

A CASE OF MISSING DISCLOSURE

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Every day, today's real estate professional is faced with the question "What must I disclose"? Most states have developed legislation that specifies what the licensee is obligated to disclose. If you live in a state where there are no guidelines yet, you can rely on the REALTOR® Code of Ethics to provide the standards you need. Article 2 of the Code clearly says that:

- You are required to communicate truthfully and not misrepresent facts.
- You must not remain silent about pertinent adverse factors.
- You are not required to discover and disclose apparent adverse factors outside the scope of your real estate license.
- You are not required to discover and disclose latent (hidden) defects.
- You are not required to disclose confidential facts.

In contemplating disclosure of information regarding a transaction, consider three things.

1. Is the information material to the subject matter of the agency relationship?
2. Is the information private in nature?
3. Was the information acquired in confidence?

Information that should be disclosed to your principal would include all known material information, whether or not it is private in nature, as long as you do not compromise your position in dual agency. Examples of what should be disclosed include:

To a Buyer/Tenant Principal

- Prices and terms the seller will accept.
- Financial condition of the seller/landlord.
- Motivation of the seller to sell.
- Title defects.
- Broker's conflict of interest.
- Market conditions and property values.
- Stigmatic characteristics of the property.
- Financing methods/alternatives.
- Any information that would improve the buyer's position.

To a Seller/Landlord Principal

- Price a buyer will pay and terms they will offer.
- Financial ability of buyer to complete the transaction.
- Motivation of the buyer to buy.
- Buyer's plans for the property.
- Broker's conflict of interest.
- Market conditions and property values.
- Any information that would improve the seller's position.

To both Parties in Dual Agency

- Information that the broker is specifically authorized to disclose by the parties in writing.
- Information that is generally understood not to be private in nature; i. e., square footage, zoning, government regulations, prior use of property, offering/asking price and terms, and information regarding the area.
- Information that may not be conveyed from one principal to the other, absent written authority of the principal, which includes information the broker is specifically instructed to keep in confidence and information that is generally understood to be private in nature or would harm the bargaining position of the principal.

With these general guidelines as a road map the next several segments of "A Case of Missing Disclosure" will investigate how disclosures regarding various material and adverse facts, such as murders, child molesters, and crime should be handled.

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