



McLane Solutions
Real Estate Education

BROKER RISK MANAGEMENT: WHAT YOU SAY AND DO CAN BE USED AGAINST YOU

A Real Estate CE Program by:
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What Happens When Things Go Wrong?

- Lawsuits
- Licensing Board complaints
- Ethics complaints
- What else?



Top Ten Claims (E & O)

1

- Fraud

2

- Breach of Duty

3

- Breach of Contract

Top Ten Claims (E & O)

4

- Negligence

5

- Bodily injury/property damage

6

- Misrepresentation regarding condition

Top Ten Claims (E & O)

7

- Consumer Protection Act

8

- Earnest/Escrow Money

9

- Misrepresentation regarding flooding/leaks

Top Ten Claims (E & O)

10

- **Misrepresentation regarding the value of the property**

What Would the Charges Be?

- Disputed driveway
- Square footage
- Bankrupt builder
- Offer presentation
- Cancel the contract
- Flood plain
- Second deposit
- Price too high?
- Price too low?
- Walk through
- Right of first refusal
- “I know best”

Disputed Driveway

- The listing agent knew that the seller had an ongoing dispute with the neighbor over a shared driveway, and failed to disclose it.

Square Footage

- The selling agent realized that the square footage on the MLS sheet was incorrect, but did not bring it to the buyer's attention.

Bankrupt Builder

- The listing agent realized that the builder was going bankrupt and would not be able to complete the roads and other amenities into the development, and did not disclose it to the buyer's agent.

Present Offers or Not?

- The listing agreement did **not** contain any language regarding presentation of offers after an offer had been made, presented, and accepted; another offer subsequently came in. Should the agent present it?

Exercising Right to Cancel

- The buyer's agent had been informed by her clients that they were exercising their right to cancel a contract, based on a home inspection. The buyer's agent failed to cancel the contract by the deadline.

NOT in the Flood!

- The buyer's agent assured the buyers that "this property is not in the flood plain; I've lived here all my life and I know". Subsequently, the FEMA maps (recently redrawn) indicate floodplain, the sale falls apart because the buyers cannot afford flood insurance.

Where's the Money?

- The contract called for the buyer to make an earnest money deposit within 5 days of written acceptance of the offer by the seller. The buyer never made the deposit, and the agent never told the sellers.

You'd Protect Us, Right?

- The buyer was from out of town; the listing agent was representing the seller. The buyer made the statement: “You wouldn’t let us buy this if the price was too high”, to which the listing agent made no reply. SOP 16-12

SOP 16-12

- If a seller agent must
- disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation
- And...explain what that means!

Wait! Did We Sell Too Low?

- A new agent lists a house which sells immediately. Later, the sellers allege that the listing price was at least 20% below market value.
- SOP 1-3? “mislead sellers”

Wait, We Could Have Walked Through?

- The buyers closed without a final walk through, and were not advised that they could have one. After closing, personal property included in the sale was missing, issues covered by furnishings, such as damaged floor coverings were discovered.

**SELLER: I LEFT A FEW
THINGS IN THE GARAGE**



**IN CASE THE BUYER
COULD USE IT**

Right of First Refusal

- Listing agent took a listing on a commercial property, and sold it with an extended closing date. 11 months *after* the contract was signed but before closing, the buyer's agent read the deed and discovered there was a right of first refusal. The entity who had that exercised it, and the buyers could not buy the property.

“I Know What My Client Wants”

- A listing agent refused to present an offer stating: “I know my clients would not accept that.” The buyers approached the sellers directly, and the sellers accepted the offer.

Ethics Check:

- SOP 1-6: REALTORS® shall present offers objectively and as quickly as possible.”

Code of Ethics References

- Article 2 REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction
- Article 4 REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker.

Fraud or Misrepresentation?

- Fraud:
 - Intentional
 - Material fact
 - Significant to decision
 - Commission or omission
 - Made knowingly
- Misrepresentation:
 - Statement is believed to be correct
 - Did not intend harm

You Be The Judge



- Home inspection
- Pre-approval
- “Hooey”
- “I mow to the line”
- Sewage?
- LLC

Home Inspection

- Inspection #1: structural damage
- Buyer cancels
- Seller: Home inspector is clueless
- Seller hires his own inspector “no structural damage”
- Second buyer
- Broker does not mention the first inspection
- Provides, on seller’s instructions, a copy of the home inspection the seller got

Subject to Financing

- “Pre-approval” letter
- Buyer loses her job
- Buyer agent doesn’t tell listing agent this

Radon is “Hooey”

- Long time agent tells buyers
- “it’s a waste of time and money”

“I Mow to the Line”

- Seller only lived there 3 years
- Neighbor indicated line when she moved in
- Subsequent survey says line is not there!

Where's the new Sewer Plant Going to be built?

- Several proposed sites
- No final decision
- Listing is near one of the proposed sites
- Disclose or not?

