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# E&O RISK MANAGER

HELPING REAL ESTATE PROFESSIONALS REDUCE THEIR CLAIM EXPOSURES

## ARE YOU AT FAULT?

### *Developing Procedures Could Save You from Litigation*

***When an agent and broker partner together for a transaction, it's extremely important for both parties to do their own due diligence. Because even if you don't directly make the mistake, you could still be at fault. This actual scenario teaches us two lessons. First, don't falsely advertise your expertise or claim you know an area of real estate that you don't. And second, when working with another party, make sure you develop procedures and ask questions to prevent a lawsuit from occurring.***

*Continue reading to see how this property purchase ran off the rails.*

#### SITUATION

A potential buyer approaches a residential agent, looking for a property where he can live with his family and operate a pest control business. The agent runs advertisements that indicate expertise in residential and commercial real estate.

#### PROBLEM

The agent, who is licensed to sell residential properties, is unfamiliar with the nuances of commercial zoning. And, unfortunately, the managing broker has no procedures in place to identify and correct the agent's error of misrepresentation and lack of knowledge.

#### MISTAKE

The agent found a property, which was listed by another "in-house" agent, that seemed to be suitable for the buyer's home and business needs. However, the agent was unfamiliar with regulations and incorrectly assumed the property could be used for a business. When the client expressed interest, the agent encouraged him to make the purchase.

#### RESULT

About one year after the buyer closed on the property, the city sent him a notice that he could not operate a pest control business out of his home due to zoning regulations. The buyer requested that the property be rezoned, but the petition was denied. The buyer

sued the agent who sold him the property, along with the broker, seeking compensatory damages, lost revenue, and attorney fees. The buyer alleged that he trusted the agent's advertised expertise. Furthermore, he alleged that the broker was also at fault because the agent's actions were not properly supervised.

#### PREVENTION

In this case, the agent and the broker could have avoided litigation if prior procedures had been in place. By supervising the transaction, the broker could have assured that proper protocol was followed: checking with the in-house agent first, not misrepresenting an area of expertise, and asking questions when needed. In addition, the agent would have served the client better by seeking advice about zoning regulations before advising the buyer that the property could be used as a residence and business. As a result, the lawsuit was settled when it became apparent that both the broker and agent would be found liable if the case went to court.

You may mean well when you're trusting your agent or broker, but you'll be kicking yourself if it lands you in a lawsuit. When it comes to your career and your clients, there are ways to stay friendly and professional. Having office procedures will help you stay consistent and protect your business. And remember to stay within your area of expertise and seek advice from an expert when you have a question or are unfamiliar with the field. **P**



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