how can the real estate agent prove the conversation took place without written documentation of the conversation?

Without written documentation of the various conversations between real estate agent and client, it turns into a “he said, she said” debate in a Court of law. The “he said, she said” scenario is not a good one for a real estate agent.

Now that we know keeping track of every form of communication that real estate agents have with their clients is a good idea, how do we keep track of the conversations?

To store the conversations, the real estate agent can do one of the following:

1. If the real estate agent prefers paper files, then the real estate agent can print the text message (or email) and stick the text message (or email) in their paper folder;
OR
2. If the real estate agent operates under a “paperless” system, the real estate agent can save/store/transfer every text message (or email) to their cloud storage.

Slide 7

Section Two – Required Disclosures

Slides 8 & 9

A husband and wife have just completed building their dream home and are looking to sell their current one. The house is located in a hot market, in great condition and you know it will not last long.

When you show up for the listing appointment, only the husband is there. He tells you his wife is on a business trip overseas and will be gone for two weeks. The husband signs the listing agreement and promises his wife will sign “soon” but he is anxious to get the property on the market. You help him with staging and get listing photos taken. The property is ready to list his wife has not signed the listing agreement. You explain you will not be able to put his property into MLS until his wife has signed the agreement. Again, he assures you he will get it signed when he talks to her tonight. He’ll have it first thing in the morning.

Knowing you are sitting on a hot property, that night you post a few pictures on Facebook that a wonderful home is about to come on the market. You are immediately contacted by a couple you have been working with who are interested and want to see it immediately. In your excitement, you text all your sellers you have an interested buyer and set the appointment.

You show it, they love it and make a full price cash offer. All parties throughout the process were aware that you were the dual agent on the property. However, to be safe you have everyone sign the dual agency disclosure form at closing.

Analysis

Instructor Notes

In this scenario, you have committed a few violations:

LSA-R.S. 37:1455.A (11)

§1455. Causes for censure, suspension, or revocation of license, registration, or certification

A. The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under this Chapter, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders if, in the opinion of the commission, a licensee, registrant, or certificate holder is performing or attempting to perform or has performed or has attempted to perform any of the following acts:

Slide 11

(11) Offering real estate for sale or lease without the written consent of the owner or his authorized agents. Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

LSA-R.S. 37:1455.A (21)

(21) Failure of a licensee to provide the parties to a real estate transaction with an agency disclosure informational pamphlet and, where applicable, a dual agency disclosure form.

Slide 12

Even though it was signed, *when* it is signed is just as important.

Best Practice

Under no circumstances can you offer a property for sale (even on social media) unless you have written permission from all parties. Always wait until the listing agreement is signed before offering the property for sale or advertising/posting on social media.

Slide 13

The dual agency disclosure form should be signed before an agent enters into dual agency representation. While working with sellers, the best practice is to get the form signed at the listing appointment when the listing agreement is being signed. For buyers, it is best to have them sign the disclosure before showing the listed property.

In both cases, the parties have given you permission to represent all parties in the transaction *before* you are a dual agent.

Instructor Notes

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You are showing one of your listings to a prospective buyer-customer. During the showing, the buyer-customer seems interested and asks if the sellers would be willing to leave the swing-set. The showing continues and the buyer-customer begins to discuss her financing options and credit history. When did substantive contact occur and when should the agency disclosure form be given?

When the buyer-customer divulges her financial information?

Upon mention of the swing-set?

As soon as you met the buyer-customer?

Slide 15

Analysis

According to agency Law, Substantive contact means that point in any conversation where confidential information is solicited or received. This includes any specific financial qualifications of the consumer or the motives or objectives in which the consumer may divulge any confidential, personal, or financial information, which, if disclosed to the other party to the transaction, could harm the party's bargaining position. This includes any electronic contact, electronic mail, or any other form of electronic transmission.

In other words, anything other than providing factual information is substantive contact.

In this case, the form should be given at the point the swing set was mentioned. It may seem impractical and difficult to “change the subject” and present the form at that time. What are you to do? There is nothing wrong with presenting the form earlier. It can only hurt you if you give it after the fact. Not before. The best practice might be to present the agency pamphlet at the beginning of the conversation.

Louisiana License Law - LSA-R.S. 37:1455.A, the Louisiana Real Estate Commission can impose a fine, censure, suspension or revoke a license for: (21) Failure of a licensee to provide the parties to a real estate transaction with an agency disclosure informational pamphlet and, where applicable, a dual agency disclosure form.

Instructor Notes

Slides 15 - 18

What if they refused to sign it?

If the client/customer refuses to sign the disclosure, a best practice is to annotate on the disclosure the day, date, time, name of the party and the fact they refused to sign. Keep this disclosure in the property file.

What about leases?

According to Agency Law, § 3893. DUTIES OF LICENSEES REPRESENTING CLIENTS (F): Nothing in this Chapter or in Chapter 17 of Title 37 shall be construed as to require agency disclosure with regard to a lease that does not exceed a term of three years and under which no sale of the subject property to the lessee is contemplated.

What about an internet leads?

Again, the disclosure needs to be given at first substantive contact – even if that contact is over the internet, email, social media, messenger applications, etc.

Instructor Notes

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My buyers wish to purchase a new construction home. The builder requires us to use their own contract. Am I allowed to do that?

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Analysis

Law: §1449.1. Duty of real estate licensees to use purchase agreement forms

A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property. No person shall alter the purchase agreement form; however, addendums or amendments to the purchase agreement form may be utilized.

“Residential real property” means real property consisting of one or not more than four residential dwelling units, which are buildings or structures each of which are occupied or intended for occupancy as single-family residences.

If the builder drafts the contract then no.

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What if I represent the builder?

Law: §1449.1. Duty of real estate licensees to use purchase agreement forms – A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property.

So yes, if you represent a builder you are still required BY LAW to use the mandatory purchase agreement.

If a licensee drafts an offer on a residential piece of property it must be the LA agreement to purchase and sell.

Slide 22

“If a licensee puts pen to paper on a purchase agreement, it had better be the Louisiana Residential Agreement To Buy Or Sell.” - Robert Maynor, Director of Investigations, Louisiana Real Estate Commission

Instructor Notes

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Students may ask additional questions about HUD houses or bank repo's where you make an offer online.

When working with Federal government agencies, licensees do not have to abide by the Louisiana Real Estate Contract.

In all other cases you do.

Is it done every day without using the mandatory purchase agreement?

Yes, and if the licensee is investigated, they may be found in violation.

Best Practice:

The licensee can add an addendum.

Continuing with the second half of the law, "**Law: §1449.1. Duty of real estate licensees to use purchase agreement forms** – A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property. No person shall alter the purchase agreement form; **however, addendums or amendments to the purchase agreement form may be utilized.**"

Instructor Notes

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I am the listing agent in a transaction. This morning I received an Offer on the listed property and immediately presented the offer to my Sellers for review/discussion.

My Sellers agree with nearly all of the terms of the Offer, but my Sellers don't want to pay any closing costs. Essentially, my Sellers don't want any money subtracted from their net sales proceeds other than the Mortgage payoff, Real Estate Commissions and pro-rated property taxes.

My Sellers want to strike through Lines 87-90 of the Offer which states, "All necessary tax, mortgage, conveyance, release certificates or cancellations and the SELLER closing fees, if any, shall be paid by the SELLER."

Can my Sellers just strike through this section of the Offer and then initial and date the alteration?

Analysis

This question is going to be governed by Louisiana Revised Statutes 37:1449.1, which outlines the use of purchase agreement forms promulgated by the Louisiana Real Estate Commission.

According to Louisiana Revised Statutes 37:1449.1(A) A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property. **No person shall alter the purchase agreement form**; however, addendums or amendments to the purchase agreement form may be utilized.

A strict reading of this statute indicates your Sellers cannot "strike through" Lines 87-90 of the Offer.

However, your Sellers can prepare counter-offer that has language similar to the below:

"Sellers shall not be bound by the terms and conditions outlined in Lines 87-90 of the Offer and the parties effectively agree to strike through the following words contained in said Lines 87-90: All necessary tax, mortgage, conveyance, release certificates or

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Instructor Notes

cancellations and the SELLER closing fees, if any, shall be paid by the SELLER. Seller shall not pay any closing costs or charges to any party, lender, or closing attorney other than the actual payoff amount for Seller's Mortgage, Real Estate Commissions and pro-rated property taxes."

Instructor Notes

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**I own 10% of an LLC that is purchasing a piece of property.
Do I have to disclose that I am licensed?**

Slides 29 - 32

According to **§3501. Licensee as Principal in a Real Estate Transaction A**. The license status of a principal in a real estate transaction, whether individually or through an entity in which an interest is held by the licensee, shall be disclosed in writing to all other principals in the real estate transaction prior to entering into negotiations concerning the execution of a real estate contract.

Yes, if a licensee owns any interest, they are required to disclose, in writing, the license status.

The next question is when must that interest be disclosed? According to §3501 it is “prior to entering into negotiations” of the contract.

Instructor Notes

Section Three – Fair Housing (Service and Assistive Animals)

Thomas is looking for a house to rent. While driving around, he sees a for lease sign on a home and calls the brokers number.

Thomas explains to the on-duty agent his desire to rent the home. He also explains he has been diagnosed with severe depression and his doctor prescribed a comfort dog to help alleviate some of his symptoms.

The agent on duty informs Thomas the owner of the home has a strict NO PETS policy and that he will not be allowed to rent the property.

Has the agent done anything wrong?

Slide 35

Analysis

Service and assistive animals are not pets. Under the Fair Housing Act, a disability is defined as a physical or mental impairment which significantly limits a person's major life activities. Even if a lease says "no pets" or restricts pets, landlords are required to make what is called a "reasonable accommodation" to allow pets who serve as assistance animals, which includes animals who provide emotional support.

Assistance animals are in a different legal classification than pets who are not assistance animals, which is why pet restrictions and fees are waived for them. They are animals that work, assist and/or perform tasks and services for the benefit of a person with a disability or provide emotional support that improves the symptoms of a disability.

Some examples of assistance animals:

- A cat who can detect and alerts their companion of oncoming seizure.
- A dog who alleviates a person's depression or anxiety.
- A cat who reduces a person's stress-induced pain.
- A bird who alerts their hard-of-hearing companion when someone has come to the door.

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Instructor Notes

Slide 37

CASE STUDY - September, 2015

University of Nebraska at Kearny paid claim of \$140,000 for refusing to allow 4 lb miniature pincher named Butch into University Housing. The dog was trained to comfort a student when she experienced disabling anxiety attacks that caused difficulty breathing and sleeping.

Slide 38

Documentation For Emotional Support Animals

If the needs of the animal are not obvious, the landlord may request written verification for the need for the animal from a health care professional or other verifier. Get an attorney involved in verification process.

Slide 39

Under the FHA, a disability is defined as a physical or mental impairment which significantly limits a person's major life activities. Even if a lease says "no pets" or restricts pets, landlords are required to make what is called a "reasonable accommodation" to allow pets who serve as assistance animals, which includes animals who provide emotional support

According to HUD: "A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability related need for an assistance animal.

For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support."

Ex. A seeing eye dog would not be verified. Others may not be so obvious. Online services provide certification process/vests, etc. They are not usually valid. If you receive and online verification and are not sure how to proceed, you can contact an attorney.

Section Four – Deposits and Commingling

Slides 40-41

Joe Smith is working with a buyer who made an offer on a home. The buyer put down a \$1,000 deposit to be held by the listing broker as ABC Realty. The offer was accepted. During the inspection period, the buyer found many deficiencies and terminated the contract and asked to receive a return of the deposit. ABC Realty returned the deposit. Below is a copy of the check:



Why was the broker's license suspended for 30 days?

Slide 42

Analysis

The broker violated RS 37:1455 A (6) - Commingling the money or other property of his principals with his own.

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Commingling as defined by Louisiana License Law is "putting personal funds and funds belonging to other persons in one mass or mixing the funds together so they cannot be identified or differentiated."

Instructor Notes

§1435. Powers of the commission F. The commission shall have the right to require all real estate licensees and registered timeshare developers to deposit all monies or things of value received on behalf of clients in a separate banking account or accounts in a legally chartered financial institution. The monies so received are not to be commingled with the personal funds of such licensees or registrants.

Rule and Regulation - A. A resident broker, including corporations, partnerships and limited liability companies, who accepts any funds on behalf of clients in a real estate sales transaction shall open and maintain a sales escrow checking account in a financial institution in the state of Louisiana. All sales escrow accounts shall be titled in the identical wording as stated on the broker's license and the wording "Sales Escrow Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds received by a broker in connection with the sale of real estate shall be deposited in this account when there is a written contract to buy and sell real estate that has been fully executed and accepted by both buyer and seller.

Instructor Notes

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I've been working with an investor for years helping him acquire rental property all over the city. He now wants me to begin managing his rental houses. He insists that after collecting the security deposit, I transfer it to him at the end of the month. Can he do that?

My owner wishes to hold all security deposits. He specifically asked me to give him all security deposits at the end of the month. Is that legal?

Slide 45

Analysis

Yes. If proper procedure is followed.

First, the *broker* must have the bank account – not the salesperson.

Second, the deposit check is to be written to the brokerage firm and put in the security deposit trust account. **Rule and Regulation - C.** A resident broker, including corporations, partnerships and limited liability companies, engaged in the collection of rental security or damage deposits in connection with property management activities on behalf of clients shall open a security deposit trust checking account in a financial institution in the state of Louisiana. All security deposit trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Security Deposit Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental security or damage deposits from or on behalf of clients shall be deposited into this account.

Next, BOTH parties must agree:

Rule and Regulation 2715. Withdrawal – A. Funds deposited into a sales escrow checking account, rental trust checking account, or security deposit trust checking account shall not be withdrawn for any purposes except: 1. upon the mutual written consent of all parties having an interest in the funds;

Rule and Regulation §2717. Deposits - A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

Stress the importance of following the proper procedure. There are a lot of agents who are not following the proper procedure .

Instructor Notes

Rule and Regulation §2901. Escrow Disputes. A. When a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 60 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following:

1. disburse the funds upon the written and mutual consent of all of the parties involved;

Finally, once both parties have agreed in writing, the check may be sent from the security deposit trust account to the owner.

What if the owner wants the deposits written directly to his/her LLC? Does the broker have to run it through their trust account or could the tenant make it directly to the owner?

§2717. Deposit A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

Both the lease agreement and the management agreement needs to say the deposit is to be held by the owner.

Slides 46-48

The buyer wants the seller to just hold on to the check (not deposit it) until closing. Is that OK?

Analysis

No. According to the Louisiana Rules and Regulations, *all* deposits must be deposited.

Rule and Regulation. §2717. Deposits A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

Instructor Notes

Instructor Notes

Slides 50 - 51

The LREC is emphasizing this issue.

Take your time in explaining the presentation and annotation of offers and counter offers. Many agents are still confused how to fill out these sections of the contract.

Slide 52

Section Five – Improperly Prepare, Present or Annotate an Offer

Bob Smith is representing a buyer named Billy. Billy submit an offer on his dream home but is now concerned since they haven't heard from this agent and the time limit for the offer has expired. Bob has attempted to call the listing agent multiple times and left multiple messages and texts. Two days after the offer has expired, Bob is finally able to reach the listing agent who informs him the house is already under contract.

Bob asks to have the rejected contract marked "rejected" and signed by the seller. The listing agent informs Bob that his seller is an attorney and has refused to sign the contract because he does not believe it is necessary when rejecting an offer. Further, the attorney believes the contract was rejected when the time limit passed.

Bob explains that his buyer simply wants to verify the offer was presented to the sellers.

Who is right?

Analysis

Someone violated the Law.

Louisiana Real Estate License Law - §1449. Broker to insure provision of contract; retention of records. B. Licensees and registrants shall insure that persons signing any document in a real estate transaction that pertains to more than one party are provided with a copy of the completed document bearing the signatures of all parties to the transaction within five days after the final signature is affixed to the document.

Instructor Notes

Slide 53

Louisiana Real Estate Rules and Regulations- §3907. Rejection of Offers and Counter Offers. All written offers and counter offers presented to a seller and/or buyer and not accepted shall be clearly marked as rejected and signed by the seller and/or buyer. In any circumstance in which a seller and/or buyer refuses to sign a rejected offer or counter offer, the licensee making the presentation of the offer or counter offer shall annotate this fact indicating the time of day and date of the rejection of the offer or counter offer by the seller and/or buyer. A copy of the rejected offer or counter offer signed by the seller and/or buyer, or a copy of the rejected offer or counter offer bearing the annotation of the licensee, shall be provided to the buyer and/or seller, and the rejected offer or counter offer shall be returned to the prospective buyer and/or seller within five days after the signature or annotation is affixed to the document.

Slide 54

LREC Guidance: The seller is not obligated to sign a rejected contract. However, the agent is required by Louisiana Real Estate License Law to provide all parties with a copy of the completed document within five days.

Therefore, if the seller refuses to sign the rejection of the purchase agreement, the listing agent is required to sign and mark as rejected, then (within five days) provides copies to both his/her client and the cooperating agent/customer.

Proper Procedure when Submitting/Presenting/Annotating Offers

Slide 55

When a buyer is preparing an offer, the Buyers complete and sign the purchase agreement. The buyer’s agent submits the offer to the listing agent, notating on the Residential Agreement to Buy and Sell who the agreement was given to and how it was delivered. As a best practice, buyer’s agent should call the listing agent to let them know an offer has been submitted.

Explain a best practice is to call the other agent and let them know an offer has been submitted.

ABC Realty Listing Firm Jane Doe 000888888 Seller's Designated Agent Name & License Number ABC Realty, LLC 000123456 Brokerage Firm or Broker Name & License Number 504-555-1234 504-555-1111 Phone Number Office Fax jd@abcreealty.com Email Address	<input type="checkbox"/> Dual Agent	XYZ Real Estate Group Selling Firm Bob Smith 000777777 Buyer's Designated Agent Name & License Number XYZ Real Estate Group 000654321 Brokerage Firm or Broker Name & License Number 504-123-4567 504-987-6543 Phone Number Office Fax bob@XYZregroup.com Email Address
Monday, January 1, 2018 1:30 PM		
Delivered by Designated Agent to Delivered by email		
Comments		
Received by Designated Agent Day Date Time AM/PM		

LOUISIANA RESIDENTIAL AGREEMENT TO BUY OR SELL

Instructor Notes

Next, the listing agent acknowledges receipt of the offer – annotating in the appropriate place on Residential Agreement to Buy and Sell. Again, a best practice is to send a message (text, email, phone call) to cooperating agent upon receipt.

Slide 56

ABC Realty		XYZ Real Estate Group	
Listing Firm		Selling Firm	
Jane Doe	000888888	Bob Smith	000777777
Seller's Designated Agent Name & License Number		Buyer's Designated Agent Name & License Number	
ABC Realty, LLC	000123456	XYZ Real Estate Group	000654321
Brokerage Firm or Broker Name & License Number		Brokerage Firm or Broker Name & License Number	
504-555-1234	504-555-1111	504-123-4567	504-987-6543
Phone Number	Office	Fax	
jd@abcrealty.com		bob@XYZregroup.com	
Email Address		Email Address	
Jane Doe	Monday, January 1, 2018	1:30	PM
Delivered by Designated Agent to	Day	Date	Time AM/PM
Delivered by email			
Comments			
Jane Doe	Monday, January 1, 2018	2:05	PM
Received by Designated Agent	Day	Date	Time AM/PM

1 ~~LOUISIANA RESIDENTIAL AGREEMENT TO BUY OR SELL~~

2

Instructor Notes

Slide 57

The listing agent will then present the offer to the seller and annotate (line 392) the offer was presented.

372			
373	EXPIRATION OF OFFER:		
374	This offer is binding and irrevocable until <u>January 2</u> , 20 <u>18</u> at <u>5:00</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM <input type="checkbox"/> MIDNIGHT <input type="checkbox"/> NOON.		
375	The Acceptance of this offer must be communicated to the offering party by the deadline stated on line 374 to be		
376	binding and effective.		
377			
378	X  <u>Jan 1, 2018 11:30 am</u>	X _____	
379	<input checked="" type="checkbox"/> Buyer's / <input type="checkbox"/> Seller's Signature Date/Time <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Buyer's / <input type="checkbox"/> Seller's Signature Date/Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
380	<u>Billy Buyer</u>	_____	
381	Print Buyer's/Seller's Full Name (First, Middle, Last)	Print Buyer's/Seller's Full Name (First, Middle, Last)	
382	<u>12345 Magnolia Blvd</u>	_____	
383	Street Address	Street Address	
384	<u>Metairie, LA 70011</u>	_____	
385	City, State, Zip	City, State, Zip	
386	_____	_____	
387	Telephone Number.Cell	Telephone Number.Cell	
388	_____	_____	
389	Telephone Number.Home Telephone Number.Work	Telephone Number.Home Telephone Number.Work	
390	_____	_____	
391	E-Mail Address	E-Mail Address	
392	<u>Jane Doe</u>	<u>Tuesday, January 2, 2018 9:30 am</u>	
393	This offer was presented to the <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Buyer by _____	Day/ Date/ Time <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> MIDNIGHT <input type="checkbox"/> NOON	
394			
395			
396	This offer is: <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected (without counter) <input type="checkbox"/> Countered (See Attached Counter) by:		
397			

Offer Acceptance, Rejection and Counter

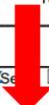
The Seller has the option of accepting, rejecting or countering the offer. In all cases, the licensee is obligated to annotate (line 412) that the offer was presented.

Rejection

In the following example, the seller has rejected the offer. According the Louisiana Real Estate Rules and Regulations, the seller is to sign the rejected offer. If the seller refuses the agent is to annotate that the seller rejected the offer.

Best Practice: The refusal to sign the rejection can be annotated on line 412 (as seen below) or the agent may notate the rejection by hand in the margin.

