

Top 10 Legal Issues Facing Brokers Today!

When I first got in this wonderful world of real estate in 1971 our biggest challenge was implementing the new MLS system! Buyer Beware was the norm. Everyone represented the seller, by law. Most companies were small independent “mom and pop” shops. There were no seller’s property disclosures, no agency forms, and NO MOLD issues! But things have changed dramatically in 32 years. According to the National Association of REALTORS’ general counsel, Laurie Janik, there are 10 top issues affecting brokers today.

1. Misrepresentation is by far the lawsuit that brokers face most. The misrepresentation and failure to disclose suits make up over 69% of the lawsuits against REALTORS according to the NAR endorsed errors and omissions insurance program.
2. Agency problems or breach of fiduciary duties came next. The problem of course is that very few agents really understand what their “statutory duties” to the client really mean. In our ABR courses module 1 is all about agency and the statutory duties. That module should take about 3 hours to teach. It always takes 5 hours minimum because of the questions and concerns. How much training is too much training???? Apparently there is no such thing as too much training.
3. Fair housing violations account for only 1-2% of the litigation cases most account for the most costly of all of the judgments...especially if you are in the rental business.
4. Antitrust laws are intended to prevent unreasonable restraints of trade. With today’s competitive environments for sellers – brokers falling at their feet with all sorts of competitive rates to get the listing, a big question for brokers is “Do you know what your agents are saying while they are out competing for listings?” When was the last time you did antitrust training in your office.
5. False or misleading advertising lawsuits such as “For Sale” sign bans and internet advertisings is a hot topic now.
6. Salespeople’s/personal assistants employment or independent contractor status can impact your tax liability. 90% of most salespeople are independent contractors...however is the same true of their assistants?
7. Environmental issues in this survey came in 7th in the list. I can guarantee you that since the list of formulated...environmental issues have climbed to be one of the top issues. Failing to recommend persons with the expertise to evaluate those hazards has been the main complaint. With the Lead Paint disclosure form alone worth \$66,000 in fines (\$11,000 per line not checked/initialed/or signed) a broker cannot let the environmental disclosures go unchecked.
8. Real Estate Settlement Procedures Act violations occur when mortgage brokers, lenders, title services, or real estate brokers give or receive anything of value in return for referrals. With many brokers today offering mortgages services as well as home protection plans....conflicts of interest are everywhere!
9. Unauthorized practice of law spawns lawsuits whenever brokers or salespeople provide legal advice. Having been a broker/owner for years I shutter when I think of the “legal advice” not only my agents gave but me as well. Adding addendums to purchase agreements, drafting agreements between the parties at the closing or just giving a legal opinion on what should be done regarding inspections can create a huge problem for the broker later.
10. Americans with disabilities act violations have been brought against brokers who fail to do what’s readily achievable with reasonable effort and expense to serve clients with disabilities.

The National Association of REALTORS just came out with its’ 2003 Legal Matrix. It shows the top issues the brokers think they are facing and compare that to the list that real estate commissions have developed as well as a list from “real estate insiders” who predict the future developments in real estate. Compare these lists to the one above to see how the focus of real estate has changed over the last couple years. The list from

the real estate commissions concentrates on those issues where they have seen an increase in disputes based upon these individual issues.

<u>Commissions</u>	<u>Brokers</u>	<u>Key Contacts</u>
1. Buyer Agency Issues	Commission Disputes	Technology
2. Dual Agency Issues	Disclosure: Structural Defects	Affinity Groups
3. Commission Disputes	Technology: Advertising	RESPA
4. Deceptive Trade Practices	Disclosure: Mold	Ethics
5. Escrow Mishandling	Disclosure: Roof	Third Party Liability
6. Licensing Issues	Frivolous Lawsuits	Agency
7. Technology: Advertising	Internet Advertising	Relocation COs.
8. Disclosure: Structural	Licensing Issues	Fair Housing
9. Disclosure: Septic	As is clauses	Employment issues
10. Personal Assistants	Technology: Privacy	Property Management

Obviously, several of the issues listed above fit under that misrepresentation and failure to disclose category. What these studies indicate is that it is definitely not as easy to be a broker today as it was 32 years ago.

The Austin Board of REALTORS is presenting an ABRM (Accredited Buyer's Representative for Managers/Brokers) course on September 29 at the Board of REALTORS office, Education Auditorium. That course is a must for brokers who really want to safe guard their agents and their income.

We'll help you:

- Manage these risks
- Develop training systems that will build risk management skill building by applying the use of the myriad of forms available to you through your association.
- Organize your information – keeping systems so that you can now track the buyers that your agents are working with in order to forecast future income streams from buyers and sellers
- Survey your clients as to their satisfaction level and develop a strategy to increase your rate of return clients
- Focus on a company ideology that truly represents your company's goal and objectives
- Identify company agency policies that will help reduce your liability
- Challenge you to encourage your agents to work with buyers only under exclusive buyer representation agreements so that you know “who you clients are at all times”.
- Work the FSBO market to increase your inventory for buyers
- Create marketing systems
- Recruit the agents that will fit into your ideology and be less of a liability to you
- Adapt to the changes that lie ahead.

I am the instructor for this program and guarantee you that it will be a day well spent. I am bringing all of the new NAR data with me to show you where your training needs to be focused in the next 2 years. I sincerely hope that you will join me.

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