

OBSERVATIONS

from the desk of Mildred Wilkins, (FIS)...

Fair Housing

Is fair housing changing with the times? Fair housing used to be so straight forward. The law still is, in fact, and this article is not an update on some new aspect of the law which you might have missed.



A New Challenge

As an instructor on foreclosure related issues my primary objective is to help professionals to learn how to become more effective intervening when consumers are struggling, in default and/or facing foreclosure. Education is my methodology with a strong emphasis on practicality. In addition, I understand that you can't save the people if you engage in reckless behavior and lose your license. Hence, a lot of my time is spent on "saving the REALTORS." The common theme for many of the articles which you receive is "save the real estate professional." I know you already took your required fair housing course. Trust me, this is a different slant and well worth your time.

Subject Matter Expertise

No offense intended, but most real estate licensees have been and remain 'general practitioners.' GP's were adequate in our former real estate market. Unfortunately, today's market is too complex for "jack of all trades, master of none" licensees. Even when your clients have been fooled into trusting their real estate transaction into your care, the risk to **you** is potentially career-ending. HOM has advocated agent specialization since 2002. We are now at a place where you owe it to yourself, your Broker and your future clients to pursue knowledge in a specific segment of the real estate practice. Brokerage X has five new customers.

- ^ Customer A—is in default on their loan, with an upside down mortgage, and needs a specialist who knows how to facilitate a short sale.
- ^ Customer B—wants to buy a bank owned property. An REO specialist who understands the risks of buying 'as is,' the need for additional title coverage, etc would be best suited to represent this customer.
- ^ Customer C—a traditional sale in a declining market. It might seem simple, but an agent who is up to speed on property valuation in a rapidly falling market is the best bet.
- ^ Customer D—has been relocated to another part of the country. What to do about the existing house, weighing the options of renting versus selling the former residence, the possible need for property management, and the considerations for housing in the new city.
- ^ Customer E—wishes to sell existing home, downsize, and move to Florida. Would like to build there.

If these scenarios don't scare you, they ought to. The potential for complaint for providing recommendations "outside your area of expertise" is exceedingly high. If you believe that one (1) agent has the expertise and the time to professionally and adequately handle all five of these very diverse customers—you are very likely guilty of not adhering to the principle of fair housing.

Read on....

Property Valuation

Real estate professionals have always been fairly careful about protecting themselves from the appearance of 'guaranteeing value' when handling real estate transactions. In today's volatile market, much more than any time in recent decades, licensees should go the extra mile to be sure that customers/clients understand that the agent is licensed in the sale, purchase or rental of real estate but cannot warrant that the amount offered or paid for property is going to be supported in the near future. In order to further insure there is little room for misunderstanding, I recommend the unilateral use of a disclosure which addresses this fact. It is also highly recommended that you take some additional training on property valuation which focuses on establishing value in a declining market. It's an entirely different process, with new factors to be considered.

Disclosure

Today's real estate professional may well feel they are between a rock and a hard place when it comes to appropriate disclosure. Whatever your concerns are, they would probably be put to rest with some clarity on disclosure as it relates to:

- agency law
- federal privacy laws
- seller disclosure law
- related sections of mortgage document

It is not possible to provide in-depth clarity in an article such as this, but I will provide an example: Mary Smith, a divorcee, has engaged you to list her home. Her mortgage is in default. The title is solely in her name. However, the mortgage is still in the names of Mary and Herman Smith. Herman is NOT your client. Yet, as a co-borrower, Herman's right to privacy (without approved disclosure) is protected by federal law. Many states' seller disclosure laws would require his signature on the seller disclosure forms to sell the home. Lastly, and perhaps most importantly, under the terms of the note, his signature/cooperation would be required for sale of the collateral. You would be wise to study fair housing in relationship to the above mentioned items.

Language Barriers

The issue of the customer/client whose first language is different from the real estate professional has major potential for becoming the basis of a fair housing complaint. During the two hour "Fair Housing" segment of the (FIS) certification training I always ask my class two questions.

- ^ 1st question—“How many of you would close on the purchase of a house when you couldn’t read ANY of the documents?” NO ONE has ever raised their hand.
- ^ 2nd question—“How many of you have participated in a closing where your clients could not read the documents?”

It’s one of those pin-dropping moments. With the incidence of foreclosure at epidemic proportions, and a fair number of folks holding crazy loans whose terms they did not understand, it behooves you to:

- a. utilize an interpreter
- b. get documents in their native language
- c. do something to avoid a lawsuit based on ‘failure to understand’ documents presented

No matter which side of the transaction you represented, you are a ‘party to the transaction’ if you received a commission check as a result of the sale.

Fairness in Marketing

Ethical guidelines require that you deal fairly with all involved parties, other professionals, and the public. Yet many real estate agents fail to disclose that a listed property is in danger of foreclosure. Some erroneously believe that there is no need to disclose until the foreclosure is completed. WRONG. Some agents believe that they must protect the privacy of the seller by not disclosing a possible foreclosure is pending. WRONG again. Other agents believe they should not take a chance on negatively impacting a possible offer by disclosing a possible foreclosure. Again, WRONG. What is right?

1. You must not disclose without written permission from Mary (and Herman, it’s his privacy too)
2. You should first disclose to your broker, via the listing contract, any special circumstances
3. You must disclose (be honest with the public) via the seller disclosure, internet and mls and any other marketing the true circumstances of this particular listing
4. Any buyer’s agent has the right to know that there are special circumstances with this listing so they can advise their buyer accordingly

Representation AFTER foreclosure

We are not going to engage in a protracted argument about whether or not there is a possibility to help a consumer AFTER foreclosure. For the record, my position is that real estate professionals, by signing a contract with a consumer, have signed on to represent them with real estate which they OWN. The agency relationship ceases to exist when the consumer no longer owns the real estate. Likewise the agency relationship changes when the borrower:

- ^ Files bankruptcy—this interrupts any agency relationship
- ^ Mails a deed-in-lieu—this severs the ownership of the real estate

The listing contract may not expire for two more months, but the agency relationship hinges on the party of the first part engaging the services of the second party to handle specific details related to real estate the borrower owns or controls. When the borrower no longer owns the real estate (it has been foreclosed or the borrower has relinquished it via deed-in lieu) or control was lost via the filing of bankruptcy, your services are no longer deemed necessary.

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