371 agreements not incorporated herein in writing are void and of no force and effect.
372
373 **EXPIRATION OF OFFER:**
374 This offer is binding and irrevocable until January 2, 20 18 at 5:00 AM PM MIDNIGHT NOON.
375 The Acceptance of this offer must be communicated to the offering party by the deadline stated on line 374 to be
376 binding and effective.
377
378 X [Signature] Jan 1, 2018 11:30 am X
379 Buyer's / Seller's Signature Date/Time AM PM Buyer's / Seller's Signature Date/Time AM PM
380 Billy Buyer Print Buyer's/Seller's Full Name (First, Middle, Last)
381 12345 Magnolia Blvd Street Address
382 Metairie, LA 70011 City, State, Zip
383 Telephone Number.Cell Telephone Number.Home Telephone Number.Work
384 E-Mail Address
385 Jane Doe Tuesday, January 2, 2018 9:30 am
386 This offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON
387
388 This offer is: Accepted Rejected (without counter) Countered (See Attached Counter) by:
389
390 X [Signature] Date/Time AM PM X
391 Buyer's / Seller's Signature Date/Time AM PM Buyer's / Seller's Signature Date/Time AM PM
392 Print Buyer's/Seller's Full Name (First, Middle, Last)
393 Street Address
394 City, State, Zip
395 Telephone Number.Cell Telephone Number.Home Telephone Number.Work
396 E-Mail Address
397 Bob Smith (Seller refuses to sign rejection) Tuesday, 1/2/2018 12:00
398 This counter offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON
399
400
401
402
403
404
405
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412



Counter offer

The following is the proper annotation for a counter offer. In addition to this form, an additional Counter offer addendum will be attached.

371 agreements not incorporated herein in writing are void and of no force and effect.
372
373 **EXPIRATION OF OFFER:**
374 This offer is binding and irrevocable until January 2, 20 18 at 5:00 AM PM MIDNIGHT NOON.
375 The Acceptance of this offer must be communicated to the offering party by the deadline stated on line 374 to be
376 binding and effective.
377
378 X [Signature] Jan 1, 2018 11:30 am X
379 Buyer's / Seller's Signature Date/Time AM PM Buyer's / Seller's Signature Date/Time AM PM
380 Billy Buyer Billy Buyer
381 Print Buyer's/Seller's Full Name (First, Middle, Last) Print Buyer's/Seller's Full Name (First, Middle, Last)
382 12345 Magnolia Blvd
383 Street Address Street Address
384 Metairie, LA 70011
385 City, State, Zip City, State, Zip
386 Telephone Number.Cell Telephone Number.Cell
387 Telephone Number.Home Telephone Number.Work Telephone Number.Home Telephone Number.Work
388
389 E-Mail Address E-Mail Address
391 Jane Doe Tuesday, January 2, 2018 9:30 am
392 This offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON
393
394
395 This offer is: Accepted Rejected (without counter) Countered (See Attached Counter) by:
396
397 X [Signature] Jan 2, 2018 12:15 X [Signature] 1/2/2018 12:15
398 Buyer's / Seller's Signature Date/Time AM PM Buyer's / Seller's Signature Date/Time AM PM
399 Sam Seller Sam Seller
400 Print Buyer's/Seller's Full Name (First, Middle, Last) Print Buyer's/Seller's Full Name (First, Middle, Last)
401 9876 Sunshine Way 9876 Sunshine Way
402 Street Address Street Address
403 Metairie, LA 70011 Metairie, LA 70011
404 City, State, Zip City, State, Zip
405 Telephone Number.Cell Telephone Number.Cell
406 Telephone Number.Home Telephone Number.Work Telephone Number.Home Telephone Number.Work
407
408 E-Mail Address E-Mail Address
409 Bob Smith Tuesday, 1/2/2018 12:00
410 This counter offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON
411
412

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Slide 62

I am the Listing Agent. My Sellers are currently under contract with Buyer A. Over the weekend, another Agent submitted an offer from Buyer B. Buyer B's offer is a cash offer (Buyer A's offer is a financed offer) and Buyer B's offer is higher than the current contract with Buyer A.

Since the Sellers are already under contract with Buyer A, should I just discard Buyer B's offer?

Analysis

This sounds like a "back-up offer" scenario.

Louisiana Revised Statutes 9:3893 governs the duties of real estate agents representing clients. According to Louisiana Revised Statutes 9:3893(A) A licensee representing a client shall:

- (1) Perform the terms of the brokerage agreement between a broker and the client.
- (2) Promote the best interests of the client by:
 - (a) Seeking a transaction at the price and terms stated in the brokerage agreement or at a price and upon terms otherwise acceptable to the client.
 - (b) Timely presenting all offers to and from the client.
 - (c) Timely accounting for all money and property received in which the client has, may have, or should have had an interest.
- (3) Exercise reasonable skill and care in the performance of brokerage services.

Slide 63

The relevant portion of the above is found in Section (A)(2)(b).

A strict reading of Section (A)(2)(b) of the statute indicates you must submit Buyer B's offer to your Sellers. In addition, Chapter 39, Subsection 3901.A states: "All written offers and counter offers for the purchase of real estate shall be presented to all buyers and/or sellers for their consideration and decision immediately, without delay."

Slide 634

You are required to submit the offer.

However, since your Sellers are currently under contract with Buyer A, it would not be wise for your Sellers to "accept" Buyer B's offer. If Sellers accept Buyer B's offer, they run the risk of being under contract to sell the same house to two, different Buyers at the same time – not a very good idea!

Instructor Notes

(As a side note, if there is some qualifying language in Buyer B's offer confirming Buyer B's offer is not effective unless and until the contract with Buyer A is formally canceled by Buyer A, then "maybe" your Seller could accept this offer. But even with this language, I still hesitate to mention it as an option for fear of the consequences that might arise from Offers that don't get the language correct!).

Slide 65

Instead, it might be wise for you to request Buyer B structure his offer to remain open until the contract with Buyer A is either closed or canceled. In this option, Sellers will not sign Buyer B's "offer."

In order to present an offer that remains "open," Buyer B could either:

1. Structure his/her offer with a long time-frame in which the offer will remain "open" (i.e. several weeks); or
2. He/she could choose not to put a time-frame on the offer and make it a "revocable at any time" offer.

Option #2 allows the Seller more flexibility to rescind the offer at any time prior to your Sellers accepting the offer in case Sellers locate another house while they wait on whether the contract with Buyer A will close or be canceled. So, be prepared for Buyer B to choose Option #2 above.

Instructor Notes

You may want to use and refer to the LREC Advertising Guidelines Checklist when covering this section – It can be found here:

<https://www.lrec.state.la.us/files/Adv%20Checklist.pdf>

Section Six – Advertising Law and Rules

Sally Salesperson is beginning a second career in real estate. She was previously a marketing executive for a large firm and knows a thing or two about branding. Being excited about her new career, she embarks on a full-scale media campaign to introduce herself to the public. She carefully constructs a digital media campaign by creating a custom logo and catch phrase – Sally Sells - and launches her first social media ad:



Is Sally's ad in compliance with the LREC advertising guidelines?

Because it is a social media post, are there any special rules?

Instructor Notes**Analysis**

Slide 68

The first issue is Sally does not have the broker/company name and phone number in the ad. It does not matter that the ad is on social media. According to Chapter 25. 2501(F). In all advertising, the salesperson or associate broker must include the name and telephone number of the sponsoring broker. The broker's name and telephone number must be conspicuous, discernible and easily identifiable by the public.

Social Media Guidelines

Slide 69

The rules regarding advertisements on websites and emails have not changed. Rule and Regulation Chapter 25. 2515 in that the ads must contain certain information.

Required information for brokers:

- the broker 's name or trade name as registered with the commission
- the city and state of the broker 's main office or branch office.
- the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

Required information for associate brokers and salespersons

- the associate broker or salesperson's name
- the broker or trade name listed on the license of that associate broker or salesperson
- the city and state of the broker 's main office or branch office.
- the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license

Slide 70

The larger question is "Does this have to be on ALL of my Facebook posts?"

The short answer is no. If you are posting on your Facebook wall – either personal or business – the necessary information only needs to be in the "Info" or "About" section of your profile page.

However, if the licensee is posting the advertisement within a Facebook Group or another page – that is not on your personal or business page – the required information would need to be within the ad. The LREC considers posts outside of your own Facebook wall an advertisement.

Jeremias “J-Man” Maniero is a real estate licensee who has a hobby of doing endurance competitions on the weekend – Warrior Dash, Crossfit, etc. He has become a local celebrity racing under the “J-Man” brand and wants to extend that into his real estate business. He and his wife are both licensed and they want to bring on two more agents to create “J-Mann Team Real Estate.” He wants to promote his J-Man brand in his real estate business.

What are the minimum requirements he needs in order to set-up, maintain and promote his team?



Analysis

Again, Jeremias does not have the broker/company name and phone number in the ad. It does not matter that the ad is on social media. According to *Chapter 25. 2501(F)*. In all advertising, the salesperson or associate broker must include the name and telephone number of the sponsoring broker. The broker's name and telephone number must be conspicuous, discernible and easily identifiable by the public.

Instructor Notes

Slide 73

Jeremias should have written permission of his broker to advertise his team name.

§1909. Team Advertising

A. A team or group name shall not be used in advertising without the written approval of the sponsoring broker.

B. The term "team" or "group" may be used to advertise real estate license activities provided that:

1. the use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person or entity is lawfully doing business;
2. the team or group is composed of more than one licensee;
3. the advertising complies with all other applicable provisions of this Chapter and LAC 46:LXVII.Chapter 25 of these rules and regulations.

Slides 74-75

In addition, Jeremias would be guilty of violating Rule and Regulation §1905. His team name "J-Mann Team Real Estate" is not allowed to be used. The term "Real Estate" at the end of his team name may lead the public to believe he is a real estate brokerage and not a team.

§1905 Team or Group Names

A. Team or group names shall not contain terms that could lead the public to believe that the team or group is offering real estate brokerage services independent of the sponsoring broker. These terms shall include, but are not limited to:

1. real estate;
2. brokerage or real estate brokerage;
3. realty;
4. company.

Instructor Notes

Slide 76-77

Are “coming soon” advertisements illegal?

While some licensees believe using the phrase “coming soon” in advertisement to be unethical or illegal, it is not a violation of the Commission’s laws and rules.

In general, licensees would be in compliance if they had written authority to advertise the property as such and they were not misrepresenting anything. It has a lot to do with intent of the advertising, often times the owner needs to make some sort of correction to the property before truly placing on the market for sale.

Licensees wishing to use the phrase “coming soon” in advertising and marketing material must adhere to the following:

Slide 78

First, the broker or brokerage advertising a property in this manner must have written authority from all property owners. Salespersons and associate brokers may be given authority by their sponsoring broker to advertise in this manner; however, this advertising must be done under the direct supervision of and approved by the broker. These advertisements must also comply with Chapter 25 of the Commission’s rules and regulations.

Do you have written authority to advertise the property and is your broker aware of your “coming soon” advertisement or the “pocket listing” you have?

Second, the licensee placing the advertisement or not placing the property in the MLS needs to properly inform the seller of this. Licensees who fail to properly inform their sellers may be charged for making false representations to their respective party.

Is your seller fully aware of how you intend to market their property?

Last, as a licensee you must present any and all written offers to the sellers for their consideration immediately and without delay. Licensees often believe that because the property is not listed in the MLS they are not obligated to forward written offers to their sellers; this is absolutely false.

The seller has the right to receive and review any offer on their property.

Slide 79

While this is not illegal, local REALTOR Board rules may differ or have restrictions on these advertisements.

Instructor Notes

Section Seven – Giving Tax and Legal Advice

Slide 80-81

I represent the Buyer in a transaction. We are past the due diligence deadline and my client wants to “back out of the contract.” My client wants to know whether he can back out and whether the Seller can come after him for breach of contract.

The contract is fairly clear that my client cannot back out of the contract since we are passed the due diligence deadline. Should I just tell him that he cannot back out of the contract?

Analysis

Slide 82

The first question that needs to be addressed is whether your client is asking you to “practice law”?

According to Louisiana law, practicing law without a license can be a serious offense that carries with it possible civil and criminal penalties.

The statutes dealing with the “unauthorized practice of law,” can be found at Louisiana Revised Statutes 37:211, et. seq.

According to Louisiana Revised Statutes 37:213(A) no natural person, who has not first been duly and regularly licensed and admitted to practice law by the supreme court of Louisiana shall:

- (1) Practice law.
- (2) Furnish attorneys or counsel or an attorney and counsel to render legal services.
- (3) Hold himself or itself out to the public as being entitled to practice law.
- (4) Render or furnish legal services or advice.
- (5) Assume to be an attorney at law or counselor at law.

Slide 83-84

Instructor Notes

(6) Assume, use, or advertise the title of lawyer, attorney, counselor, advocate or equivalent terms in any language, or any phrase containing any of these titles in such manner as to convey the impression that he is a practitioner of law.

(7) In any manner advertise that he, either alone or together with any other person, has, owns, conducts, or maintains an office of any kind for the practice of law.

But how do we define the “practice of law”?

The definition of “the practice of law” is found in Louisiana Revised Statutes 37:212. According to Louisiana Revised Statutes 37:212(A) the practice of law means and includes:

(1) In a representative capacity, the appearance as an advocate, or the drawing of papers, pleadings or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state; or

(2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect;

(a) The advising or counseling of another as to secular law;

(b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights;

(c) The doing of any act, in behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right; or

(d) Certifying or giving opinions, or rendering a title opinion as a basis of any title insurance report or title insurance policy as provided in R.S. 22:512(17), as it relates to title to immovable property or any interest therein or as to the rank or priority or validity of a lien, privilege or mortgage as well as the preparation of acts of sale, mortgages, credit sales or any acts or other documents passing titles to or encumbering immovable property.

For our purposes in answering your specific question, we need to focus on Louisiana Revised Statutes 37:212(A)(2)(a).

Essentially, your client is asking you to advise or counsel him on the effects of secular Louisiana law regarding contracts. Clearly, this would be considered an unauthorized practice of law.

Slide 85-86

Slide 87

Instructor Notes

Instead of advising your client whether he can back out of the contract, it would be wise to recommend your client seek legal advice from a licensed attorney in the State of Louisiana.

Instructor Notes

Slide 88

I represent the Seller in a transaction. We have received an offer on the Seller's home and the Seller's want to know if they should accept the offer.

Are the Sellers asking me to provide a legal opinion which would be considered the "practice of law"?

Slide 89

Analysis

We're back to what acts are considered "unauthorized practice of law."

At the outset, let me mention the following: I've always taken the position that a real estate agent should suggest a client accept or reject any particular offer in a vacuum.

Instead, the real estate agent should pull all the recent sales of comparable homes, provide those sales to the Seller and advise the Seller whether the offer falls in line with the recent sales of comparable homes. If the home has unique features which cause it to "fall outside the norm," this should be pointed out to the Seller and taken into consideration. Ultimately, the Seller must decide whether to accept or reject any particular offer.

Slide 90

Phrases like, "I think this is a solid offer based on what I've shown you" are clearly acceptable.

Phrases like, "You'd be stupid not to take this offer" should be guarded against.

Assuming you are following the above, the next question that needs to be addressed is: whether guiding a Seller regarding a home's value would be considered an "unauthorized practice of law."

Applying Louisiana Revised Statutes 37:212 and 37:213, noted above, lets go through the analysis:

You do not fall under Louisiana Revised Statute 37:212(A)(1) because you are not drawing any papers, pleadings, or documents before any court of record in this state; or

You also do not fall under Louisiana Revised Statute 37:212(A)(2) because:

Instructor Notes

1. you are not advising or counseling the Seller as to secular law;
2. you are not drawing a paper, document, or instrument affecting or relating to secular rights;
3. you are not doing any act to prevent or redress a wrong;
4. you are not doing any act to obtain or secure the enforcement or establishment of a right; and
5. you are not:
 - a. certifying or giving opinions
 - b. rendering a title opinion as a basis of any title insurance policy
 - c. you are not rendering an opinion as to the rank or priority or validity of a lien, privilege or mortgage
 - d. you are not preparing an act of sale, mortgage, credit sale or any act or other document passing titles to or encumbering immovable property.

Slide 91

Accordingly, guiding a Seller regarding a home's value would not be considered an "unauthorized practice of law."

Shortly after the death of his grandfather, Shawn received word that he inherited a vacant warehouse previously owned by his grandfather. As an engineer, Shawn had no use for the warehouse. He decided it would be best to sell the building and put the money toward opening his own engineering firm. Shawn contacted Bob, a licensee who specialized in commercial real estate, and set up a listing appointment. Upon further inspection of the warehouse, Bob suggested a few minor improvements would increase the marketability and potential increased sales price.

**Unsure of how to proceed, Shawn began asking Bob questions regarding the sale of the property. Are these improvements tax deductible expenses? Is this sale subject to capital gains tax? My buddy suggested I 1031 this. Do you think that is wise?
How should Bob answer these questions?**

Analysis

Agents should not engage in “the unauthorized practice of law.” What exactly that means has shifted over the years, but generally licensees can do things like fill in the blanks of pre-printed sales agreements once approved by an attorney. They cannot, however, draft legal documents or give general legal advice, and tax questions fall in this category as well.

Best Practices

The general best practice is to refer your client to their pre-existing lawyer or tax professional. If they don’t have one, you can suggest a few that you’ve worked with before. Explain to clients that while you have worked on many deals for other clients and have an understanding of some tax implications, a tax professional will be able to answer their questions more directly. And the tax professional may understand the family’s overall financial situation better than you can.

Deferring specialized or legal questions in the home buying/selling process to an individual licensed in those specifics, and creating a written record that you notified your client to seek independent guidance will greatly reduce your liability.

Section Eight – Confidentiality

Slide 95-96

I am the listing agent for property in Denham Springs. During the August 2016 flood, my sellers' house only flooded in one room (barely) and didn't flood in any other part of the home. My sellers sent me an email requesting that I not disclose this information because the house "didn't flood like my neighbors did or like the rest of the parish."

They insisted the home doesn't meet their definition of flooding and disclosure of minimal water intrusion as "flooding" might hinder their ability to sell their house.

Is a little water inside of a home considered "confidential information" that cannot be disclosed?

Analysis

As a result of the floods that occurred throughout Denham Springs and Lafayette (and other parts of Louisiana) in August 2016, this scenario is going to become more and more prevalent.

In order to answer the question, we must examine two areas dealing with water intrusion.

The first area that needs to be addressed is: whether there are any Louisiana Statutes that dictate whether 2-3 inches of water can be deemed confidential when the sellers request that it remain confidential.

Whether an item in a real estate transaction is deemed confidential is governed by Louisiana Revised Statutes 9:3891.

According to Louisiana Revised Statutes 9:3891(6)(a) "Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:

Instructor Notes

- (i) The client permits the disclosure by word or conduct.
- (ii) The disclosure is required by law or would reveal serious defect.
- (iii) The information becomes public from a source other than the licensee.

At first glance, it would appear Louisiana Statutes dictate that since your clients specifically requested you not disclose 2-3 inches of water, this information is deemed confidential and shall not be disclosed by you.

However, please see Louisiana Revised Statutes 9:3891(6)(b) where the following is stated:

(b) Confidential information **shall not** be considered to include material information about the physical condition of the property.

Slide 97

Said another way, according to Louisiana Revised Statutes 9:3891(6)(b), if the item being requested to remain confidential might be considered material information about the physical condition of the property, then that item is not considered confidential information, and must be disclosed.

I think most everyone would agree that a house taking on any amount of water would be considered, at the very least, "material information about the physical condition of the property" that needs to be disclosed.

Now that we know material information about the physical condition of the property must be disclosed, we now turn our attention to the next area: are there any forms promulgated by the Louisiana Real Estate Commission that support the requirement that a house taking on 2-3 inches of water needs to be disclosed.

Slide 98

Please see Section One (1), Question #5, of the Property Disclosure Document for Residential Real Estate, wherein the Louisiana Real Estate Commission phrases the question about "flooding" as follows:

"(5) Has **any** flooding, **water intrusion**, accumulation, or drainage problem been experienced with respect to the land? If yes, indicate the nature and frequency of the defect at the end of this section."

Through practice and experience, the Louisiana Real Estate Commission has come to know that the definition of "flooding" varies from person to person. Your seller might believe a house needs to take on 1 Foot or more of water before it is considered to have "flooded." While your definition of "flooding" might be: if the house took on even an inch of water, then it is considered to have "flooded."

In this section you may want to pull out the PDD and show students on the actual form.

Instructor Notes

Slide 99-100

By using the phrase “any...water intrusion,” the Louisiana Real Estate Commission cut through the various definitions of “flooding.” It is clear the Louisiana Real Estate Commission requires that all amounts of water taken on by a specific property be disclosed.

One additional point about Section One (1), Question #5 of the Property Disclosure Document for Residential Real Estate: please note the question asks whether any water intrusion occurred with respect to the “land”. It doesn’t say “house.” It says “land.”

Thus, not only are sellers required to disclose the 2-3 inches of water that their house took on, they are also required to disclose any amount of water that any portion of their property took on even if the water never reached the house!

Instructor Notes

Slide 101

These same sellers are in a financial bind and must sell their house. That's part of the reason they don't want me to disclose the water intrusion.

In their email, they also asked that I keep confidential the fact that they are in a financial bind and "need" to sell this house.

Is the fact that the sellers are in a financial bind and must sell their house considered "confidential information" that cannot be disclosed?

Slide 102

Analysis

To answer this question, let's go back to Louisiana Revised Statutes 9:3891.

According to Louisiana Revised Statutes 9:3891(6)(a) "Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:

- (i) The client permits the disclosure by word or conduct.
 - (ii) The disclosure is required by law or would reveal serious defect.
 - (iii) The information becomes public from a source other than the licensee.
- (b) Confidential information shall not be considered to include material information about the physical condition of the property.

Now let's analyze the above statute in relation to your client's request to see if your client's financial situation and their "need" to sell this house must remain confidential:

Slide 103

1. Did your clients send you a written request to not disclose their poor financial situation and their "need" to sell the house?

Yes

Instructor Notes

Slide 104

2. Could disclosure of your client's poor financial situation and "need" to sell the house materially harm your client's position?

Yes. When sharks smell blood in the water they attack. So, too, when Buyers sense the Sellers have a weak negotiating position, Buyers will try everything they can to get the lowest price possible on property.

Slide 105

3. Has your client permitted the disclosure of their poor financial situation and "need" to sell the house by word or conduct?

So far, it doesn't look like they have.

Slide 106

4. Is the disclosure of your client's poor financial situation and "need" to sell the house required by law?

Can't think of any laws that require this!

Slide 107

5. Would the disclosure of your client's poor financial situation and "need" to sell the house reveal a serious defect in the house?

Pretty sure client's financial situation and the condition of the house are two, totally unrelated items!

Slide 108

6. Has your client's poor financial situation and "need" to sell the house become public from a source other than you?

So far, it looks like nobody else but you and your clients are in possession of the information. So, no.

Slide 109

7. Could your client's poor financial situation and "need" to sell the house be considered material information about the physical condition of the property?

Similar to the answer to question #5, it's pretty safe to say that your client's financial situation would not reveal material information about the physical condition of the property.

Instructor Notes

Section 9 – Don't Measure the House, but Check the Measurements

Slide 110

Slide 111

I am at a listing appointment and my Sellers aren't sure of the square footage of the house. I recently took a class on how to measure the square footage of a house. Should I go ahead and measure the house and put that measurement in MLS?

Slide 112

Analysis

This question essentially asks: does a real estate agent have a duty to measure the square footage of a house?

Generally, duties of Real Estate Agents can be found/determined as follows:

Slide 113

1. What does Louisiana Revised Statutes 9:3893 say are the duties of a real estate agent?

In summary, Louisiana Revised Statute 9:3893 does not mandate a specific duty of a real estate agent to measure the square footage of the house.

Slide 114

2. What duties can be analogically drawn from Louisiana Revised Statutes 37:1455?

In summary, there doesn't appear to be any item in Louisiana Revised Statute 37:1455 that could imply a specific duty of a real estate agent to measure the square footage of the house.

Slide 115

3. Are there any Louisiana Court Cases that outline specific duties of a real estate agent?

Next, we turn to Louisiana cases where the Court addresses whether Real Estate Agents have a duty to measure the square footage of the house.

At the outset, it is important to note there aren't many (if any) Louisiana cases where the Court addresses whether Real Estate Agents have a duty to measure the square footage of the house. The one case that comes close (but not directly on point) is *Tres' Chic in a Week, LLC, vs. The Home Realty Store, et al.*, 993 So.2d 228 (La. App. 1 Cir. 7/17/08).

Instructor Notes

In this case, the Buyer (i.e. Tres' Chic in a Week, LLC) bought, remodeled and resold houses. The Buyer's real estate agent showed them an MLS listing for a home indicating the home had 2,132 square feet of living area. Buyer purchased the home for \$148,000 on September 1, 2004 (i.e. \$69.42/sq ft.). After remodeling, Buyer intended to sell the home for approximately \$85 per square foot or \$181,220.

After the renovations were complete and while Buyer was showing the home, the Buyer's real estate agent learned that a previous MLS listing in 1999 by Buyer's real estate broker indicated the home had 1,846 square feet of living area (not 2,132 sq ft). Several measurements were conducted and the home's actual square footage was determined to be 1,861, resulting in a purchase cost to Buyer of \$79.52 per square foot.

Buyer sold the home for \$155,000 (i.e. approximately \$83.29 per square foot).

Buyer filed a lawsuit against their real estate agent seeking damages for lost profits. Buyer alleged their real estate agent had knowledge that the actual square footage was 1,861, as opposed to 2,132, based on a prior MSL listing of the home and failure to disclose this was negligent misrepresentation.

The Court of Appeal found no evidence that Buyer's real estate agent knew the home only had 1,861 square feet of living area as opposed to 2,132. Therefore, the Court of Appeals concluded that Buyer failed to show their real estate agent knowingly made any false representations concerning the square footage of living area of this home as contemplated by LSA-R.S. 37:1455(A)(15).

The Court of Appeals commented that Buyer might have been able to successfully recover on the theory of negligent misrepresentation, but Buyer failed to offer any evidence to establish whether the customs and practices of real estate brokers in general required that the Buyer's agent research the MLS history for the property in question. According to the Court, if the customs and practices of real estate brokers in general impose such a duty, it was clearly breached by the Buyer's real estate agent in this case, and the Buyer's real estate agent might be liable to Buyer under LSA-C.C. art. 2315 for negligent misrepresentation.

In Summary, there don't appear to be any Louisiana Court Cases that mandate a specific duty of a real estate agent to measure the square footage of a home.

4. What duties can be analogically drawn from the customs and practices of real estate agents?

So, the final inquiry is whether there are any customs and/or practices which mandate a real estate agent has a specific duty to measure the square footage of a home.

This will be determined on a case by case basis and, most likely, will depend upon the geographical area in which the real estate agent practices. In other words, whether the customs and practices of real estate agents indicate that a real estate agent has a duty to measure the square footage of a house might differ between cities.

In addressing this final inquiry, it might be pertinent to examine how the Louisiana Real Estate Commission defines Real Estate Activity. Although the definition of Real Estate Activity does not mandate the customs and practices of real estate agents, it helps us determine what activities the Louisiana Real Estate Commission might believe should be customs and practices of real estate agents.

According to Louisiana Revised Statutes 37:1431(24) "Real estate activity" means any activity relating to any portion of a real estate transaction performed for another by any person, partnership, limited liability company, association, or corporation, foreign or domestic, whether pursuant to a power of attorney or otherwise, who for a fee, commission, or other valuable consideration or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

- (a) Sells, exchanges, purchases, manages, rents, or leases or negotiates the sale, exchange, purchase, rental, or leasing of real estate.
- (b) Offers or attempts or agrees to negotiate the sale, exchange, purchase, management, rental, or leasing of real estate.
- (c) Lists or offers or attempts or agrees to list for sale or lease any real estate or the improvement thereon.
- (d) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate or the improvements thereon.

Instructor Notes

(e) Advertises or holds himself, itself, or themselves out as engaged in the business of selling, exchanging, purchasing, managing, renting, or leasing real estate.

(f) Assists or directs in the procuring of prospects or the negotiation or closing of any transaction, other than mortgage financing, which results or is calculated to result in the sale, exchange, managing, leasing, or renting of any real estate, other than a provider of information, ideas, and materials to guide homeowners in the sale of their own property.

(g) Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.

(h)(i) Sells or attempts to sell or offers or attempts to negotiate the sale of any business whose assets include real estate or leases of real estate.

(ii) Lists or offers or attempts or agrees to list for sale any business whose assets include real estate or leases of real estate.

Measurement of the square footage of a house is not included in the definition of "Real Estate Activity." Therefore, it could be said that the Louisiana Real Estate Commission does not contemplate that measurement of the square footage of a house should be a duty of a real estate agent, either directly or by custom or practice.

Slide 116

Summary

Slide 117

After reviewing all of the above, here are several quick thoughts:

1. Louisiana statutes, Louisiana cases, and the customs and practices of real estate agents do not appear to mandate a specific duty of a real estate agent to measure the square footage of a house;
2. If a real estate agent takes it upon herself/himself to measure the square footage of a house, that real estate agent is potentially adding more liability to himself/herself than is required by law;

Instructor Notes

3. It is probably a good idea for real estate agents to do a search of prior MLS listings to determine if there are discrepancies in square footage measurements for the house to be listed;
 - a. If an agent conducts this search, the agent should document in her/his files the time period searched;
 - b. If an agent discovers any discrepancies in prior MLS listings, the real estate agent should provide, in writing, all information to the client and recommend they have the property surveyed and/or appraised to determine an accurate square footage measurement.

4. If a client (Buyer or Seller) is unsure of the square footage of a house, the real estate agent should recommend the client have the property surveyed and/or appraised to determine an accurate square footage measurement.
 - a. i.e. shift the liability away from the real estate agent and onto other trained professionals.

Instructor Notes

Section 10 – Unprofessional and Unethical Conduct

Slide 118

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A common thread of concern has been professionalism within the real estate industry. Professionalism means respect. Treating clients, customers and other agents with courtesy and respect shows a commitment to your craft and your industry.

Unprofessional conduct impacts the perception of the industry as a whole. This section will identify what unprofessional and unethical conduct is. It is designed to raise awareness of professional courtesies we can employ within our business and industry.

Slide 120

Not Returning Phone Calls and E-mails

Communication is key to any real estate transaction. Not returning phone calls and e-mails in a timely fashion shows a lack of respect. Not only does it negatively affect the relationship with your clients, but lack of communication with the cooperating agent hinders their ability to communicate with their client.

Communicate with all parties in a timely fashion. When submitting an offer, be courteous and let the other agent that an offer has been submitted. Also, when receiving an offer, a simple text message or e-mail to the cooperating agent letting them know it has been received can go a long way.

Slide 121

Not Having All Paperwork with an Offer

When presenting an offer, agents should have all documents together in so a complete offer can be submitted. Incomplete or missing paperwork can cause numerous delays and inconsistencies when the offer is presented. Present the offer, the signed Property Condition Disclosure, the buyer's mortgage pre-approval, a signed lead paint form if applicable, the buyers earnest money deposit and any other supporting documentation.

Instructor Notes

Slide 122

Buyer's agent does not show homes with lower-than-typical cooperating compensation offered by listing broker.

Your buyer has entrusted you to show them all available houses that meet their criteria. If a house listed that meets a buyer's criteria, you have an obligation to show the property to the buyer. It is a violation of fiduciary trust to not show a property because of the cooperating commission is lower than you would expect.

Slide 123

Buyer's agent does not show clients homes listed by certain brokerage companies based on reputation or past experiences.

Same rules apply here. You owe your buyer a fiduciary responsibility to show homes that meet their criteria. Failure to do so because you do not like the other agent or company would be a violation of that trust.

Slide 124

Listing agent accepts listing with an unrealistic asking price for the marketing opportunity.

Listing an overpriced home with the sole purpose of prospecting for new clients is exceptionally unethical and borderline illegal. The process of selling a home can be an emotional roller coaster, one that many people are not adequately prepared for. This can create false hope for the homeowner who may not be knowledgeable about the market. Your priority should be to sell the home first. Do you want to be known as the agent who cannot sell a house?

Slide 125

Taking pictures and recording videos of a property you have not listed.

While Louisiana Real Estate Law and Rules and Regulations does not specifically address this, there may be ethical implications with a local REALTOR Association. In general, videoing any home without the permission of the owner is considered bad business practice.

While there are circumstances where it may be necessary – a client is out of town and unable to view the property – permission from the seller should still be obtained.

Instructor Notes

Slide 126

Section Eleven – “NK” Instead of “No” on the Property Disclosure Form

Slide 127

My sellers are trying to fill out the property disclosure form, but are unsure how to answer some of the questions.

For the questions about which the sellers are unsure, should Sellers check “No” or “NK” (i.e. “No Knowledge”)?

The LREC will probably address this in the next revision of the PDD.

Analysis

This is a very good question and I’m sure our answer is going to cause a stir with a lot of Real Estate Brokers throughout Louisiana.

For years we’ve told Real Estate Agents that if Sellers are not 1,000,000,....etc.% positive of an answer to one of the questions on the Property Disclosure form, the Seller should check “NK.”

Every time we provided this recommendation in the past, Brokers would let us know that a Property Disclosure form becomes relatively useless if it is littered with “NK” responses.

Slide 128

Well, we now have a Louisiana Supreme Court case entitled *Williams v. Nelson*, 136 So.3d 793 (Louisiana 2014), that creates a pretty significant issue for Sellers who check “No” on the Property Disclosure form instead of “NK”.

Here are the facts:

Slide 129

On April 25, 2012, Plaintiffs/Buyers purchased a residence located in Metairie, Louisiana from The Allan R. & Louise Nelson Revocable Trust and The Allan R. Nelson Marital Trust for \$1.4 million.

On February 24, 2012, the Trusts co-trustees executed a Sellers’ Property Condition Disclosure form wherein they represented the property’s condition.

Slide 130

When selecting from the option to choose “Yes,” “No,” or “NK” to the various questions asked, the Trustees checked the “No” boxes for each inquiry regarding defects in the property (with a few exceptions where they checked “NK”).

Instructor Notes

Based upon the “NK” responses and the pre-sale inspection, the Plaintiffs/Buyers averred they agreed to purchase the property “As Is” and waive their Redhibition rights.

Subsequent to the sale, in October 2012, the Plaintiffs/Buyers filed suit against the Trusts/Sellers alleging the property was found to have numerous and major defects. Plaintiffs/Buyers essentially alleged the following adverse to Sellers:

1. Sellers committed fraud when they checked “No,”;
2. This fraud induced Plaintiffs/Buyers to purchase the property and waive their Redhibition rights; and
3. Due to this alleged fraud, Plaintiffs/Buyers could not be bound to the Redhibition waiver

Slide 131

In other words, Plaintiffs/Buyers alleged they should be able to maintain a lawsuit against Sellers to reduce the sales price and/or rescind the sale due to defects in the property.

The Trusts/Sellers denied any liability and asserted they were never in a position to know of any defects that may have existed in the property.

The Trial Court and Court of Appeals dismissed the Plaintiffs/Buyers lawsuit.

Slide 133

However, the Louisiana Supreme Court overturned the dismissal and remanded the case back to the lower Courts for further proceedings.

Slide 134

According to the Louisiana Supreme Court, Sellers committed two fatal errors:

1. Sellers failed to advise the plaintiffs that they were not in a position to know one way or another whether the property contained defects; and
2. By checking “No” (instead of “NK”), Sellers intentionally misled the plaintiffs into believing that the Sellers were in a position to know the condition of the property and that the property did not contain any defects.

Slide 135

So, what are Real Estate Agents supposed to do with this? At the present time, it might be wise to consider the following:

1. If Sellers are not in a position one way or another to disclose whether the property has any defects, Sellers should disclose this fact to Buyers in writing;
2. If Sellers are not 1,000,000....etc.% sure of an answer to a question on the property disclosure form, Sellers should check “NK.”

Instructor Notes

Slide 136

Errors and Omissions Claims Handling

THE INSURED'S DUTIES IF THERE IS A CLAIM - The Insured shall give written notice by submitting a completed Notice of Claim Form to the Company as soon as possible after the Claim is first made but in no event more than ninety (90) days after the Insured becomes aware of such Claim.

The Insured shall immediately forward to the Company every demand, notice, summons, or other process about any Claim received by the Insured or the Insured's representative.

The Insured shall cooperate with the Company and, at the Company's request, the Insured shall assist the Company in responding to the Claim and making settlements. The Insured shall attend hearings and trials and help in securing and giving evidence at the Company's request.

2018 LREC Mandatory Course

Real Estate Best Practices

Student Guide



Prepared for the Louisiana Real Estate Commission by

Brent P. Lancaster

President, Bob Brooks School

H.L. "Rye" Tuten, III

President, Tuten Title & Escrow

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Student Manual

Course Syllabus

Instructor Qualifications and Background

Brent Lancaster

Brent Lancaster, ABR, GRI, SRS, AHWD, BPOR, CDEI, e-PRO, MRP, PSA combines his love of the business of real estate with his passion for education. He offers a variety of solutions to the challenges that agent's face in today's real estate environment. He believes in delivering tools agents can use immediately to improve the quality and efficiency of their business.

In 2005, he became the broker/owner of his own real estate company, Brent Lancaster and Associates, LLC.

For the last 14 years, Brent has been delivering high quality course content as President/CEO of one of the nation's oldest real estate schools – Bob Brooks School of Real Estate. Since 1971, Bob Brooks School has trained many generations of real estate agents.

Brent lives in Baton Rouge, Louisiana with his wife of 14 years Laura and his two children Leyton (6) and Nate (3).

H.L. “Rye” Tuten, III

Born July 12, 1977, in Orangeburg, South Carolina. In 1999, Mr. Tuten obtained a Bachelor of Arts degree, Cum Laude, from Clemson University. While at Clemson, Mr. Tuten was a member of the Kappa Alpha Order, Fellowship of Christian Athletes, and Phi Alpha Theta Historical Honor Society.

In 2003, Mr. Tuten obtained a Juris Doctor degree from The University of Mississippi School of Law (i.e. “Ole Miss Law School”). While at Ole Miss Law School, Mr. Tuten was the recipient of the Julius Owen Moss Memorial Scholarship and Judge W.N. Ethridge, Jr., Memorial Scholarship

In 2003, Mr. Tuten was admitted to the Louisiana State Bar. Mr. Tuten is a member of the Louisiana State Bar Association, Lafayette Parish Bar Associations, Realtor Association of Acadiana, and Acadiana Mortgage Lenders' Association. Mr. Tuten also serves on the Board of Directors for the Acadian Home Builder's Association. Mr. Tuten is past co-chairman of the Membership Committee for the American Inn of Court and past member of the American Bar Association.

From 2003 until approximately 2011, Mr. Tuten's law practice focused heavily on defense litigation with a primary focus on defense of real estate agents and real estate brokers. During this timeframe, Mr. Tuten was admitted to practice in all Louisiana State Courts and Federal Courts for the Western and Eastern Districts of Louisiana.

Mr. Tuten has been involved with numerous lawsuits involving various real estate transactions and up until 2011 was an approved attorney for Rice Insurance Services Company (RISC provides Louisiana Group Errors & Omissions Insurance for Real Estate Agents and Brokers). Up until 2011, if a Real Estate Agent or Broker in Acadiana were sued, it's likely RISC assigned Mr. Tuten to represent them.

In 2011, Mr. Tuten shifted his practice away from litigation and towards real estate closings by founding Tuten Title & Escrow, LLC, a full service real estate closing company. Since 2011, Mr. Tuten has operated Tuten Title & Escrow, LLC, to provide closing and escrow services for residential and commercial purchases and refinances; title curative work incidental to new purchases and refinances; and title insurance.

Mr. Tuten is an accomplished speaker in the area of risk management for Real Estate Agents and Real Estate Brokers having provided risk management seminars to various Real Estate Agents/Brokers throughout Acadiana. In his presentations, Mr. Tuten draws on his many years of litigation experience to educate Real Estate Agents and Real Estate Brokers.

Mr. Tuten is married to Lainey Huguet Tuten and has four (4) children, H.L. "Harrison" Tuten, IV (age 8), A. Camp Tuten (age 6), Hatten Carolina Tuten (age 4), and English Catherine Tuten (age 1).

Course Description

The course focuses on custom case studies, clearly articulated via PowerPoint and reading material that cover each point presented in the 2018 mandatory outline. The scenario involves licensees who are in violation and will be presented with best practices to avoid such situations.

Course Goal

Real estate licensees are taught many laws and rules that can be difficult to understand. Once agents are faced with real-world scenarios, they can better apply those laws and rules, have a true understanding of them, and better represent his or her client.

Vendor Policies and Regulations:

Prerequisites: There are no educational prerequisites for this course.

Registration: Any attempt to take this course under an assumed identity will forfeit your right to receive a certificate of completion and may result in sanctions by the Louisiana Real Estate Commission.

Attendance: Students attending a live presentation must sign in before the course and sign out after the course; this course is a four (4) hour presentation, and 100% attendance is required to receive credit for completion. Credit shall not be granted for partial attendance. No exceptions!

Tardiness/Absences: Credit shall not be granted for late arrivals, excessive absences, and/or early departures. Students are not allowed to make up missed portions of a course.

Course Participation: Instructors may not, in any venue, answer questions of a personal or legal nature, and students should not interpret any information received from instructors or course content as being legal advice.

Classroom Rules of Conduct: To provide an atmosphere conducive to learning, students must turn off all electronic devices prior to the start of class. Newspapers, books, magazines, or any other reading materials are not permitted during class presentation. Violations may result in loss of continuing education credit.

ADA Compliance: Upon request, reasonable accommodations will be provided to individuals with a documented disability to assure that an equal opportunity to participate in this course is provided. For further information, contact our office at (555) 555-5555.

Vendor Contact Information: (insert your contact information here)

Phone: (555) 555-5555, weekdays between 8 a.m. and 5 p.m. central time.

E-mail: anyschool@yourschool.com

Address: any town USA

Disclaimer

These materials are to be used for informational purposes and should not be construed as specific legal advice, nor are they designed to cover every aspect of a legal situation or every factual circumstance that may arise regarding the subject matter included.

This publication is for reference purposes only and readers are responsible for contacting their own attorneys or other professional advisors for legal or contract advice. The comments provided herein solely represent the opinions of the authors and are not a guarantee of interpretation of the law or contracts by any court or by the Louisiana Real Estate Commission.

Course Learning Objectives

Recordkeeping

- To understand the LREC recordkeeping requirements specifically regarding electronic messages and text messages.

Required Disclosures

- Review the laws regarding advertising property with written permission.
- Go over details of the required disclosures licensees must provide within the real estate transaction.
- Discuss the required disclosures licensees must provide when they have an ownership interest in a property.

Fair Housing

- Gain knowledge of the Federal Fair housing laws as they pertain to service and assistive animals.

Deposits and Commingling

- Review deposit and commingling requirements in sales and property management transactions.
- Understand what licensees are supposed to do with sales escrow deposit checks coming into their possession.

Improperly Prepare, Present or Annotate an Offer

- Understand the preparations, presentation and annotation of offers. Review the specific lines of the Residential Agreement to Buy and Sell.
- Analyze the correct procedure for presentation of backup offers.

Advertising Law and Rules

- Analyze the laws regarding social media advertising and the proper procedure for the one click away rule.
- Discuss the team advertising rules and laws, as well as “coming soon” advertising requirements.

Giving Legal and Tax Advice

- Discuss how agents may be guilty of unauthorized practice of law
- Discover the pitfalls of giving of tax advice

Confidentiality

- Understand the disclosure of material defects and the laws that can affect the sale.
- Discuss the licensee's role regarding what information can (and should) be kept confidential.

Don't Measure the House, but Check the Measurements

- Look at the agent's responsibility and liability in measuring a home.

Unprofessional and Unethical Conduct

- Review various scenarios where agents are conducting unprofessional and unethical practices.
- Describe the pitfalls of failing to show clients homes listed by certain brokerage companies based on reputation or past experiences.
- Understand the ethical implications of clients and/or licensees taking pictures and recording videos of a property a licensee does not have listed.

"NK" Instead of "No" on the Property Disclosure Form

- Understand the difference in "NK" vs. "No" on the Property Condition Disclosure Form. Analyze the current Louisiana Supreme Court case that addresses this issue.

Course Outline

I. Recordkeeping

Case Study – Text Messages

II. Required Disclosures

Case Study – Written Permission to Advertise a property for Sale

Case Study – Agency Disclosure Form

Case Study – New Construction

Case Study – Purchase Agreement

Case Study – Disclosure of Ownership

III. Fair Housing

Case Study – Service and Assistive Animals

IV. Deposits and Commingling

Case Study – Escrow Account Maintenance

Case Study – Property Management

Case Study – Sales Deposit Checks

V. Improperly Prepare, Present or Annotate an Offer

Case Study – Presentation of Offers

Case Study – Back-up Offers

VI. Advertising Law and Rules

Case Study – Advertising on Social Media

Case Study – Team Advertising

Case Study – “Coming Soon” Advertisements

VII. Giving Legal and Tax Advice

Case Study – Are you Practicing Law?

Case Study – Unauthorized Practice of Law

Case Study – Giving Tax Advice

VIII. Confidentiality

Case Study – Material Defects

Case Study – Disclosure of Confidential Information

IX. Don't Measure the House, but Check the Measurements

Case Study – Duty to Measure

X. Unprofessional and Unethical Conduct

Not Returning Phone Calls and Emails

Not Having All Paperwork With An Offer

Buyer's agent does not show homes with lower-than-typical cooperating compensation offered by listing broker.

Buyer's agent does not show clients homes listed by certain brokerage companies based on reputation or past experiences.

Listing agent accepts listing with an unrealistic asking price for the marketing opportunity.

Taking pictures and recording videos of a property you have not listed.

XI. "NK" Instead of "No" on the Property Disclosure Form

Case Study – "NK" Instead of "No" on the Property Disclosure Form

Section One – Recordkeeping

I get a ton of text messages from clients each day. Do I need to keep all of these text messages? If so, how do I store them?

Analysis

The simple answer to your question is “Yes” and there are legal and practical reasons for the answer.

According to Louisiana Revised Statutes 37:1449(D)(1) Individual real estate brokers **shall retain all of the following records**, readily available and properly indexed, for a period of five years:

(a) Bank statements, copies of deposit slips, and cancelled checks on all escrow or trust accounts.

(b) **Copies of all documents that pertain in any way to real estate transactions** wherein the individual real estate broker or licensees sponsored by the individual real estate broker have appeared in a licensing capacity.

According to Louisiana Revised Statutes 37:1449(D)(2) The requirement regarding copies shall not be altered by the transfer of a broker to that of an associate broker, an unlicensed person, or an inactive licensee.

Yes, the statute makes this requirement applicable to “Brokers,” but how do Brokers get a copy of these documents? Answer: from the individual real estate agent.

So, a liberal and practical reading of the above statute dictates that real estate agents must, first, keep a copy of all records pertaining to each individual real estate transaction and then, second, provide a copy of those records to their Broker.

But does the above statute contemplate “text messages”?

Again, the answer is “Yes.”

The words “shall” and “all” and the phrase “all documents that pertain in any way to real estate transactions” contained in the above statute is very broad and all-encompassing and would

include “text messages” since text messages could be construed as a written document in a similar way that emails can be construed as a written document.

So, the above discussion outlines the legal reason to keep a copy of all text messages (i.e. because there is a Louisiana Statute that mandates real estate agents keep a copy of all documents, including text messages).

There are also practical reasons to keep a copy of all documents in each real estate transaction, including text messages.

First, keeping track of all conversations will keep the real estate agent “engaged” with their clients and keep the conversations between the real estate agent and client fresh in the real estate agent’s mind. An engaged real estate agent is more likely to provide top notch representation to their clients. Additionally, an engaged real estate agent most likely won’t appear “aloof” or “forgetful” (you’d be surprised how many agents are depicted by their clients as “not engaged,” “aloof,” “forgetful,” etc.)

Secondly, what happens if the real estate agent is sued by the client for failure to disclose an item?

Is the real estate agent going to remember every conversation they had with their clients in the absence of written documentation of the conversation? (Answer: most likely not)

And even if the real estate agent does remember every conversation they have with their client, how can the real estate agent prove the conversation took place without written documentation of the conversation?

Without written documentation of the various conversations between real estate agent and client, it turns into a “he said, she said” debate in a Court of law. The “he said, she said” scenario is not a good one for a real estate agent.

Now that we know keeping track of every form of communication that real estate agents have with their clients is a good idea, how do we keep track of the conversations?

To store the conversations, the real estate agent can do one of the following:

1. If the real estate agent prefers paper files, then the real estate agent can print the text message (or email) and stick the text message (or email) in their paper folder; OR
2. If the real estate agent operates under a “paperless” system, the real estate agent can save/store/transfer every text message (or email) to their cloud storage.

Section Two – Required Disclosures

A husband and wife have just completed building their dream home and are looking to sell their current one. The house is in located in a hot market, in great condition and you know it will not last long.

When you show up for the listing appointment, only the husband is there. He tells you his wife is on a business trip overseas and will be gone for two weeks. The husband signs the listing agreement and promises his wife will sign “soon” but he is anxious to get the property on the market. You help him with staging and get listing photos taken. The property is ready to list his wife has not signed the listing agreement. You explain you will not be able to put his property into MLS until his wife has signed the agreement. Again, he assures you he will get it signed when he talks to her tonight. He’ll have it first thing in the morning.

Knowing you are sitting on a hot property, that night you post a few pictures on Facebook that a wonderful home is about to come on the market. You are immediately contacted by a couple you have been working with who are interested and want to see it immediately. In your excitement, you text all your sellers you have an interested buyer and set the appointment.

You show it, they love it and make a full price cash offer. All parties throughout the process were aware that you were the dual agent on the property. However, to be safe you have everyone sign the dual agency disclosure form at closing.

Analysis

In this scenario, you have committed a few violations:

LSA-R.S. 37:1455.A (11)

§1455. Causes for censure, suspension, or revocation of license, registration, or certification

A. The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under this Chapter, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders if, in the opinion of the commission, a licensee, registrant, or certificate holder is performing or attempting to perform or has performed or has attempted to perform any of the following acts:

(11) Offering real estate for sale or lease without the written consent of the owner or his authorized agents. Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

LSA-R.S. 37:1455.A (21)

(21) Failure of a licensee to provide the parties to a real estate transaction with an agency disclosure informational pamphlet and, where applicable, a dual agency disclosure form.

Even though it was signed, *when* it is signed is just as important.

Best Practice

Under no circumstances can you offer a property for sale (even on social media) unless you have written permission from all parties. Always wait until the listing agreement is signed before offering the property for sale or advertising/posting on social media.

The dual agency disclosure form should be signed before an agent enters into dual agency representation. While working with sellers, the best practice is to get the form signed at the listing appointment when the listing agreement is being signed. For buyers, it is best to have them sign the disclosure before showing the listed property.

In both cases, the parties have given you permission to represent all parties in the transaction *before* you are a dual agent.

You are showing one of your listings to a prospective buyer-customer. During the showing, the buyer-customer seems interested and asks if the sellers would be willing to leave the swing-set. The showing continues and the buyer-customer begins to discuss her financing options and credit history. When did substantive contact occur and when should the agency disclosure form be given?

When the buyer-customer divulges her financial information?

Upon mention of the swing-set?

As soon as you met the buyer-customer?

Analysis

According to agency Law, Substantive contact means that point in any conversation where confidential information is solicited or received. This includes any specific financial qualifications of the consumer or the motives or objectives in which the consumer may divulge any confidential, personal, or financial information, which, if disclosed to the other party to the transaction, could harm the party's bargaining position. This includes any electronic contact, electronic mail, or any other form of electronic transmission.

In other words, anything other than providing factual information is substantive contact.

In this case, the form should be given at the point the swing set was mentioned. It may seem impractical and difficult to “change the subject” and present the form at that time. What are you to do? There is nothing wrong with presenting the form earlier. It can only hurt you if you give it after the fact. Not before. The best practice might be to present the agency pamphlet at the beginning of the conversation.

Louisiana License Law - LSA-R.S. 37:1455.A, the Louisiana Real Estate Commission can impose a fine, censure, suspension or revoke a license for: (21) Failure of a licensee to provide the parties to a real estate transaction with an agency disclosure informational pamphlet and, where applicable, a dual agency disclosure form.

What if they refused to sign it?

If the client/customer refuses to sign the disclosure, a best practice is to annotate on the disclosure the day, date, time, name of the party and the fact they refused to sign. Keep this disclosure in the property file.

What about leases?

According to Agency Law, § 3893. DUTIES OF LICENSEES REPRESENTING CLIENTS (F): Nothing in this Chapter or in Chapter 17 of Title 37 shall be construed as to require agency disclosure with regard to a lease that does not exceed a term of three years and under which no sale of the subject property to the lessee is contemplated.

What about an internet leads?

Again, the disclosure needs to be given at first substantive contact – even if that contact is over the internet, email, social media, messenger applications, etc.

My buyers wish to purchase a new construction home. The builder requires us to use their own contract. Am I allowed to do that?

Analysis

Law: §1449.1. Duty of real estate licensees to use purchase agreement forms

A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property. No person shall alter the purchase agreement form; however, addendums or amendments to the purchase agreement form may be utilized.

“Residential real property” means real property consisting of one or not more than four residential dwelling units, which are buildings or structures each of which are occupied or intended for occupancy as single-family residences.

If the builder drafts the contract then no.

What if I represent the builder?

Law: §1449.1. Duty of real estate licensees to use purchase agreement forms – A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property.

So yes, if you represent a builder you are still required BY LAW to use the mandatory purchase agreement.

If a licensee drafts an offer on a residential piece of property it must be the LA agreement to purchase and sell.

“If a licensee puts pen to paper on a purchase agreement, it had better be the Louisiana Residential Agreement To Buy Or Sell.” - Robert Maynor, Director of Investigations, Louisiana Real Estate Commission

Best Practice:

The licensee can add an addendum.

Continuing with the second half of the law, “**Law: §1449.1. Duty of real estate licensees to use purchase agreement forms** – A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property. No person shall alter the purchase agreement form; however, addendums or amendments to the purchase agreement form may be utilized.”

I am the listing agent in a transaction. This morning I received an Offer on the listed property and immediately presented the offer to my Sellers for review/discussion.

My Sellers agree with nearly all of the terms of the Offer, but my Sellers don't want to pay any closing costs. Essentially, my Sellers don't want any money subtracted from their net sales proceeds other than the Mortgage payoff, Real Estate Commissions and pro-rated property taxes.

My Sellers want to strike through Lines 87-90 of the Offer which states, "All necessary tax, mortgage, conveyance, release certificates or cancellations and the SELLER closing fees, if any, shall be paid by the SELLER."

Can my Sellers just strike through this section of the Offer and then initial and date the alteration?

Analysis

This question is going to be governed by Louisiana Revised Statutes 37:1449.1, which outlines the use of purchase agreement forms promulgated by the Louisiana Real Estate Commission.

According to Louisiana Revised Statutes 37:1449.1(A) A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property. **No person shall alter the purchase agreement form**; however, addendums or amendments to the purchase agreement form may be utilized.

A strict reading of this statute indicates your Sellers cannot "strike through" Lines 87-90 of the Offer.

However, your Sellers can prepare counter-offer that has language similar to the below:

"Sellers shall not be bound by the terms and conditions outlined in Lines 87-90 of the Offer and the parties effectively agree to strike through the following words contained in said Lines 87-90: All necessary tax, mortgage, conveyance, release certificates or cancellations and the SELLER

closing fees, if any, shall be paid by the SELLER. Seller shall not pay any closing costs or charges to any party, lender, or closing attorney other than the actual payoff amount for Seller's Mortgage, Real Estate Commissions and pro-rated property taxes.”

**I own 10% of an LLC that is purchasing a piece of property.
Do I have to disclose that I am licensed?**

According to **§3501. Licensee as Principal in a Real Estate Transaction A**. The license status of a principal in a real estate transaction, whether individually or through an entity in which an interest is held by the licensee, shall be disclosed in writing to all other principals in the real estate transaction prior to entering into negotiations concerning the execution of a real estate contract.

Yes, if a licensee owns any interest, they are required to disclose, in writing, the license status.

The next question is when must that interest be disclosed? According to §3501 it is “prior to entering into negotiations” of the contract.

Section Three – Fair Housing (Service and Assistive Animals)

Thomas is looking for a house to rent. While driving around, he sees a for lease sign on a home and calls the brokers number.

Thomas explains to the on-duty agent his desire to rent the home. He also explains he has been diagnosed with severe depression and his doctor prescribed a comfort dog to help alleviate some of his symptoms.

The agent on duty informs Thomas the owner of the home has a strict NO PETS policy and that he will not be allowed to rent the property.

Has the agent done anything wrong?

Analysis

Service and assistive animals are not pets. Under the Fair Housing Act, a disability is defined as a physical or mental impairment which significantly limits a person's major life activities. Even if a lease says "no pets" or restricts pets, landlords are required to make what is called a "reasonable accommodation" to allow pets who serve as assistance animals, which includes animals who provide emotional support.

Assistance animals are in a different legal classification than pets who are not assistance animals, which is why pet restrictions and fees are waived for them. They are animals that work, assist and/or perform tasks and services for the benefit of a person with a disability or provide emotional support that improves the symptoms of a disability.

Some examples of assistance animals:

- A cat who can detect and alerts their companion of oncoming seizure.
- A dog who alleviates a person's depression or anxiety.
- A cat who reduces a person's stress-induced pain.

- A bird who alerts their hard-of-hearing companion when someone has come to the door.

CASE STUDY - September, 2015

University of Nebraska at Kearny paid claim of \$140,000 for refusing to allow 4 lb miniature pincher named Butch into University Housing. The dog was trained to comfort a student when she experienced disabling anxiety attacks that caused difficulty breathing and sleeping.

Documentation For Emotional Support Animals

If the needs of the animal are not obvious, the landlord may request written verification for the need for the animal from a health care professional or other verifier. Get an attorney involved in verification process.

According to HUD: “A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability related need for an assistance animal.

For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.”

Ex. A seeing eye dog would not be verified. Others may not be so obvious. Online services provide certification process/vests, etc. They are not usually valid. If you receive an online verification and are not sure how to proceed, you can contact an attorney.

Section Four – Deposits and Commingling

Joe Smith is working with a buyer who made an offer on a home. The buyer put down a \$1,000 deposit to be held by the listing broker as ABC Realty. The offer was accepted. During the inspection period, the buyer found many deficiencies and terminated the contract and asked to receive a return of the deposit. ABC Realty returned the deposit. Below is a copy of the check:



Why was the broker's license suspended for 30 days?

Analysis

The broker violated RS 37:1455 A (6) - Commingling the money or other property of his principals with his own.

Commingling as defined by Louisiana License Law is “putting personal funds and funds belonging to other persons in one mass or mixing the funds together so they cannot be identified or differentiated.”

§1435. Powers of the commission F. The commission shall have the right to require all real estate licensees and registered timeshare developers to deposit all monies or things of value received on behalf of clients in a separate banking account or accounts in a legally chartered financial institution. The monies so received are not to be commingled with the personal funds of such licensees or registrants.

Rule and Regulation - A. A resident broker, including corporations, partnerships and limited liability companies, who accepts any funds on behalf of clients in a real estate sales transaction shall open and maintain a sales escrow checking account in a financial institution in the state of Louisiana. All sales escrow accounts shall be titled in the identical wording as stated on the broker's license and the wording "Sales Escrow Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds received by a broker in connection with the sale of real estate shall be deposited in this account when there is a written contract to buy and sell real estate that has been fully executed and accepted by both buyer and seller.

I've been working with an investor for years helping him acquire rental property all over the city. He now wants me to begin managing his rental houses. He insists that after collecting the security deposit, I transfer it to him at the end of the month. Can he do that?

My owner wishes to hold all security deposits. He specifically asked me to give him all security deposits at the end of the month. Is that legal?

Analysis

Yes. If proper procedure is followed.

First, the *broker* must have the bank account – not the salesperson.

Second, the deposit check is to be written to the brokerage firm and put in the security deposit trust account. **Rule and Regulation - C.** A resident broker, including corporations, partnerships and limited liability companies, engaged in the collection of rental security or damage deposits in connection with property management activities on behalf of clients shall open a security deposit trust checking account in a financial institution in the state of Louisiana. All security deposit trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Security Deposit Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental security or damage deposits from or on behalf of clients shall be deposited into this account.

Next, BOTH parties must agree:

Rule and Regulation 2715. Withdrawal – A. Funds deposited into a sales escrow checking account, rental trust checking account, or security deposit trust checking account shall not be withdrawn for any purposes except: 1. upon the mutual written consent of all parties having an interest in the funds;

Rule and Regulation §2717. Deposits - A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account,

rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

Rule and Regulation §2901. Escrow Disputes. A. When a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 60 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following:

1. disburse the funds upon the written and mutual consent of all of the parties involved;

Finally, once both parties have agreed in writing, the check may be sent from the security deposit trust account to the owner.

What if the owner wants the deposits written directly to his/her LLC? Does the broker have to run it through their trust account or could the tenant make it directly to the owner?

§2717. Deposit A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

Both the lease agreement and the management agreement needs to say the deposit is to be held by the owner.

The buyer wants the seller to just hold on to the check (not deposit it) until closing. Is that OK?

Analysis

No. According to the Louisiana Rules and Regulations, *all* deposits must be deposited.

Rule and Regulation. §2717. Deposits A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

Section Five – Improperly Prepare, Present or Annotate an Offer

Bob Smith is representing a buyer named Billy. Billy submit an offer on his dream home but is now concerned since they haven't heard from this agent and the time limit for the offer has expired. Bob has attempted to call the listing agent multiple times and left multiple messages and texts. Two days after the offer has expired, Bob is finally able to reach the listing agent who informs him the house is already under contract.

Bob asks to have the rejected contract marked "rejected" and signed by the seller. The listing agent informs Bob that his seller is an attorney and has refused to sign the contract because he does not believe it is necessary when rejecting an offer. Further, the attorney believes the contract was rejected when the time limit passed.

Bob explains that his buyer simply wants to verify the offer was presented to the sellers.

Who is right?

Analysis

Someone violated the Law.

Louisiana Real Estate License Law - §1449. Broker to insure provision of contract; retention of records. B. Licensees and registrants shall insure that persons signing any document in a real estate transaction that pertains to more than one party are provided with a copy of the completed document bearing the signatures of all parties to the transaction within five days after the final signature is affixed to the document.

Louisiana Real Estate Rules and Regulations- §3907. Rejection of Offers and Counter Offers. All written offers and counter offers presented to a seller and/or buyer and not accepted shall be

clearly marked as rejected and signed by the seller and/or buyer. In any circumstance in which a seller and/or buyer refuses to sign a rejected offer or counter offer, the licensee making the presentation of the offer or counter offer shall annotate this fact indicating the time of day and date of the rejection of the offer or counter offer by the seller and/or buyer. A copy of the rejected offer or counter offer signed by the seller and/or buyer, or a copy of the rejected offer or counter offer bearing the annotation of the licensee, shall be provided to the buyer and/or seller, and the rejected offer or counter offer shall be returned to the prospective buyer and/or seller within five days after the signature or annotation is affixed to the document.

LREC Guidance: The seller is not obligated to sign a rejected contract. However, the agent is required by Louisiana Real Estate License Law to provide all parties with a copy of the completed document within five days.

Therefore, if the seller refuses to sign the rejection of the purchase agreement, the listing agent is required to sign and mark as rejected, then (within five days) provides copies to both his/her client and the cooperating agent/customer.

Proper Procedure when Submitting/Presenting/Annotating Offers

When a buyer is preparing an offer, the Buyers complete and sign the purchase agreement. The buyer’s agent submits the offer to the listing agent, notating on the Residential Agreement to Buy and Sell who the agreement was given to and how it was delivered. As a best practice, buyer’s agent should call the listing agent to let them know an offer has been submitted.

ABC Realty		XYZ Real Estate Group	
Listing Firm		Selling Firm	
Jane Doe 000888888		Bob Smith 000777777	
Seller's Designated Agent Name & License Number		Buyer's Designated Agent Name & License Number	
ABC Realty, LLC 000123456		XYZ Real Estate Group 000654321	
Brokerage Firm or Broker Name & License Number		Brokerage Firm or Broker Name & License Number	
504-555-1234 504-555-1111		504-123-4567 504-987-6543	
Phone Number	Office	Fax	
jd@abc Realty.com		bob@XYZregroup.com	
Email Address		Email Address	
Jane Doe		Monday, January 1, 2018 1:30 PM	
Delivered by Designated Agent to		Day	Date
Delivered by email		Time	AM/PM
Comments			
Received by Designated Agent		Day	Date
		Time	AM/PM

LOUISIANA RESIDENTIAL AGREEMENT TO BUY OR SELL

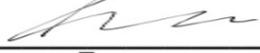
Next, the listing agent acknowledges receipt of the offer – annotating in the appropriate place on Residential Agreement to Buy and Sell. Again, a best practice is to send a message (text, email, phone call) to cooperating agent upon receipt.

ABC Realty		XYZ Real Estate Group	
Listing Firm		Selling Firm	
Jane Doe 000888888		Bob Smith 000777777	
Seller's Designated Agent Name & License Number		Buyer's Designated Agent Name & License Number	
ABC Realty, LLC 000123456		XYZ Real Estate Group 000654321	
Brokerage Firm or Broker Name & License Number		Brokerage Firm or Broker Name & License Number	
504-555-1234 504-555-1111		504-123-4567 504-987-6543	
Phone Number	Office	Fax	
jd@abc Realty.com		bob@XYZregroup.com	
Email Address		Email Address	
Jane Doe		Monday, January 1, 2018 1:30 PM	
Delivered by Designated Agent to		Day	Date
Delivered by email		Time	AM/PM
Comments			
Jane Doe		Monday, January 1, 2018 2:05 PM	
Received by Designated Agent		Day	Date
		Time	AM/PM

1 **LOUISIANA RESIDENTIAL AGREEMENT TO BUY OR SELL**

2

The listing agent will then present the offer to the seller and annotate (line 392) the offer was presented.

372			
373	EXPIRATION OF OFFER:		
374	This offer is binding and irrevocable until <u>January 2</u> , 20 <u>18</u> at <u>5:00</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM <input type="checkbox"/> MIDNIGHT <input type="checkbox"/> NOON.		
375	The Acceptance of this offer must be communicated to the offering party by the deadline stated on line 374 to be		
376	binding and effective.		
377			
378	X 	<u>Jan 1, 2018 11:30 am</u>	X
379	<input checked="" type="checkbox"/> Buyer's / <input type="checkbox"/> Seller's Signature	Date/Time <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Buyer's / <input type="checkbox"/> Seller's Signature
380	<u>Billy Buyer</u>		
381	Print Buyer's/Seller's Full Name (First, Middle, Last)		Print Buyer's/Seller's Full Name (First, Middle, Last)
382	<u>12345 Magnolia Blvd</u>		
383	Street Address		Street Address
384	<u>Metairie, LA 70011</u>		
385	City, State, Zip		City, State, Zip
386			
387	Telephone Number.Cell		Telephone Number.Cell
388			
389	Telephone Number.Home	Telephone Number.Work	Telephone Number.Home
390			Telephone Number.Work
391	E-Mail Address		E-Mail Address
392	<u>Jane Doe</u>		<u>Tuesday, January 2, 2018 9:30 am</u>
393	This offer was presented to the <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Buyer by		Day/ Date/ Time <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> MIDNIGHT <input type="checkbox"/> NOON
394			
395	This offer is: <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected (without counter) <input type="checkbox"/> Countered (See Attached Counter) by:		
396			
397			

Offer Acceptance, Rejection and Counter

The Seller has the option of accepting, rejecting or countering the offer. In all cases, the licensee is obligated to annotate (line 412) that the offer was presented.

Rejection

In the following example, the seller has rejected the offer. According the Louisiana Real Estate Rules and Regulations, the seller is to sign the rejected offer. If the seller refuses the agent is to annotate that the seller rejected the offer.

Best Practice: The refusal to sign the rejection can be annotated on line 412 (as seen below) or the agent may notate the rejection by hand in the margin.

371	agreements not incorporated herein in writing are void and of no force and effect.	
372		
373	EXPIRATION OF OFFER:	
374	This offer is binding and irrevocable until <u>January 2</u> , 20 <u>18</u> at <u>5:00</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM <input type="checkbox"/> MIDNIGHT <input type="checkbox"/> NOON.	
375	The Acceptance of this offer must be communicated to the offering party by the deadline stated on line 374 to be	
376	binding and effective.	
377		
378	<input checked="" type="checkbox"/> Buyer's / <input type="checkbox"/> Seller's Signature <u>Jan 1, 2018 11:30 am</u> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Buyer's / <input type="checkbox"/> Seller's Signature _____ Date/Time <input type="checkbox"/> AM <input type="checkbox"/> PM
379	<u>Billy Buyer</u>	_____
380	Print Buyer's/Seller's Full Name (First, Middle, Last)	Print Buyer's/Seller's Full Name (First, Middle, Last)
381	<u>12345 Magnolia Blvd</u>	_____
382	Street Address	Street Address
383	<u>Metairie, LA 70011</u>	_____
384	City, State, Zip	City, State, Zip
385	_____	_____
386	Telephone Number.Cell	Telephone Number.Cell
387	_____	_____
388	Telephone Number.Home	Telephone Number.Home
389	_____ Telephone Number.Work	_____ Telephone Number.Work
390	_____	_____
391	E-Mail Address	E-Mail Address
392	<u>Jane Doe</u>	<u>Tuesday, January 2, 2018 9:30 am</u>
393	This offer was presented to the <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Buyer by	Day/ Date/ Time <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> MIDNIGHT <input type="checkbox"/> NOON
394	_____	_____
395		
396	This offer is: <input type="checkbox"/> Accepted <input checked="" type="checkbox"/> Rejected (without counter) <input type="checkbox"/> Countered (See Attached Counter) by:	
397		
398	<input checked="" type="checkbox"/> _____	<input type="checkbox"/> _____
399	<input type="checkbox"/> Buyer's / <input type="checkbox"/> Seller's Signature _____ Date/Time <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Buyer's / <input type="checkbox"/> Seller's Signature _____ Date/Time <input type="checkbox"/> AM <input type="checkbox"/> PM
400	_____	_____
401	Print Buyer's/Seller's Full Name (First, Middle, Last)	Print Buyer's/Seller's Full Name (First, Middle, Last)
402	_____	_____
403	Street Address	Street Address
404	_____	_____
405	City, State, Zip	City, State, Zip
406	_____	_____
407	Telephone Number.Cell	Telephone Number.Cell
408	_____	_____
409	Telephone Number.Home	Telephone Number.Home
410	_____ Telephone Number.Work	_____ Telephone Number.Work
411	_____	_____
412	E-Mail Address <u>Bob Smith (Seller refuses to sign rejection) Tuesday, 1/2/2018 12:00</u>	E-Mail Address _____
	This counter offer was presented to the <input checked="" type="checkbox"/> Seller <input type="checkbox"/> Buyer by	Day/ Date/ Time <input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> MIDNIGHT <input checked="" type="checkbox"/> NOON
	_____	_____

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Acceptance

The following is the proper annotation for an accepted offer.

371 agreements not incorporated herein in writing are void and of no force and effect.
372
373 **EXPIRATION OF OFFER:**
374 This offer is binding and irrevocable until January 2, 20 18 at 5:00 AM PM MIDNIGHT NOON.
375 The Acceptance of this offer must be communicated to the offering party by the deadline stated on line 374 to be
376 binding and effective.
377
378 X [Signature] Jan 1, 2018 11:30 am X
379 Buyer's / Seller's Signature Date/Time AM PM
380 Billy Buyer
381 Print Buyer's/Seller's Full Name (First, Middle, Last)
382 12345 Magnolia Blvd
383 Street Address
384 Metairie, LA 70011
385 City, State, Zip
386
387 Telephone Number.Cell
388
389 Telephone Number.Home Telephone Number.Work
390
391 E-Mail Address
392 Jane Doe
393 This offer was presented to the Seller Buyer by
394 Day/ Date/ Time Tuesday, January 2, 2018 9:30 am AM PM MIDNIGHT NOON
395
396 This offer is: Accepted Rejected (without counter) Countered (See Attached Counter) by:
397
398 X [Signature] Jan 2, 2018 12:15 X
399 Buyer's / Seller's Signature Date/Time AM PM
400 Sam Seller
401 Print Buyer's/Seller's Full Name (First, Middle, Last)
402 9876 Sunshine Way
403 Street Address
404 Metairie, LA 70011
405 City, State, Zip
406
407 Telephone Number.Cell
408
409 Telephone Number.Home Telephone Number.Work
410
411 E-Mail Address
412 Bob Smith
This counter offer was presented to the Seller Buyer by
Day/ Date/ Time Tuesday, 1/2/2018 12:00 AM PM MIDNIGHT NOON

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Counter offer

The following is the proper annotation for a counter offer. In addition to this form, an additional Counter offer addendum will be attached.

371 agreements not incorporated herein in writing are void and of no force and effect.
372
373 **EXPIRATION OF OFFER:**
374 This offer is binding and irrevocable until January 2, 20 18 at 5:00 AM PM MIDNIGHT NOON.
375 The Acceptance of this offer must be communicated to the offering party by the deadline stated on line 374 to be
376 binding and effective.
377
378 X [Signature] Jan 1, 2018 11:30 am X
379 Buyer's / Seller's Signature Date/Time AM PM Buyer's / Seller's Signature Date/Time AM PM
380 Billy Buyer [Signature]
381 Print Buyer's/Seller's Full Name (First, Middle, Last) Print Buyer's/Seller's Full Name (First, Middle, Last)
382 12345 Magnolia Blvd [Signature]
383 Street Address Street Address
384 Metairie, LA 70011 [Signature]
385 City, State, Zip City, State, Zip
386 Telephone Number.Cell Telephone Number.Cell
387 Telephone Number.Home Telephone Number.Work Telephone Number.Home Telephone Number.Work
388
389 E-Mail Address E-Mail Address
391 Jane Doe Tuesday, January 2, 2018 9:30 am
392 This offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON
393
394
395 This offer is: Accepted Rejected (without counter) Countered (See Attached Counter) by:
396
397 X [Signature] Jan 2, 2018 12:15 X [Signature] 1/2/2018 12:15
398 Buyer's / Seller's Signature Date/Time AM PM Buyer's / Seller's Signature Date/Time AM PM
399 Sam Seller [Signature] Sally Seller
400 Print Buyer's/Seller's Full Name (First, Middle, Last) Print Buyer's/Seller's Full Name (First, Middle, Last)
401 9876 Sunshine Way [Signature]
402 Street Address Street Address
403 Metairie, LA 70011 [Signature]
404 City, State, Zip City, State, Zip
405 Telephone Number.Cell Telephone Number.Cell
406 Telephone Number.Home Telephone Number.Work Telephone Number.Home Telephone Number.Work
407
408 E-Mail Address E-Mail Address
409 Bob Smith Tuesday, 1/2/2018 12:00
410 This counter offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON
411
412

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I am the Listing Agent. My Sellers are currently under contract with Buyer A. Over the weekend, another Agent submitted an offer from Buyer B. Buyer B's offer is a cash offer (Buyer A's offer is a financed offer) and Buyer B's offer is higher than the current contract with Buyer A.

Since the Sellers are already under contract with Buyer A, should I just discard Buyer B's offer?

Analysis

This sounds like a "back-up offer" scenario.

Louisiana Revised Statutes 9:3893 governs the duties of real estate agents representing clients. According to Louisiana Revised Statutes 9:3893(A) A licensee representing a client shall:

- (1) Perform the terms of the brokerage agreement between a broker and the client.
- (2) Promote the best interests of the client by:
 - (a) Seeking a transaction at the price and terms stated in the brokerage agreement or at a price and upon terms otherwise acceptable to the client.
 - (b) Timely presenting all offers to and from the client.
 - (c) Timely accounting for all money and property received in which the client has, may have, or should have had an interest.
- (3) Exercise reasonable skill and care in the performance of brokerage services.

The relevant portion of the above is found in Section (A)(2)(b).

A strict reading of Section (A)(2)(b) of the statute indicates you must submit Buyer B's offer to your Sellers. In addition, Chapter 39, Subsection 3901.A states: "All written offers and counter offers for the purchase of real estate shall be presented to all buyers and/or sellers for their consideration and decision immediately, without delay."

You are required to submit the offer.

However, since your Sellers are currently under contract with Buyer A, it would not be wise for your Sellers to "accept" Buyer B's offer. If Sellers accept Buyer B's offer, they run the risk of being under contract to sell the same house to two, different Buyers at the same time – not a very good idea!

(As a side note, if there is some qualifying language in Buyer B's offer confirming Buyer B's offer is not effective unless and until the contract with Buyer A is formally canceled by Buyer A, then "maybe" your Seller could accept this offer. But even with this language, I still hesitate to mention it as an option for fear of the consequences that might arise from Offers that don't get the language correct!).

Instead, it might be wise for you to request Buyer B structure his offer to remain open until the contract with Buyer A is either closed or canceled. In this option, Sellers will not sign Buyer B's "offer."

In order to present an offer that remains "open," Buyer B could either:

1. Structure his/her offer with a long time-frame in which the offer will remain "open" (i.e. several weeks); or
2. He/she could choose not to put a time-frame on the offer and make it a "revocable at any time" offer.

Option #2 allows the Seller more flexibility to rescind the offer at any time prior to your Sellers accepting the offer in case Sellers locate another house while they wait on whether the contract with Buyer A will close or be canceled. So, be prepared for Buyer B to choose Option #2 above.

Section Six – Advertising Law and Rules

Sally Salesperson is beginning a second career in real estate. She was previously a marketing executive for a large firm and knows a thing or two about branding. Being excited about her new career, she embarks on a full-scale media campaign to introduce herself to the public. She carefully constructs a digital media campaign by creating a custom logo and catch phrase – Sally Sells - and launches her first social media ad:



Is Sally's ad in compliance with the LREC advertising guidelines?

Because it is a social media post, are there any special rules?

Analysis

The first issue is Sally does not have the broker/company name and phone number in the ad. It does not matter that the ad is on social media. According to Chapter 25, 2501(F). In all advertising, the salesperson or associate broker must include the name and telephone number

of the sponsoring broker. The broker's name and telephone number must be conspicuous, discernible and easily identifiable by the public.

Social Media Guidelines

The rules regarding advertisements on websites and emails have not changed. Rule and Regulation Chapter 25. 2515 in that the ads must contain certain information.

Required information for brokers:

- the broker's name or trade name as registered with the commission
- the city and state of the broker's main office or branch office.
- the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

Required information for associate brokers and salespersons

- the associate broker or salesperson's name
- the broker or trade name listed on the license of that associate broker or salesperson
- the city and state of the broker's main office or branch office.
- the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license

The larger question is "Does this have to be on ALL of my Facebook posts?"

The short answer is no. If you are posting on your Facebook wall – either personal or business – the necessary information only needs to be in the "Info" or "About" section of your profile page.

However, if the licensee is posting the advertisement within a Facebook Group or another page – that is not on your personal or business page – the required information would need to be within the ad. The LREC considers posts outside of your own Facebook wall an advertisement.

Jeremias “J-Man” Maniero is a real estate licensee who has a hobby of doing endurance competitions on the weekend – Warrior Dash, Crossfit, etc. He has become a local celebrity racing under the “J-Man” brand and wants to extend that into his real estate business. He and his wife are both licensed and they want to bring on two more agents to create “J-Mann Team Real Estate.” He wants to promote his J-Man brand in his real estate business.

What are the minimum requirements he needs in order to set-up, maintain and promote his team? Is his logo LREC compliant?



Analysis

Again, Jeremias does not have the broker/company name and phone number in the ad. According to *Chapter 25. 2501(F)*. In all advertising, the salesperson or associate broker must include the name and telephone number of the sponsoring broker. The broker's name and telephone number must be conspicuous, discernible and easily identifiable by the public.

Jeremias should have written permission of his broker to advertise his team name.

§1909. Team Advertising

A. A team or group name shall not be used in advertising without the written approval of the sponsoring broker.

B. The term "team" or "group" may be used to advertise real estate license activities provided that:

1. the use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person or entity is lawfully doing business;
2. the team or group is composed of more than one licensee;
3. the advertising complies with all other applicable provisions of this Chapter and LAC 46:LXVII.Chapter 25 of these rules and regulations.

In addition, Jeremias would be guilty of violating Rule and Regulation §1905. His team name “J-Mann Team Real Estate” is not allowed to be used. The term “Real Estate” at the end of his team name may lead the public to believe he is a real estate brokerage and not a team.

§1905 Team or Group Names

A. Team or group names shall not contain terms that could lead the public to believe that the team or group is offering real estate brokerage services independent of the sponsoring broker. These terms shall include, but are not limited to:

1. real estate;
2. brokerage or real estate brokerage;
3. realty;
4. company.

Are “coming soon” advertisements illegal?

While some licensees believe using the phrase “coming soon” in advertisement to be unethical or illegal, it is not a violation of the Commission’s laws and rules.

In general, licensees would be in compliance if they had written authority to advertise the property as such and they were not misrepresenting anything. It has a lot to do with intent of the advertising, often times the owner needs to make some sort of correction to the property before truly placing on the market for sale.

Licensees wishing to use the phrase “coming soon” in advertising and marketing material must adhere to the following:

First, the broker or brokerage advertising a property in this manner must have written authority from all property owners. Salespersons and associate brokers may be given authority by their sponsoring broker to advertise in this manner; however, this advertising must be done under the direct supervision of and approved by the broker. These advertisements must also comply with Chapter 25 of the Commission’s rules and regulations.

Do you have written authority to advertise the property and is your broker aware of your “coming soon” advertisement or the “pocket listing” you have?

Second, the licensee placing the advertisement or not placing the property in the MLS needs to properly inform the seller of this. Licensees who fail to properly inform their sellers may be charged for making false representations to their respective party.

Is your seller fully aware of how you intend to market their property?

Last, as a licensee you must present any and all written offers to the sellers for their consideration immediately and without delay. Licensees often believe that because the property is not listed in the MLS they are not obligated to forward written offers to their sellers; this is absolutely false.

The seller has the right to receive and review any offer on their property.

While this is not illegal, local REALTOR Board rules may differ or have restrictions on these advertisements.

Section Seven – Giving Tax and Legal Advice

I represent the Buyer in a transaction. We are past the due diligence deadline and my client wants to “back out of the contract.” My client wants to know whether he can back out and whether the Seller can come after him for breach of contract.

The contract is fairly clear that my client cannot back out of the contract since we are passed the due diligence deadline. Should I just tell him that he cannot back out of the contract?

Analysis

Pause.

The first question that needs to be addressed is whether your client is asking you to “practice law”?

According to Louisiana law, practicing law without a license can be a serious offense that carries with it possible civil and criminal penalties.

The statutes dealing with the “unauthorized practice of law,” can be found at Louisiana Revised Statutes 37:211, et. seq.

According to Louisiana Revised Statutes 37:213(A) no natural person, who has not first been duly and regularly licensed and admitted to practice law by the supreme court of Louisiana shall:

- (1) Practice law.
- (2) Furnish attorneys or counsel or an attorney and counsel to render legal services.
- (3) Hold himself or itself out to the public as being entitled to practice law.
- (4) Render or furnish legal services or advice.

(5) Assume to be an attorney at law or counselor at law.

(6) Assume, use, or advertise the title of lawyer, attorney, counselor, advocate or equivalent terms in any language, or any phrase containing any of these titles in such manner as to convey the impression that he is a practitioner of law.

(7) In any manner advertise that he, either alone or together with any other person, has, owns, conducts, or maintains an office of any kind for the practice of law.

But how do we define the “practice of law”?

The definition of “the practice of law” is found in Louisiana Revised Statutes 37:212. According to Louisiana Revised Statutes 37:212(A) the practice of law means and includes:

(1) In a representative capacity, the appearance as an advocate, or the drawing of papers, pleadings or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state; or

(2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect;

(a) The advising or counseling of another as to secular law;

(b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights;

(c) The doing of any act, in behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right; or

(d) Certifying or giving opinions, or rendering a title opinion as a basis of any title insurance report or title insurance policy as provided in R.S. 22:512(17), as it relates to title to immovable property or any interest therein or as to the rank or priority or validity of a lien, privilege or mortgage as well as the preparation of acts of sale, mortgages, credit sales or any acts or other documents passing titles to or encumbering immovable property.

For our purposes in answering your specific question, we need to focus on Louisiana Revised Statutes 37:212(A)(2)(a).

Essentially, your client is asking you to advise or counsel him on the effects of secular Louisiana law regarding contracts. Clearly, this would be considered an unauthorized practice of law.

Instead of advising your client whether he can back out of the contract, it would be wise to recommend your client seek legal advice from a licensed attorney in the State of Louisiana.

I represent the Seller in a transaction. We have received an offer on the Seller's home and the Seller's want to know if they should accept the offer.

Are the Sellers asking me to provide a legal opinion which would be considered the "practice of law"?

Analysis

We're back to what acts are considered "unauthorized practice of law."

At the outset, let me mention the following: I've always taken the position that a real estate agent should suggest a client accept or reject any particular offer in a vacuum.

Instead, the real estate agent should pull all the recent sales of comparable homes, provide those sales to the Seller and advise the Seller whether the offer falls in line with the recent sales of comparable homes. If the home has unique features which cause it to "fall outside the norm," this should be pointed out to the Seller and taken into consideration. Ultimately, the Seller must decide whether to accept or reject any particular offer.

Phrases like, "I think this is a solid offer based on what I've shown you" are clearly acceptable.

Phrases like, "You'd be stupid not to take this offer" should be guarded against.

Assuming you are following the above, the next question that needs to be addressed is: whether guiding a Seller regarding a home's value would be considered an "unauthorized practice of law."

Applying Louisiana Revised Statutes 37:212 and 37:213, noted above, lets go through the analysis:

You do not fall under Louisiana Revised Statute 37:212(A)(1) because you are not drawing any papers, pleadings, or documents before any court of record in this state; or

You also do not fall under Louisiana Revised Statute 37:212(A)(2) because:

1. you are not advising or counseling the Seller as to secular law;

2. you are not drawing a paper, document, or instrument affecting or relating to secular rights;
3. you are not doing any act to prevent or redress a wrong;
4. you are not doing any act to obtain or secure the enforcement or establishment of a right;
and
5. you are not:
 - a. certifying or giving opinions
 - b. rendering a title opinion as a basis of any title insurance policy
 - c. you are not rendering an opinion as to the rank or priority or validity of a lien, privilege or mortgage
 - d. you are not preparing an act of sale, mortgage, credit sale or any act or other document passing titles to or encumbering immovable property.

Accordingly, guiding a Seller regarding a home's value would not be considered an "unauthorized practice of law."

Shortly after the death of his grandfather, Shawn received word that he inherited a vacant warehouse previously owned by his grandfather. As an engineer, Shawn had no use for the warehouse. He decided it would be best to sell the building and put the money toward opening his own engineering firm. Shawn contacted Bob, a licensee who specialized in commercial real estate, and set up a listing appointment. Upon further inspection of the warehouse, Bob suggested a few minor improvements would increase the marketability and potential increased sales price.

**Unsure of how to proceed, Shawn began asking Bob questions regarding the sale of the property. Are these improvements tax deductible expenses? Is this sale subject to capital gains tax? My buddy suggested I 1031 this. Do you think that is wise?
How should Bob answer these questions?**

Analysis

Agents should not engage in “the unauthorized practice of law.”

What exactly that means has shifted over the years, but generally licensees can do things like fill in the blanks of pre-printed sales agreements once approved by an attorney. They cannot, however, draft legal documents or give general legal advice, and tax questions fall in this category as well.

Best Practices

The general best practice is to refer your client to their pre-existing lawyer or tax professional. If they don't have one, you can suggest a few that you've worked with before. Explain to clients that while you have worked on many deals for other clients and have an understanding of some tax implications, a tax professional will be able to answer their questions more directly. And the tax professional may understand the family's overall financial situation better than you can. Deferring specialized or legal questions in the home buying/selling process to an individual licensed in those specifics, and creating a written record that you notified your client to seek independent guidance will greatly reduce your liability.

Section Eight – Confidentiality

I am the listing agent for property in Denham Springs. During the August 2016 flood, my sellers' house only flooded in one room (barely) and didn't flood in any other part of the home. My sellers sent me an email requesting that I not disclose this information because the house "didn't flood like my neighbors did or like the rest of the parish."

They insisted the home doesn't meet their definition of flooding and disclosure of minimal water intrusion as "flooding" might hinder their ability to sell their house.

Is a little water inside of a home considered "confidential information" that cannot be disclosed?

Analysis

As a result of the floods that occurred throughout Denham Springs and Lafayette (and other parts of Louisiana) in August 2016, this scenario is going to become more and more prevalent.

In order to answer the question, we must examine two areas dealing with water intrusion.

The first area that needs to be addressed is: whether there are any Louisiana Statutes that dictate whether 2-3 inches of water can be deemed confidential when the sellers request that it remain confidential.

Whether an item in a real estate transaction is deemed confidential is governed by Louisiana Revised Statutes 9:3891.

According to Louisiana Revised Statutes 9:3891(6)(a) "Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:

- (i) The client permits the disclosure by word or conduct.
- (ii) The disclosure is required by law or would reveal serious defect.
- (iii) The information becomes public from a source other than the licensee.

At first glance, it would appear Louisiana Statutes dictate that since your clients specifically requested you not disclose 2-3 inches of water, this information is deemed confidential and shall not be disclosed by you.

However, please see Louisiana Revised Statutes 9:3891(6)(b) where the following is stated:

(b) Confidential information **shall not** be considered to include material information about the physical condition of the property.

Said another way, according to Louisiana Revised Statutes 9:3891(6)(b), if the item being requested to remain confidential might be considered material information about the physical condition of the property, then that item is not considered confidential information, and must be disclosed.

I think most everyone would agree that a house taking on any amount of water would be considered, at the very least, “material information about the physical condition of the property” that needs to be disclosed.

Now that we know material information about the physical condition of the property must be disclosed, we now turn our attention to the next area: are there any forms promulgated by the Louisiana Real Estate Commission that support the requirement that a house taking on 2-3 inches of water needs to be disclosed.

Please see Section One (1), Question #5, of the Property Disclosure Document for Residential Real Estate, wherein the Louisiana Real Estate Commission phrases the question about “flooding” as follows:

“(5) Has **any** flooding, **water intrusion**, accumulation, or drainage problem been experienced with respect to the land? If yes, indicate the nature and frequency of the defect at the end of this section.”

Through practice and experience, the Louisiana Real Estate Commission has come to know that the definition of “flooding” varies from person to person. Your seller might believe a house needs to take on 1 Foot or more of water before it is considered to have “flooded.” While your definition of “flooding” might be: if the house took on even an inch of water, then it is considered to have “flooded.”

By using the phrase “any...water intrusion,” the Louisiana Real Estate Commission cut through the various definitions of “flooding.” It is clear the Louisiana Real Estate Commission requires that all amounts of water taken on by a specific property be disclosed.

One additional point about Section One (1), Question #5 of the Property Disclosure Document for Residential Real Estate: please note the question asks whether any water intrusion occurred with respect to the “land”. It doesn’t say “house.” It says “land.”

Thus, not only are sellers required to disclose the 2-3 inches of water that their house took on, they are also required to disclose any amount of water that any portion of their property took on even if the water never reached the house!

These same sellers are in a financial bind and must sell their house. That's part of the reason they don't want me to disclose the water intrusion.

In their email, they also asked that I keep confidential the fact that they are in a financial bind and "need" to sell this house.

Is the fact that the sellers are in a financial bind and must sell their house considered "confidential information" that cannot be disclosed?

Analysis

To answer this question, let's go back to Louisiana Revised Statutes 9:3891.

According to Louisiana Revised Statutes 9:3891(6)(a) "Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:

(i) The client permits the disclosure by word or conduct.

(ii) The disclosure is required by law or would reveal serious defect.

(iii) The information becomes public from a source other than the licensee.

(b) Confidential information shall not be considered to include material information about the physical condition of the property.

Now let's analyze the above statute in relation to your client's request to see if your client's financial situation and their "need" to sell this house must remain confidential:

1. Did your clients send you a written request to not disclose their poor financial situation and their "need" to sell the house?

Yes

2. Could disclosure of your client's poor financial situation and "need" to sell the house materially harm your client's position?

Yes. When sharks smell blood in the water they attack. So, too, when Buyers sense the Sellers have a weak negotiating position, Buyers will try everything they can to get the lowest price possible on property.

3. Has your client permitted the disclosure of their poor financial situation and "need" to sell the house by word or conduct?

So far, it doesn't look like they have.

4. Is the disclosure of your client's poor financial situation and "need" to sell the house required by law?

Can't think of any laws that require this!

5. Would the disclosure of your client's poor financial situation and "need" to sell the house reveal a serious defect in the house?

Pretty sure client's financial situation and the condition of the house are two, totally unrelated items!

6. Has your client's poor financial situation and "need" to sell the house become public from a source other than you?

So far, it looks like nobody else but you and your clients are in possession of the information. So, no.

7. Could your client's poor financial situation and "need" to sell the house be considered material information about the physical condition of the property?

Similar to the answer to question #5, it's pretty safe to say that your client's financial situation would not reveal material information about the physical condition of the property.

Section 9 – Don't Measure the House, but Check the Measurements

I am at a listing appointment and my Sellers aren't sure of the square footage of the house. I recently took a class on how to measure the square footage of a house. Should I go ahead and measure the house and put that measurement in MLS?

Analysis

This question essentially asks: does a real estate agent have a duty to measure the square footage of a house?

Generally, duties of Real Estate Agents can be found/determined as follows:

- 1. What does Louisiana Revised Statutes 9:3893 say are the duties of a real estate agent?**
In summary, Louisiana Revised Statute 9:3893 does not mandate a specific duty of a real estate agent to measure the square footage of the house.
- 2. What duties can be analogically drawn from Louisiana Revised Statutes 37:1455?**
In summary, there doesn't appear to be any item in Louisiana Revised Statute 37:1455 that could imply a specific duty of a real estate agent to measure the square footage of the house.
- 3. Are there any Louisiana Court Cases that outline specific duties of a real estate agent?**

Next, we turn to Louisiana cases where the Court addresses whether Real Estate Agents have a duty to measure the square footage of the house.

At the outset, it is important to note there aren't many (if any) Louisiana cases where the Court addresses whether Real Estate Agents have a duty to measure the square footage of the house. The one case that comes close (but not directly on point) is *Tres' Chic in a Week, LLC, vs. The Home Realty Store, et al.*, 993 So.2d 228 (La. App. 1 Cir. 7/17/08).

In this case, the Buyer (i.e. Tres' Chic in a Week, LLC) bought, remodeled and resold houses. The Buyer's real estate agent showed them an MLS listing for a home indicating the home had 2,132 square feet of living area. Buyer purchased the home for \$148,000 on September 1, 2004 (i.e. \$69.42/sq ft.). After remodeling, Buyer intended to sell the home for approximately \$85 per square foot or \$181,220.

After the renovations were complete and while Buyer was showing the home, the Buyer's real estate agent learned that a previous MLS listing in 1999 by Buyer's real estate broker indicated the home had 1,846 square feet of living area (not 2,132 sq ft). Several measurements were conducted and the home's actual square footage was determined to be 1,861, resulting in a purchase cost to Buyer of \$79.52 per square foot.

Buyer sold the home for \$155,000 (i.e. approximately \$83.29 per square foot).

Buyer filed a lawsuit against their real estate agent seeking damages for lost profits. Buyer alleged their real estate agent had knowledge that the actual square footage was 1,861, as opposed to 2,132, based on a prior MSL listing of the home and failure to disclose this was negligent misrepresentation.

The Court of Appeal found no evidence that Buyer's real estate agent knew the home only had 1,861 square feet of living area as opposed to 2,132. Therefore, the Court of Appeals concluded that Buyer failed to show their real estate agent knowingly made any false representations concerning the square footage of living area of this home as contemplated by LSA-R.S. 37:1455(A)(15).

The Court of Appeals commented that Buyer might have been able to successfully recover on the theory of negligent misrepresentation, but Buyer failed to offer any evidence to establish whether the customs and practices of real estate brokers in general required that the Buyer's agent research the MLS history for the property in question. According to the Court, if the customs and practices of real estate brokers in general impose such a duty, it was clearly breached by the Buyer's real estate agent in this case, and the Buyer's real estate agent might be liable to Buyer under LSA-C.C. art. 2315 for negligent misrepresentation.

In Summary, there don't appear to be any Louisiana Court Cases that mandate a specific duty of a real estate agent to measure the square footage of a home.

4. What duties can be analogically drawn from the customs and practices of real estate agents?

So, the final inquiry is whether there are any customs and/or practices which mandate a real estate agent has a specific duty to measure the square footage of a home.

This will be determined on a case by case basis and, most likely, will depend upon the geographical area in which the real estate agent practices. In other words, whether the customs and practices of real estate agents indicate that a real estate agent has a duty to measure the square footage of a house might differ between cities.

In addressing this final inquiry, it might be pertinent to examine how the Louisiana Real Estate Commission defines Real Estate Activity. Although the definition of Real Estate Activity does not mandate the customs and practices of real estate agents, it helps us determine what activities the Louisiana Real Estate Commission might believe should be customs and practices of real estate agents.

According to Louisiana Revised Statutes 37:1431(24) "Real estate activity" means any activity relating to any portion of a real estate transaction performed for another by any person, partnership, limited liability company, association, or corporation, foreign or domestic, whether pursuant to a power of attorney or otherwise, who for a fee, commission, or other valuable consideration or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

(a) Sells, exchanges, purchases, manages, rents, or leases or negotiates the sale, exchange, purchase, rental, or leasing of real estate.

(b) Offers or attempts or agrees to negotiate the sale, exchange, purchase, management, rental, or leasing of real estate.

(c) Lists or offers or attempts or agrees to list for sale or lease any real estate or the improvement thereon.

(d) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate or the improvements thereon.

(e) Advertises or holds himself, itself, or themselves out as engaged in the business of selling, exchanging, purchasing, managing, renting, or leasing real estate.

(f) Assists or directs in the procuring of prospects or the negotiation or closing of any transaction, other than mortgage financing, which results or is calculated to result in the sale, exchange, managing, leasing, or renting of any real estate, other than a provider of information, ideas, and materials to guide homeowners in the sale of their own property.

(g) Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.

(h)(i) Sells or attempts to sell or offers or attempts to negotiate the sale of any business whose assets include real estate or leases of real estate.

(ii) Lists or offers or attempts or agrees to list for sale any business whose assets include real estate or leases of real estate.

Measurement of the square footage of a house is not included in the definition of "Real Estate Activity." Therefore, it could be said that the Louisiana Real Estate Commission does not contemplate that measurement of the square footage of a house should be a duty of a real estate agent, either directly or by custom or practice.

Summary

After reviewing all of the above, here are several quick thoughts:

1. Louisiana statutes, Louisiana cases, and the customs and practices of real estate agents do not appear to mandate a specific duty of a real estate agent to measure the square footage of a house;
2. If a real estate agent takes it upon herself/himself to measure the square footage of a house, that real estate agent is potentially adding more liability to himself/herself than is required by law;
3. It is probably a good idea for real estate agents to do a search of prior MLS listings to determine if there are discrepancies in square footage measurements for the house to be listed;
 - a. If an agent conducts this search, the agent should document in her/his files the time period searched;
 - b. If an agent discovers any discrepancies in prior MLS listings, the real estate agent should provide, in writing, all information to the client and recommend they have

the property surveyed and/or appraised to determine an accurate square footage measurement.

4. If a client (Buyer or Seller) is unsure of the square footage of a house, the real estate agent should recommend the client have the property surveyed and/or appraised to determine an accurate square footage measurement.
 - a. i.e. shift the liability away from the real estate agent and onto other trained professionals.

Section 10 – Unprofessional and Unethical Conduct

A common thread of concern has been professionalism within the real estate industry. Professionalism means respect. Treating clients, customers and other agents with courtesy and respect shows a commitment to your craft and your industry.

Unprofessional conduct impacts the perception of the industry as a whole. This section will identify what unprofessional and unethical conduct is. It is designed to raise awareness of professional courtesies we can employ within our business and industry.

Not Returning Phone Calls and Emails

Communication is key to any real estate transaction. Not returning phone calls and emails in a timely fashion shows a lack of respect. Not only does it negatively affect the relationship with your clients, but lack of communication with the cooperating agent hinders their ability to communicate with their client.

Communicate with all parties in a timely fashion. When submitting an offer, be courteous and let the other agent that an offer has been submitted. Also, when receiving an offer, a simple text message or email to the cooperating agent letting them know it has been received can go a long way.

Not Having All Paperwork With An Offer

When presenting an offer, agents should have all documents together in so a complete offer can be submitted. Incomplete or missing paperwork can cause numerous delays and inconsistencies when the offer is presented. Present the offer, the signed Property Condition Disclosure, the buyer's mortgage pre-approval, a signed lead paint form if applicable, the buyers earnest money deposit and any other supporting documentation.

Buyer's agent does not show homes with lower-than-typical cooperating compensation offered by listing broker.

Your buyer has entrusted you to show them all available houses that meet their criteria. If a house listed that meets a buyer's criteria, you have an obligation to show the property to the buyer. It is a violation of fiduciary trust to not show a property because of the cooperating commission is lower than you would expect.

Buyer's agent does not show clients homes listed by certain brokerage companies based on reputation or past experiences.

Same rules apply here. You owe your buyer a fiduciary responsibility to show homes that meet their criteria. Failure to do so because you do not like the other agent or company would be a violation of that trust.

Listing agent accepts listing with an unrealistic asking price for the marketing opportunity.

Listing an overpriced home with the sole purpose of prospecting for new clients is exceptionally unethical and borderline illegal. The process of selling a home can be an emotional roller coaster, one that many people are not adequately prepared for. This can create false hope for the homeowner who may not be knowledgeable about the market. Your priority should be to sell the home first. Do you want to be known as the agent who cannot sell a house?

Taking pictures and recording videos of a property you have not listed.

While Louisiana Real Estate Law and Rules and Regulations does not specifically address this, there may be ethical implications with a local REALTOR Association. In general, videoing any home without the permission of the owner is considered bad business practice.

While there are circumstances where it may be necessary – a client is out of town and unable to view the property – permission from the seller should still be obtained.

Section Eleven – “NK” Instead of “No” on the Property Disclosure Form

My sellers are trying to fill out the property disclosure form, but are unsure how to answer some of the questions.

For the questions about which the sellers are unsure, should Sellers check “No” or “NK” (i.e. “No Knowledge”)?

Analysis

This is a very good question and I’m sure our Answer is going to cause a stir with a lot of Real Estate Brokers throughout Louisiana.

For years we’ve told Real Estate Agents that if Sellers are not 1,000,000,....etc.% positive of an answer to one of the questions on the Property Disclosure form, the Seller should check “NK.”

Every time we provided this recommendation in the past, Brokers would let us know that a Property Disclosure form becomes relatively useless if it is littered with “NK” responses.

Well, we now have a Louisiana Supreme Court case entitled *Williams v. Nelson*, 136 So.3d 793 (Louisiana 2014), that creates a pretty significant issue for Sellers who check “No” on the Property Disclosure form instead of “NK”.

Here are the facts:

On April 25, 2012, Plaintiffs/Buyers purchased a residence located in Metairie, Louisiana from The Allan R. & Louise Nelson Revocable Trust and The Allan R. Nelson Marital Trust for \$1.4 million.

On February 24, 2012, the Trusts co-trustees executed a Sellers’ Property Condition Disclosure form wherein they represented the property’s condition.

When selecting from the option to choose “Yes,” “No,” or “NK” to the various questions asked, the Trustees checked the “No” boxes for each inquiry regarding defects in the property (with a few exceptions where they checked “NK”).

Based upon the “NK” responses and the pre-sale inspection, the Plaintiffs/Buyers averred they agreed to purchase the property “As Is” and waive their Redhibition rights.

Subsequent to the sale, in October 2012, the Plaintiffs/Buyers filed suit against the Trusts/Sellers alleging the property was found to have numerous and major defects. Plaintiffs/Buyers essentially alleged the following adverse to Sellers:

1. Sellers committed fraud when they checked “No,”;
2. This fraud induced Plaintiffs/Buyers to purchase the property and waive their Redhibition rights; and
3. Due to this alleged fraud, Plaintiffs/Buyers could not be bound to the Redhibition waiver

In other words, Plaintiffs/Buyers alleged they should be able to maintain a lawsuit against Sellers to reduce the sales price and/or rescind the sale due to defects in the property.

The Trusts/Sellers denied any liability and asserted they were never in a position to know of any defects that may have existed in the property.

The Trial Court and Court of Appeals dismissed the Plaintiffs/Buyers lawsuit.

However, the Louisiana Supreme Court overturned the dismissal and remanded the case back to the lower Courts for further proceedings.

According to the Louisiana Supreme Court, Sellers committed two fatal errors:

1. Sellers failed to advise the plaintiffs that they were not in a position to know one way or another whether the property contained defects; and
2. By checking “No” (instead of “NK”), Sellers intentionally misled the plaintiffs into believing that the Sellers were in a position to know the condition of the property and that the property did not contain any defects.

So, what are Real Estate Agents supposed to do with this? At the present time, it might be wise to consider the following:

1. If Sellers are not in a position one way or another to disclose whether the property has any defects, Sellers should disclose this fact to Buyers in writing;
2. If Sellers are not 1,000,000....etc.% sure of an answer to a question on the property disclosure form, Sellers should check “NK.”

Errors and Omissions Claims Handling

THE INSURED'S DUTIES IF THERE IS A CLAIM - The Insured shall give written notice by submitting a completed Notice of Claim Form to the Company as soon as possible after the Claim is first made but in no event more than ninety (90) days after the Insured becomes aware of such Claim.

The Insured shall immediately forward to the Company every demand, notice, summons, or other process about any Claim received by the Insured or the Insured's representative.

The Insured shall cooperate with the Company and, at the Company's request, the Insured shall assist the Company in responding to the Claim and making settlements. The Insured shall attend hearings and trials and help in securing and giving evidence at the Company's request.



2018 Mandatory Course

Real Estate Best Practices

SECTION ONE

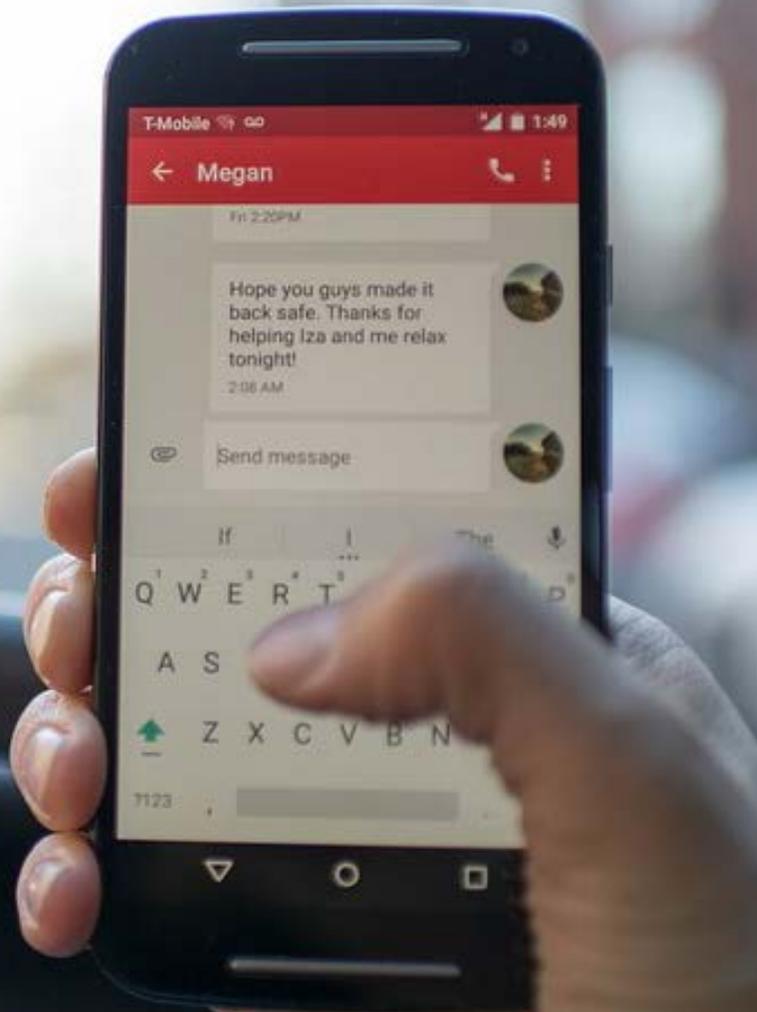
Recordkeeping

CASE STUDY

I get a ton of text messages from clients each day.

Do I need to keep all of these text messages?

If so, how do I store them?



Do I need to keep all of these text messages?

Yes

Louisiana Revised Statutes 37:1449

Louisiana Revised Statutes 37:1449(D)(1) Individual real estate brokers **shall retain all of the following records**, readily available and properly indexed, for a period of five years:

(a) Bank statements, copies of deposit slips, and cancelled checks on all escrow or trust accounts.

(b) **Copies of all documents that pertain in any way to real estate transactions** wherein the individual real estate broker or licensees sponsored by the individual real estate broker have appeared in a licensing capacity.



It says “broker.” I am not a broker.

Best practice

If the real estate agent prefers paper files, then the real estate agent can print the text message (or e-mail) and stick the text message (or e-mail) in their paper folder; OR

If the real estate agent operates under a “paperless” system, the real estate agent can save/store/transfer every text message (or e-mail) to their cloud storage.

SECTION TWO

Required Disclosures

A husband and wife have just completed building their dream home and are looking to sell their current one. The house is in located in a hot market, in great condition and you know it will not last long.

When you show up for the listing appointment, only the husband is there. He tells you his wife is on a business trip overseas and will be gone for two weeks. The husband signs the listing agreement and promises his wife will sign “soon” but he is anxious to get the property on the market. You help him with staging and get listing photos taken. The property is ready to list his wife has not signed the listing agreement. You explain you will not be able to put his property into MLS until his wife has signed the agreement. Again, he assures you he will get it signed when he talks to her tonight. He’ll have it first thing in the morning.

Knowing you are sitting on a hot property, that night you post a few pictures on Facebook that a wonderful home is about to come on the market. You are immediately contacted by a couple you have been working with who are interested and want to see it immediately.

In your excitement, you text all your sellers you have an interested buyer and set the appointment.

You show it, they love it and make a full price cash offer.

All parties throughout the process were aware that you were the dual agent on the property. However, to be safe you have everyone sign the dual agency disclosure form at closing.

What violations have occurred?

Louisiana Revised Statutes 37:1445

R.S. 37:1455.A

(11) Offering real estate for sale or lease without the written consent of the owner or his authorized agents.

(21) Failure of a licensee to provide the parties to a real estate transaction with an agency disclosure informational pamphlet and, where applicable, a dual agency disclosure form.



Must have written consent of the owner

Even though it was signed, *when* it is signed is just as important.

Dual Agency

Must be signed by all parties before acting as dual agent.

When is the best time to get the form signed by the sellers?

When is the best time to get the form signed by the buyers?

CONFIDENTIAL INFORMATION

Confidential information means information obtained by a licensee, broker, or both landlord and tenant in the same transaction. Such a relationship shall not constitute dual agency if the licensee is the seller of property that he/she owns or if the property is owned by a real estate business of which the licensee is the sole proprietor and agent. A dual agency relationship shall not be construed to exist in a circumstance in which the licensee is working with both landlord and tenant as to a lease that does not exceed a term of three years and the licensee is the landlord. Dual agency is allowed only when informed consent is presumed to have been given by any client who signed the dual agency disclosure form prescribed by the Louisiana Real Estate Commission. Specific duties owed to both buyer/seller and lessor/lessee are:

- To treat all clients honestly.
- To provide factual information about the property.
- To disclose all latent material defects in the property that are known to them.
- To help the buyer compare financing options.
- To provide information about comparable properties that have sold, so that both clients may make educated buying/selling decisions.
- To disclose financial qualifications to the buyer/lessee to the seller/lessor.
- To explain real estate terms.
- To help buyers/lessees arrange for property inspections
- To explain closing costs and procedures.

CONFIDENTIAL INFORMATION means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occur:

- The client permits the disclosure by word or conduct.
- The disclosure is required by law or would reveal serious defect.
- The information became public from a source other than the licensee.

By signing below you acknowledge that you have read and understand this form and that you are authorized to sign this form in the capacity in which you have signed.

Buyer/Lessee: _____ Seller/Lessor: _____

By: _____ Title: _____ Date: _____ Licensee: _____ Date: _____

By: _____ Title: _____ Date: _____ Licensee: _____ Date: _____

AgencForm Rev. 10/12

CASE STUDY

You are showing one of your listings to a prospective buyer-customer. During the showing, the buyer-customer seems interested and asks if the sellers would be willing to leave the swing-set. The showing continues and the buyer-customer begins to discuss her financing options and credit history. When did substantive contact occur and when should the agency disclosure form be given?

When the buyer-customer divulges her financial information?

Upon mention of the swing-set?

As soon as you met the buyer-customer?

When did substantive contact occur and when should the agency disclosure form be given?

When the buyer-customer divulges her financial information?

Upon mention of the swingset?

As soon as you met the buyer-customer?

Am I required to give the agency disclosure to all parties in a lease?

Agency disclosure is **not** required for a lease that does not exceed a term of three years and under which no sale of the subject property to the lessee is contemplated.



What about internet leads?

First substantive contact.

internet, e-mail, social media, messenger applications, etc.

CASE STUDY

My buyers wish to purchase a new construction home. The builder requires us to use their own contract. Am I allowed to do that?

§1449.1. Duty of real estate licensees to use purchase agreement forms

A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property. No person shall alter the purchase agreement form; however, addendums or amendments to the purchase agreement form may be utilized.



What if the builder drafts the contract?

No

What if I represent the builder?

Yes, if you represent a builder you are still required BY LAW to use the mandatory purchase agreement.

§1449.1. Duty of real estate licensees to use purchase agreement forms – A licensee representing either the buyer or seller of residential real property shall complete the purchase agreement form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property



“If a licensee puts pen to paper on a purchase agreement, it had better be the Louisiana Residential Agreement To Buy Or Sell.”

- Robert Maynor,
Director of Investigations,
Louisiana Real Estate Commission

Best Practice

The licensee can add an addendum.

Continuing with the second half of the law, “... however, addendums or amendments to the purchase agreement form may be utilized.”



What about HUD Homes?

Or bank repo's where you make an offer online?

When working with Federal government agencies, licensees do not have to abide by the Louisiana Real Estate Contract.

In all other cases you do.

Is it done every day without using the mandatory purchase agreement?
Probably.

CASE STUDY

I am the listing agent in a transaction. This morning I received an offer on the listed property and immediately presented the offer to my sellers for review/discussion.

My sellers agree with nearly all of the terms of the offer, but my sellers don't want to pay any closing costs. Essentially, my sellers don't want any money subtracted from their net sales proceeds other than the mortgage payoff, real estate commissions, and pro-rated property taxes.

My sellers want to strike through Lines 87-90 of the offer which state,
**“All necessary tax, mortgage, conveyance, release certificates or cancellations,
and the SELLER closing fees, if any, shall be paid by the SELLER.”**

Can my sellers just strike through this section of the offer and then initial and date the alteration?

Louisiana Revised
Statutes 37:1449.1(A)

“...No person shall alter the purchase agreement form.”



Best Practice

Prepare a counteroffer

“Sellers shall not be bound by the terms and conditions outlined in Lines 87-90 of the Offer and the parties effectively agree to strike through the following words contained in said Lines 87-90: All necessary tax, mortgage, conveyance, release certificates or cancellations and the SELLER closing fees, if any, shall be paid by the SELLER. Seller shall not pay any closing costs or charges to any party, lender, or closing attorney other than the actual payoff amount for Seller’s Mortgage, Real Estate Commissions and pro-rated property taxes.”



CASE STUDY

I own 10% of an LLC that is purchasing a piece of property.

Do I have to disclose that I am licensed?

Yes, if a licensee owns any interest, they are required to disclose, in writing, the license status.

§3501. Licensee as Principal in a Real Estate Transaction

A. The license status of a principal in a real estate transaction, whether individually or through an entity in which an interest is held by the licensee, shall be disclosed in writing to all other principals in the real estate transaction prior to entering into negotiations concerning the execution of a real estate contract.



When must that interest be disclosed?

§3501. Licensee as Principal in a Real Estate Transaction

A. The license status of a principal in a real estate transaction, whether individually or through an entity in which an interest is held by the licensee, shall be disclosed in writing to all other principals in the real estate transaction prior to entering into negotiations concerning the execution of a real estate contract.



SECTION THREE

Fair Housing (Service and Assistive Animals)

CASE STUDY

Thomas is looking for a house to rent. While driving around, he sees a “For Lease” sign on a home and calls the broker’s number.

Thomas explains to the on-duty agent his desire to rent the home. He also explains he has been diagnosed with severe depression and his doctor prescribed a comfort dog to help alleviate some of his symptoms.

The agent on duty informs Thomas that the owner of the home has a strict NO PETS policy and that he will not be allowed to rent the property.

Has the agent done anything wrong?

Service and assistive animals are not pets.

Under the Fair Housing Act, a disability is defined as a physical or mental impairment which significantly limits a person's major life activities.

Even if a lease says "no pets" or restricts pets, landlords are required to make what is called a "reasonable accommodation" to allow pets who serve as assistance animals, which includes animals who provide emotional support.



Some examples of assistance animals:

A cat who can detect and alerts their companion of oncoming seizure.

A dog who alleviates a person's depression or anxiety.

A cat who reduces a person's stress-induced pain.

A bird who alerts their hard-of-hearing companion when someone has come to the door.



CASE STUDY - September, 2015

University of Nebraska at Kearny paid claim of \$140,000 for refusing to allow 4 lb miniature pincher named Butch into University Housing. The dog was trained to comfort a student when she experienced disabling anxiety attacks that caused difficulty breathing and sleeping.

Documentation For Emotional Support Animals

If the needs of the animal are not obvious, the landlord may request written verification for the need for the animal from a health care professional or other verifier. Get an attorney involved in verification process.

According to HUD: “A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability related need for an assistance animal.



SECTION FOUR

Deposits and Commingling

CASE STUDY

Joe Smith is working with a buyer who made an offer on a home. The buyer put down a \$1,000 deposit to be held by the listing broker as ABC Realty. The offer was accepted. During the inspection period, the buyer found many deficiencies and terminated the contract and asked to receive a return of the deposit.

ABC Realty returned the deposit. Below is a copy of the check:



CASE STUDY

Why was the broker's license suspended for thirty days?

 **ABC REALTY, LLC**
Operating Account
12345 Main Street
Baton Rouge, La 70808

1025

DATE 1/1/2018

PAY TO THE ORDER OF The Buyer's Real Estate Firm \$ \$1,000.00

One Thousand Dollars and 00/xx DOLLARS  Security Features Included. Details on Back.

MEMO Return of Deposit - 123 Magnolia Way 

⑆0000000000⑆ ⑆0000000000⑆ 1025

Commingling

“putting personal funds and funds belonging to other persons in one mass or mixing the funds together so they cannot be identified or differentiated.”



CASE STUDY

I've been working with an investor for years, helping him acquire rental property all over the city. He now wants me to begin managing his rental houses. He insists that after collecting the security deposit, I transfer it to him at the end of the month.

Can he do that?

My owner wishes to hold all security deposits. He specifically asked me to give him all security deposits at the end of the month.

Is that legal?

Yes. If proper procedure is followed.

First, the *broker* must have the bank account – not the salesperson.

Second, the deposit check is to be written to the brokerage firm and put in the security deposit trust account.

Next, BOTH parties must agree

Finally, once both parties have agreed in writing, the check may be sent from the security deposit trust account to the owner.

What if the owner wants the deposits written directly to his/her LLC? Does the broker have to run it through their trust account or could the tenant make it directly to the owner?

§2717. Deposit

A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.



What if the owner wants the deposits written directly to his/her LLC? Does the broker have to run it through their trust account or could the tenant make it directly to the owner?

§2717. Deposit “...unless all parties having an interest in the funds have agreed otherwise in writing.”

Both the lease agreement and the management agreement needs to say the deposit is to be held by the owner.

CASE STUDY

The buyer wants the seller to hold on to a check (not deposit it) until closing.

Is that okay?

No. According to the Louisiana Rules and Regulations, *all* deposits must be deposited.

§2717. Deposits A. Funds received in a real estate sales, lease or management transaction **shall be deposited** in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

SECTION FIVE

**Improperly Prepare, Present
or Annotate an Offer**

CASE STUDY

Bob Smith is representing a buyer named Billy. Billy submit an offer on his dream home, but he is now concerned since they haven't heard from the agent and the time limit for the offer has expired. Bob has attempted to call the listing agent multiple times and left multiple messages and texts. Two days after the offer has expired, Bob is finally able to reach the listing agent who informs him the house is already under contract.

Bob asks to have the rejected contract marked "rejected" and signed by the seller. The listing agent informs Bob that his seller is an attorney and has refused to sign the contract because he does not believe it is necessary when rejecting an offer. Further, the attorney believes the contract was rejected when the time limit passed.

Bob explains that his buyer simply wants to verify the offer was presented to the sellers.

Who is right - Bob or the attorney?

§1449. Broker to insure provision of contract; retention of records.

B. Licensees and registrants shall insure that persons signing any document in a real estate transaction that pertains to more than one party are provided with a copy of the completed document bearing the signatures of all parties to the transaction within five days after the final signature is affixed to the document.



§3907. Rejection of Offers and Counter Offers.

All written offers and counter offers presented to a seller and/or buyer and not accepted shall be clearly marked as rejected and signed by the seller and/or buyer. In any circumstance in which a seller and/or buyer refuses to sign a rejected offer or counter offer, the licensee making the presentation of the offer or counter offer shall annotate this fact indicating the time of day and date of the rejection of the offer or counter offer by the seller and/or buyer. A copy of the rejected offer or counter offer signed by the seller and/or buyer, or a copy of the rejected offer or counter offer bearing the annotation of the licensee, shall be provided to the buyer and/or seller, and the rejected offer or counter offer shall be returned to the prospective buyer and/or seller within five days after the signature or annotation is affixed to the document.



LREC Guidance

LREC Guidance: The seller is not obligated to sign a rejected contract. However, the agent is required by Louisiana Real Estate License Law to provide all parties with a copy of the completed document within five days.

Therefore, if the seller refuses to sign the rejection of the purchase agreement, the listing agent is required to sign and mark as rejected, then (within five days) provides copies to both his/her client and the cooperating agent/customer.



ABC Realty			XYZ Real Estate Group			
Listing Firm			Selling Firm			
Jane Doe		000888888	<input type="checkbox"/>		Bob Smith	
Seller's Designated Agent Name & License Number			Buyer's Designated Agent Name & License Number			
ABC Realty, LLC		000123456	Dual Agent		XYZ Real Estate Group	
Brokerage Firm or Broker Name & License Number			Brokerage Firm or Broker Name & License Number			
504-555-1234		504-555-1111			504-123-4567	
Phone Number	Office	Fax			Phone Number	Office
jd@abcreealty.com					bob@XYZregroup.com	
Email Address			Email Address			
Jane Doe			Monday, January 1, 2018		1:30	PM
Delivered by Designated Agent to			Day	Date	Time	AM/PM
Delivered by email						
Comments						
Received by Designated Agent			Day	Date	Time	AM/PM

ABC Realty			XYZ Real Estate Group		
Listing Firm			Selling Firm		
Jane Doe		000888888	<input type="checkbox"/> Dual Agent		
Seller's Designated Agent Name & License Number			Buyer's Designated Agent Name & License Number		
ABC Realty, LLC		000123456	XYZ Real Estate Group		000654321
Brokerage Firm or Broker Name & License Number			Brokerage Firm or Broker Name & License Number		
504-555-1234		504-555-1111	504-123-4567		504-987-6543
Phone Number	Office	Fax	Phone Number	Office	Fax
jd@abcrealty.com			bob@XYZregroup.com		
Email Address			Email Address		
Jane Doe		Monday, January 1, 2018	1:30	PM	
Delivered by Designated Agent to			Day	Date	Time AM/PM
Delivered by email					
Comments					
Jane Doe		Monday, January 1, 2018	2:05	PM	
Received by Designated Agent			Day	Date	Time AM/PM

372

373 **EXPIRATION OF OFFER:**

374 This offer is binding and irrevocable until January 2, 20 18 at 5:00 AM PM MIDNIGHT NOON.

375 The Acceptance of this offer must be communicated to the offering party by the deadline stated on line 374 to be
376 binding and effective.

377

378 **X**  Jan 1, 2018 11:30 am

379 Buyer's / Seller's Signature Date/Time AM PM

380 Billy Buyer

381 Print Buyer's/Seller's Full Name (First, Middle, Last)

382 12345 Magnolia Blvd

383 Street Address

384 Metairie, LA 70011

385 City, State, Zip

386 _____

387 Telephone Number.Cell

388 _____

389 Telephone Number.Home Telephone Number.Work

390 _____

391 E-Mail Address

392 Jane Doe

393 This offer was presented to the Seller Buyer by

394 _____

395

396 This offer is: Accepted Rejected (without counter) Countered (See Attached Counter) by:

397

X _____

Buyer's / Seller's Signature Date/Time AM PM

Print Buyer's/Seller's Full Name (First, Middle, Last)

Street Address

City, State, Zip

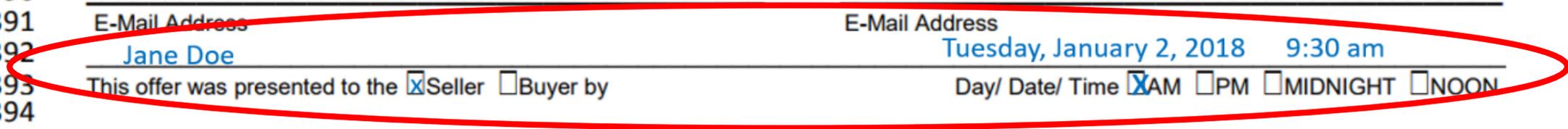
Telephone Number.Cell

Telephone Number.Home Telephone Number.Work

E-Mail Address

Tuesday, January 2, 2018 9:30 am

Day/ Date/ Time AM PM MIDNIGHT NOON



371 agreements not incorporated herein in writing are void and of no force and effect.

372

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376 binding and effective.

377

378 [Signature] Jan 1, 2018 11:30 am

379 Buyer's / Seller's Signature Date/Time AM PM

380 Billy Buyer

381 Print Buyer's/Seller's Full Name (First, Middle, Last)

382 12345 Magnolia Blvd

383 Street Address

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394

395

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397

398 Buyer's / Seller's Signature Date/Time AM PM

399

400 Print Buyer's/Seller's Full Name (First, Middle, Last)

401

402 Street Address

403

404 City, State, Zip

405

406 Telephone Number.Cell

407

408 Telephone Number.Home Telephone Number.Work

409

410 E-Mail Address

411 Bob Smith (Seller refuses to sign rejection) Tuesday, 1/2/2018 12:00

412

This counter offer was presented to the Seller Buyer by

Day/ Date/ Time AM PM MIDNIGHT NOON

Offer Acceptance, Rejection and Counter

The Seller has the option of accepting, rejecting or countering the offer. In all cases, the licensee is obligated to annotate (line 412) that the offer was presented.



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379 Buyer's / Seller's Signature Date/Time Jan 1, 2018 11:30 am AM PM

380

381 Print Buyer's/Seller's Full Name (First, Middle, Last)

382

383 12345 Magnolia Blvd

384

385 Metairie, LA 70011

386

387

388 Telephone Number.Cell

389

390 Telephone Number.Home

391

392 E-Mail Address

393

394

395 This offer was presented to the Seller Buyer by

396

397 This offer is: Accepted Rejected (without counter) Countered (See Attached Counter) by:

398

399 Buyer's / Seller's Signature Date/Time AM PM

400

401 Print Buyer's/Seller's Full Name (First, Middle, Last)

402

403 Street Address

404

405 City, State, Zip

406

407 Telephone Number.Cell

408

409 Telephone Number.Home

410

411 E-Mail Address

412

Bob Smith (Seller refuses to sign rejection) Tuesday, 1/2/2018 12:00

This counter offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON

X

Buyer's / Seller's Signature Date/Time AM PM

X

Print Buyer's/Seller's Full Name (First, Middle, Last)

X

Street Address

X

City, State, Zip

X

Telephone Number.Cell

X

Telephone Number.Home Telephone Number.Work

X

E-Mail Address Tuesday, January 2, 2018 9:30 am

X

This offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON

X

This offer is: Accepted Rejected (without counter) Countered (See Attached Counter) by:

X

Buyer's / Seller's Signature Date/Time AM PM

X

Print Buyer's/Seller's Full Name (First, Middle, Last)

X

Street Address

X

City, State, Zip

X

Telephone Number.Cell

X

Telephone Number.Home Telephone Number.Work

X

E-Mail Address

X

This counter offer was presented to the Seller Buyer by Day/ Date/ Time AM PM MIDNIGHT NOON

Rejection

If the seller refuses the agent is to annotate that the seller rejected the offer.

Best Practice: The refusal to sign the rejection can be annotated on line 412 (as seen below) or the agent may notate the rejection by hand in the margin.



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383 Street Address

384 Metairie, LA 70011

385 City, State, Zip

386

387 Telephone Number.Cell

388

389 Telephone Number.Home Telephone Number.Work

390

391 E-Mail Address

392 Jane Doe

393 This offer was presented to the Seller Buyer by

394

395

396 This offer is: **Accepted** **Rejected** (without counter) **Countered** (See Attached Counter) by:

397

398 X  Jan 2, 2018 12:15

399 Buyer's / Seller's Signature Date/Time AM PM

400 Sam Seller

401 Print Buyer's/Seller's Full Name (First, Middle, Last)

402 9876 Sunshine Way

403 Street Address

404 Metairie, LA 70011

405 City, State, Zip

406

407 Telephone Number.Cell

408

409 Telephone Number.Home Telephone Number.Work

410

411 E-Mail Address

412 Bob Smith

This counter offer was presented to the Seller Buyer by

X

Buyer's / Seller's Signature Date/Time AM PM

Print Buyer's/Seller's Full Name (First, Middle, Last)

Street Address

City, State, Zip

Telephone Number.Cell

Telephone Number.Home Telephone Number.Work

E-Mail Address

Tuesday, January 2, 2018 9:30 am

Day/ Date/ Time AM PM MIDNIGHT NOON

X  1/2/2018 12:15

Buyer's / Seller's Signature Date/Time AM PM

Sally Seller

Print Buyer's/Seller's Full Name (First, Middle, Last)

9876 Sunshine Way

Street Address

Metairie, LA 70011

City, State, Zip

Telephone Number.Cell

Telephone Number.Home Telephone Number.Work

E-Mail Address

Tuesday, 1/2/2018 12:00

Day/ Date/ Time AM PM MIDNIGHT NOON

Accepted Offer



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388 Jane Doe _____
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411 _____
412 _____

This offer is: Accepted Rejected (without counter) **Countered** (See Attached Counter) by:
397 X  Jan 2, 2018 12:15 X _____
398 Buyer's / Seller's Signature Date/Time AM PM Buyer's / Seller's Signature Date/Time AM PM
399 Sam Seller _____
400 Print Buyer's/Seller's Full Name (First, Middle, Last) _____
401 9876 Sunshine Way _____
402 Street Address _____
403 Metairie, LA 70011 _____
404 City, State, Zip _____
405 Telephone Number.Cell _____
406 Telephone Number.Home _____ Telephone Number.Work _____
407 E-Mail Address _____
408 Bob Smith _____
409 This counter offer was presented to the Seller Buyer by _____
410 _____
411 _____
412 _____



Counteroffer



CASE STUDY

I am the Listing Agent. My sellers are currently under contract with Buyer A. Over the weekend, another agent submitted an offer from Buyer B. Buyer B's offer is a cash offer (Buyer A's offer is a financed offer) and Buyer B's offer is higher than the current contract with Buyer A.

Since the Sellers are already under contract with Buyer A, should I just discard Buyer B's offer?

LA R.S. 9:3893

- (A) A licensee representing a client shall:
- (2) Promote the best interests of the client by:
 - (b) Timely presenting all offers to and from the client.



Since the Sellers are already under contract with Buyer A, should I just discard Buyer B's offer?

You must submit the offer.

Backup Offer

Request Buyer B structure his offer to remain open until the contract with Buyer A is either closed or canceled. In this option, Sellers will not sign Buyer B's "offer."

In order to present an offer that remains "open," Buyer B could either:

Structure his/her offer with a long time-frame in which the offer will remain "open" (i.e. several weeks); or

He/she could choose not to put a time-frame on the offer and make it a "revocable at any time" offer.

SECTION SIX

Advertising Law and Rules

CASE STUDY

Sally Salesperson is beginning a second career in real estate. She was previously a marketing executive for a large firm and knows a thing or two about branding. Being excited about her new career, she embarks on a full-scale media campaign to introduce herself to the public. She carefully constructs a digital media campaign by creating a custom logo and catch phrase - Sally Sells - and launches her first social media ad:



Is Sally's ad in compliance with the LREC advertising guidelines?

Because it is a social media post, are there any special rules?

Broker name

Broker phone number

Required information for brokers:

- the broker's name or trade name as registered with the commission
- the city and state of the broker's main office or branch office.
- the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

Required information for associate brokers and salespersons

- the associate broker or salesperson's name
- the broker or trade name listed on the license of that associate broker or salesperson
- the city and state of the broker's main office or branch office.
- the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license





“Is all of this information required for ALL of my Facebook posts?”

NO.

If you are posting on your Facebook wall – either personal or business – the necessary information only needs to be in the “Info” or “About” section of your profile page.



“Is all of this information required for ALL of my Facebook posts?”

If you are posting the advertisement within a Facebook Group or another page – that is not on your personal or business page – the required information would need to be within the ad. The LREC considers posts outside of your own Facebook wall an advertisement.

CASE STUDY

Jeremias “J-Man” Maniero is a real estate licensee who has a hobby of doing endurance competitions on the weekend - Warrior Dash, Crossfit, etc. He has become a local celebrity racing under the “J-Man” brand and wants to extend that into his real estate business. He and his wife are both licensed and they want to bring on two more agents to create “J-Man Team Real Estate”. He wants to promote his brand in his real estate business.



What are the minimum requirements he needs in order to set-up, maintain, and promote his team?

Is his logo LREC-compliant?

Broker name/phone number?

Jeremias should have written permission of his broker to advertise his team name.



§1909. Team Advertising

A. A team or group name shall not be used in advertising without the written approval of the sponsoring broker.

B. The term "team" or "group" may be used to advertise real estate license activities provided that:

1. the use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person or entity is lawfully doing business;
2. the team or group is composed of more than one licensee;
3. the advertising complies with all other applicable provisions of this Chapter and LAC 46:LXVII.



Team Advertising

His team name “J-Mann Team Real Estate” is not allowed to be used. The term “Real Estate” at the end of his team name may lead the public to believe he is a real estate brokerage and not a team.



§1905 Team or Group Names

A. Team or group names shall not contain terms that could lead the public to believe that the team or group is offering real estate brokerage services independent of the sponsoring broker. These terms shall include, but are not limited to:

1. real estate;
2. brokerage or real estate brokerage;
3. realty;
4. company



CASE STUDY

Are “Coming Soon”
advertisements illegal?

**It is not a violation of
the Commission's laws
and rules.**

**Coming
SOON**

Licensees wishing to use the phrase “coming soon” in advertising and marketing material must adhere to the following:

1. the broker or brokerage advertising a property in this manner must have written authority from all property owners.
2. the licensee placing the advertisement or not placing the property in the MLS needs to properly inform the seller of this.
3. as a licensee you must present any and all written offers to the sellers for their consideration immediately and without delay.

Coming
SOON

Coming Soon

While this is not illegal, local REALTOR Board rules may differ or have restrictions on these advertisements.

Coming
SOON

SECTION SEVEN

Giving Legal and Tax Advice

CASE STUDY

I represent the buyer in a transaction. We are past the due diligence deadline and my client wants to “back out of the contract.” My client wants to know whether he can back out and whether the seller can come after him for breach of contract.

The contract is fairly clear that my client cannot back out of the contract since we are past the due diligence deadline.

Should I tell him that he cannot back out of the contract?

Did your client is ask you to practice law?

Practicing law without a license can be a serious offense that carries with it possible civil and criminal penalties.



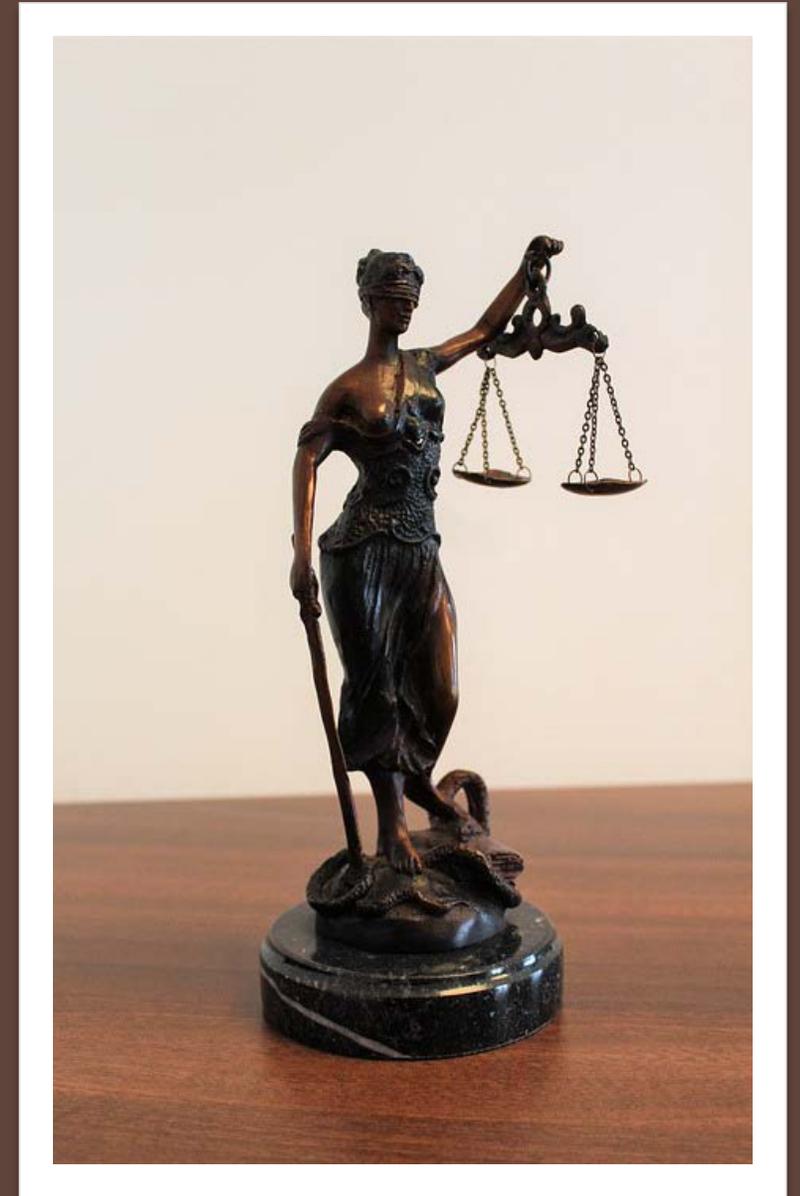
No one without a law license may:

- (1) Practice law.
- (2) Furnish attorneys or counsel or an attorney and counsel to render legal services.
- (3) Hold himself or itself out to the public as being entitled to practice law.
- (4) Render or furnish legal services or advice.



No one without a law license may:

- (5) Assume to be an attorney at law or counselor at law.
- (6) Assume, use, or advertise the title of lawyer, attorney, counselor, advocate or equivalent terms in any language, or any phrase containing any of these titles in such manner as to convey the impression that he is a practitioner of law.
- (7) In any manner advertise that he, either alone or together with any other person, has, owns, conducts, or maintains an office of any kind for the practice of law.



The practice of law means and includes:

- (1) In a representative capacity, the appearance as an advocate, or the drawing of papers, pleadings or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state; or

- (2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect;
 - (a) The advising or counseling of another as to secular law;

 - (b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights;



The practice of law means and includes:

(2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect;

(b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights;

(c) The doing of any act, in behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right; or

(d) Certifying or giving opinions, or rendering a title opinion as a basis of any title insurance report or title insurance policy as provided in R.S. 22:512(17), as it relates to title to immovable property or any interest therein or as to the rank or priority or validity of a lien, privilege or mortgage as well as the preparation of acts of sale, mortgages, credit sales or any acts or other documents passing titles to or encumbering immovable property.



Best Practice

Instead of advising your client whether he can back out of the contract, it would be wise to recommend your client seek legal advice from a licensed attorney in the State of Louisiana.



CASE STUDY

I represent the seller in a transaction. We have received an offer on the Seller's home, and the seller wants to know if they should accept the offer.

Is the seller asking me to provide a legal opinion which would be considered the "practice of law"?

Unauthorized practice of law

Is guiding a Seller regarding a home's value would be considered an "unauthorized practice of law."

Here we go again...

Phrases like, “I think this is a solid offer based on what I’ve shown you” are clearly acceptable.

Phrases like, “You’d be stupid not to take this offer” should be guarded against.

Guiding a Seller regarding a home's value would not be considered an "unauthorized practice of law."

CASE STUDY

Shortly after the death of his grandfather, Shawn received word that he inherited a vacant warehouse previously owned by his grandfather. As an engineer, Shawn had no use for the warehouse. He decided it would be best to sell the building and put the money toward opening his own engineering firm. Shawn contacted Bob, a licensee who specialized in commercial real estate, and set up a listing appointment. Upon further inspection of the warehouse, Bob suggested that a few minor improvements would increase the marketability and potentially increase the sales price.

Unsure of how to proceed, Shawn began asking Bob questions regarding the sale of the property:

“Are these improvements tax-deductible expenses?”

“Is this sale subject to Capital Gains Tax?”

“My buddy suggested that I 1031 this. Do you think that is wise?”

How should Bob answer these questions?

What about tax advice?

The general best practice is to refer your client to their pre-existing lawyer or tax professional. If they don't have one, you can suggest a few that you've worked with before. Explain to clients that while you have worked on many deals for other clients and have an understanding of some tax implications, a tax professional will be able to answer their questions more directly. And the tax professional may understand the family's overall financial situation better than you can.



What about tax advice?

Deferring specialized or legal questions in the home buying/selling process to an individual licensed in those specifics, and creating a written record that you notified your client to seek independent guidance will greatly reduce your liability.



SECTION EIGHT

Confidentiality

CASE STUDY

I am the listing agent for property in Denham Springs. During the August 2016 flood, my sellers' house only flooded in one room (barely) and didn't flood in any other part of the home. My sellers sent me an e-mail requesting that I not disclose this information because the house "didn't flood like my neighbors did or like the rest of the parish".

They insisted the home doesn't meet their definition of flooding and disclosure of minimal water intrusion as "flooding" might hinder their ability to sell their house.

Is a little water inside of a home considered "confidential information" that cannot be disclosed?

The first area that needs to be addressed is: whether there are any Louisiana Statutes that dictate whether 2-3 inches of water can be deemed confidential when the sellers request that it remain confidential.

“Confidential information **shall not** be considered to include material information about the physical condition of the property.”



Second, are there any forms promulgated by the Louisiana Real Estate Commission that support the requirement that a house taking on 2-3 inches of water needs to be disclosed.

property described herein has been determined a wetland by the Corps.

(5) Has any flooding, water intrusion, accumulation, or drainage problem been experienced with respect to the land? If yes, indicate the nature and frequency of the defect at the end of this section. Y N NK

(6) What is/are the flood zone classification(s) of the property? _____ What is the source and date of this information? Check all that apply. Survey/Date _____ Flood Elevation Certificate/Date _____ Other/Date _____

Question Number	Explanation of "Yes" answers	<input type="checkbox"/> Additional sheet is attached
_____	_____	_____
_____	_____	_____
_____	_____	_____

SECTION 2: TERMITES, WOOD-DESTROYING INSECTS AND ORGANISMS

(7) Has the property ever had termites or other wood-destroying insects or organisms? Y N NK

By using the phrase “any...water intrusion,” the Louisiana Real Estate Commission cut through the various definitions of “flooding.” It is clear the Louisiana Real Estate Commission requires that all amounts of water taken on by a specific property be disclosed.



Section One (1), Question #5 of the Property Disclosure Document for Residential Real Estate: please note the question asks whether any water intrusion occurred with respect to the “land”. It doesn’t say “house.” It says “land.”

Thus, not only are sellers required to disclose the 2-3 inches of water that their house took on, they are also required to disclose any amount of water that any portion of their property took on even if the water never reached the house!



CASE STUDY

These same sellers are in a financial bind and must sell their house. That's part of the reason they don't want me to disclose the water intrusion.

In their e-mail, they also asked that I keep confidential the fact that they are in a financial bind and "need" to sell this house.

Is the fact that the sellers are in a financial bind and must sell their house considered "confidential information" that cannot be disclosed?

LA R.S. 9:3891(6)

(a) "Confidential information" means information obtained by a licensee from a client during the term of a brokerage agreement that was made confidential by the written request or written instruction of the client or is information the disclosure of which could materially harm the position of the client, unless at any time any of the following occurs:

- (i) The client permits the disclosure by word or conduct.
- (ii) The disclosure is required by law or would reveal serious defect.
- (iii) The information becomes public from a source other than the licensee.

(b) Confidential information shall not be considered to include material information about the physical condition of the property



Did your clients send you a written request to not disclose their poor financial situation and their “need” to sell the house?

Yes

Could disclosure of your client's poor financial situation and "need" to sell the house materially harm your client's position?

Yes. When sharks smell blood in the water they attack. So, too, when Buyers sense the Sellers have a weak negotiating position, Buyers will try everything they can to get the lowest price possible on property.

Has your client permitted the disclosure of their poor financial situation and “need” to sell the house by word or conduct?

So far, it doesn't look like they have.

Is the disclosure of your client's poor financial situation and "need" to sell the house required by law?

Can't think of any laws that require this!

Would the disclosure of your client's poor financial situation and "need" to sell the house reveal a serious defect in the house?

Pretty sure client's financial situation and the condition of the house are two, totally unrelated items!

Has your client's poor financial situation and "need" to sell the house become public from a source other than you?

So far, it looks like nobody else but you and your clients are in possession of the information. So, no.

Could your client's poor financial situation and "need" to sell the house be considered material information about the physical condition of the property?

Similar to a previous question, it's pretty safe to say that your client's financial situation would not reveal material information about the physical condition of the property.

SECTION NINE

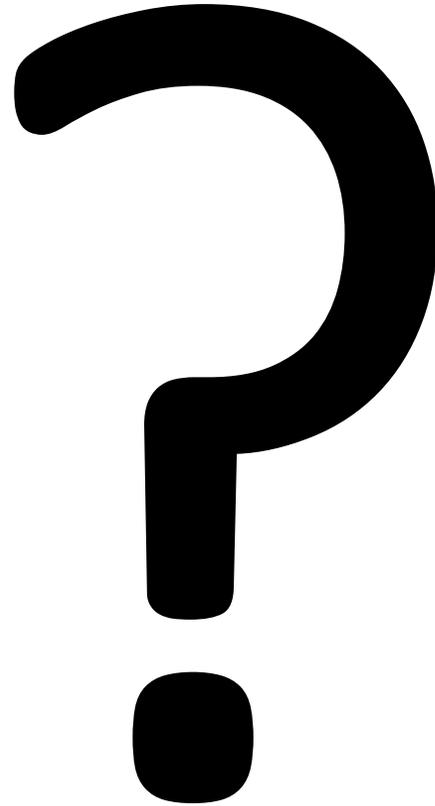
House Measurement Best Practices

CASE STUDY

I am at a listing appointment and my sellers aren't sure of the square footage of the house. I recently took a class on how to measure the square footage of a house.

Should I go ahead and measure the house and put that measurement in the MLS?

This question essentially asks: does a real estate agent have a duty to measure the square footage of a house?



What does Louisiana Revised Statutes 9:3893 say are the duties of a real estate agent?

In summary, Louisiana Revised Statute 9:3893 does not mandate a specific duty of a real estate agent to measure the square footage of the house.

What duties can be analogically drawn from Louisiana Revised Statutes 37:1455?

In summary, there doesn't appear to be any item in Louisiana Revised Statute 37:1455 that could imply a specific duty of a real estate agent to measure the square footage of the house.

Are there any Louisiana Court Cases that outline specific duties of a real estate agent?

There does not appear to be any Louisiana Court Cases that mandate a specific duty of a real estate agent to measure the square footage of a home.

What duties can be analogically drawn from the customs and practices of real estate agents?

Measurement of the square footage of a house is not included in the definition of “Real Estate Activity.” Therefore, it could be said that the Louisiana Real Estate Commission does not contemplate that measurement of the square footage of a house should be a duty of a real estate agent, either directly or by custom or practice.

Summary

Louisiana statutes, Louisiana cases, and the customs and practices of real estate agents do not appear to mandate a specific duty of a real estate agent to measure the square footage of a house;

If a real estate agent takes it upon herself/himself to measure the square footage of a house, that real estate agent is potentially adding more liability to himself/herself than is required by law;

It is probably a good idea for real estate agents to do a search of prior MLS listings to determine if there are discrepancies in square footage measurements for the house to be listed;

- If an agent conducts this search, the agent should document in her/his files the time period searched;

- If an agent discovers any discrepancies in prior MLS listings, the real estate agent should provide, in writing, all information to the client and recommend they have the property surveyed and/or appraised to determine an accurate square footage measurement.

If a client (Buyer or Seller) is unsure of the square footage of a house, the real estate agent should recommend the client have the property surveyed and/or appraised to determine an accurate square footage measurement.

- i.e. shift the liability away from the real estate agent and onto other trained professionals.

SECTION TEN

Unprofessional and Unethical Conduct

CASE STUDY

A common thread of concern has been professionalism within the real estate industry. Professionalism means respect. Treating clients, customers, and other agents with courtesy and respect shows a commitment to your craft and your industry.

Unprofessional conduct impacts the perception of the industry as a whole.

This section will identify what unprofessional and unethical conduct is. It is designed to raise awareness of professional courtesies we can employ within our business and industry.

Not Returning Phone Calls and E-mails

Communication is key to any real estate transaction. Not returning phone calls and e-mails in a timely fashion shows a lack of respect. Not only does it negatively affect the relationship with your clients, but lack of communication with the cooperating agent hinders their ability to communicate with their client.

Communicate with all parties in a timely fashion. When submitting an offer, be courteous and let the other agent that an offer has been submitted. Also, when receiving an offer, a simple text message or e-mail to the cooperating agent letting them know it has been received can go a long way.

Not Having All Paperwork with an Offer

When presenting an offer, agents should have all documents together in so a complete offer can be submitted. Incomplete or missing paperwork can cause numerous delays and inconsistencies when the offer is presented. Present the offer, the signed Property Condition Disclosure, the buyer's mortgage pre-approval, a signed lead paint form if applicable, the buyers earnest money deposit and any other supporting documentation.

Buyer's agent does not show homes with lower-than-typical cooperating compensation offered by listing broker.

Your buyer has entrusted you to show them all available houses that meet their criteria. If a house listed that meets a buyer's criteria, you have an obligation to show the property to the buyer. It is a violation of fiduciary trust to not show a property because of the cooperating commission is lower than you would expect.

Buyer's agent does not show clients homes listed by certain brokerage companies based on reputation or past experiences.

Same rules apply here. You owe your buyer a fiduciary responsibility to show homes that meet their criteria. Failure to do so because you do not like the other agent or company would be a violation of that trust.

Listing agent accepts listing with an unrealistic asking price for the marketing opportunity.

Listing an overpriced home with the sole purpose of prospecting for new clients is exceptionally unethical and borderline illegal. The process of selling a home can be an emotional roller coaster, one that many people are not adequately prepared for. This can create false hope for the homeowner who may not be knowledgeable about the market. Your priority should be to sell the home first. Do you want to be known as the agent who cannot sell a house?

Taking pictures and recording videos of a property you have not listed.

While Louisiana Real Estate Law and Rules and Regulations does not specifically address this, there may be ethical implications with a local REALTOR Association. In general, videoing any home without the permission of the owner is considered bad business practice.

While there are circumstances where it may be necessary – a client is out of town and unable to view the property – permission from the seller should still be obtained.

SECTION ELEVEN

“NK” Instead of “No” on the
Property Disclosure Form

CASE STUDY

My sellers are trying to fill out the property disclosure form, but they are unsure how to answer some of the questions.

For the questions about which the sellers are unsure, should the sellers check “No” or “NK” (i.e. “No Knowledge”)?

Louisiana Supreme Court Case *Williams v. Nelson*

Louisiana Supreme Court case entitled *Williams v. Nelson*, 136 So.3d 793 (Louisiana 2014), that creates a pretty significant issue for Sellers who check “No” on the Property Disclosure form instead of “NK”.



Louisiana Supreme Court Case *Williams v. Nelson*

On April 25, 2012, Plaintiffs/Buyers purchased a residence located in Metairie, Louisiana from The Allan R. & Louise Nelson Revocable Trust and The Allan R. Nelson Marital Trust for \$1.4 million.

On February 24, 2012, the Trusts co-trustees executed a Sellers' Property Condition Disclosure form wherein they represented the property's condition.



Louisiana Supreme Court Case *Williams v. Nelson*

When selecting from the option to choose “Yes,” “No,” or “NK” to the various questions asked, the Trustees checked the “No” boxes for each inquiry regarding defects in the property (with a few exceptions where they checked “NK”).

Based upon the “NK” responses and the pre-sale inspection, the Plaintiffs/Buyers averred they agreed to purchase the property “As Is” and waive their Redhibition rights.

Subsequent to the sale, in October 2012, the Plaintiffs/Buyers filed suit against the Trusts/Sellers alleging the property was found to have numerous and major defects.



Louisiana Supreme Court Case *Williams v. Nelson*

Plaintiffs/Buyers alleged they should be able to maintain a lawsuit against Sellers to reduce the sales price and/or rescind the sale due to defects in the property.

The Trusts/Sellers denied any liability and asserted they were never in a position to know of any defects that may have existed in the property.

The Trial Court and Court of Appeals dismissed the Plaintiffs/Buyers lawsuit.



Louisiana Supreme Court Case *Williams v. Nelson*

The Louisiana Supreme Court overturned the dismissal and remanded the case back to the lower Courts for further proceedings.



Louisiana Supreme Court Case *Williams v. Nelson*

According to the Louisiana Supreme Court, Sellers committed two fatal errors:

Sellers failed to advise the plaintiffs that they were not in a position to know one way or another whether the property contained defects; and

By checking “No” (instead of “NK”), Sellers intentionally misled the plaintiffs into believing that the Sellers were in a position to know the condition of the property and that the property did not contain any defects.



What are Real Estate Agents supposed to do with this?

Consider the following:

If Sellers are not in a position one way or another to disclose whether the property has any defects, Sellers should disclose this fact to Buyers in writing;

If Sellers are not 1,000,000....etc.% sure of an answer to a question on the property disclosure form, Sellers should check "NK."





Errors and Omissions Claims Handling

THE INSURED'S DUTIES IF THERE IS A CLAIM - The Insured shall give written notice by submitting a completed Notice of Claim Form to the Company as soon as possible after the Claim is first made but in no event more than ninety (90) days after the Insured becomes aware of such Claim.

The Insured shall immediately forward to the Company every demand, notice, summons, or other process about any Claim received by the Insured or the Insured's representative.

The Insured shall cooperate with the Company and, at the Company's request, the Insured shall assist the Company in responding to the Claim and making settlements. The Insured shall attend hearings and trials and help in securing and giving evidence at the Company's request.