Broker Z is in an LLC

- LLC buys investment property
- Broker Z makes an offer from the LLC
- Does not disclose, nor does the contract state, that Broker Z is one of the shareholders in the LLC

There's a Violent Sex Offender

- In the neighborhood where agent lives and is selling a house
- Buyers are retired, no kids
- Agent makes no comment, nor does she remind them of how to look up sex offenders

Agency in Georgia

- Sellers
- Buyers
- Single agency
- Dual agency
- Designated agency

Pitfalls of Multiple Representation

- Unable to provide undivided loyalty

Undisclosed
multiple
representation

Breach of
confidentiality

Duties Under License Law

- Perform terms of any written agreement
- Reasonable skill and care
- Promote client's interest
- Present all written offers timely manner
- Disclose: agency, interests, compensation, material facts

Duties Under License Law

- Advise expert advice
- Account in timely manner for property & money
- Comply with all laws

Code of Ethics

1. Honesty
2. Pertinent facts
3. Cooperation & compensation
4. Personal interest
5. Professional service/contemplated interest

Code of Ethics

- 6. Rebates
- 7. Compensation from both parties
- 8. Escrow
- 9. Put it in writing
- 10. Don't discriminate
- 11. Competency

Code of Ethics

- 12. True picture in advertising
- 13. Don't practice law
- 14. Cooperate with professional standards enforcement

Code of Ethics

- 15. Don't lie about competitors
- 16. Compete, but play by the rules
- 17. Mediation or arbitration of commission disputes

Stuck in the Middle

- You had the Biltmore listing
- Expired
- They relisted with your competition
- You have buyers who would love it—the Contents
- You know Biltmores are building, don't want two mortgages
- Can you tell the Contents this?
- Who is your client?

BFF

- You listed your BFF's house
- Couple came in office
- Gave them agency notice
- Created a buyer agency with them
- On the way to the showing, you tell them the seller is your BFF
- Have you behaved ethically?
- What other alternatives did you have?

“Let Me Sleep on It”

- Johnson listing, you present offer
- Johnsons want to ‘sleep on it’
- Another buyer calls:
- Is it sold?
- Do you think it is sold?
- Should you schedule a showing?
- Avoid them until 5 pm tomorrow, when you’ll have a decision.

Beyond Difficult

- Seller is Knight
- Beyond difficult
- Listing will go with relo company in 2 weeks
- Knight's last chance to get more \$ is before then
- Buyers are Days
- *Lovely people!*
- Only buyers interested
- You might be able to get them up
- What do you do?

Appraisers and Agents

Appraisers

- FIRREA
- Federally related
- USPAP compliant

Agents

- CMAs
- BPOs
- Limits on use

Seller's Top Three

- Price home competitively
- Find a buyer
- Market house
- Close fourth: sell in my time frame

Buyer's Top Three

- Find me a house
- Negotiate price
- Negotiate terms

Pricing

- Know market
 - Right comps
 - Geographic competency
 - Absorption rate
 - LP/SP ratio
 - DOM
 - Competing listings
- Understand economic forces
 - Supply and demand
 - Interest rates
 - Unemployment
 - Money supply

Pricing Issues

- Over listed:
consequences
- Under listed:
consequences



Pricing Basics

- Market:
- Right comparables
- Geographic competency
- Absorption rate
- LP/SP
- DOM
- Competing listings
- Economic forces:
- Supply and demand
- Interest rates
- Unemployment
- Money supply

Inspecting for a Listing

- Red flags
- Do your homework
- Measure and verify
- Have sellers review all marketing data for accuracy

Acceptable or Unacceptable?

- Wheelchair
- Kids on deck
- Synagogue
- Diversity
- “Perfect for”
- “Family”
- I speak Russian
- Handicap accessible
- No students
- Roommates
- Age restricted

Fair Housing

- Race
- Color
- National Origin
- Religion
- Sex (Gender)
- Familial Status
- Handicap (Disability)

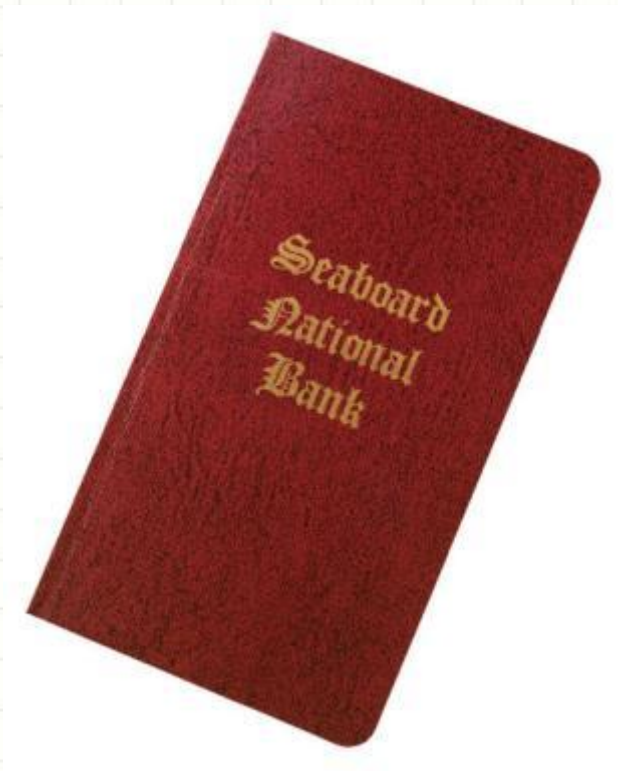
Georgia: Same as Federal



Recent Cases

- Denying a rental to a person who uses a guide dog
- Advertising a two bedroom apartment as being for only two adults
- Refusing to rent a property with a “high deck” or “steep steps” to families
- Refusing to allow a designated parking spot for a handicapped individual

Escrow



- Commingling
- Failure to deposit
- Failure to account
- Failure to collect additional deposits

Other Pitfalls

- Oops
- “It’s Okay to Do it This Way”
- “You’ll Never Work in this town again..”
- “I’m just a partner”
- “Me Too”
- “Oh, I never got your message”
- “It’s a process”
- Best Title is the Best
- Follow Me
- Photoshop
- Just Lock it Up when you leave

OOPS!

- Listing contact said: prorated propane
- Dining room chandelier excluded
- Stove and dishwasher included
- No mention of refrigerator
- A cooperating broker brought a contract:
- No mention of propane, chandelier, included refrigerator
- Agent didn't review it carefully, just sent it to sellers for signatures.

“It’s Okay...”

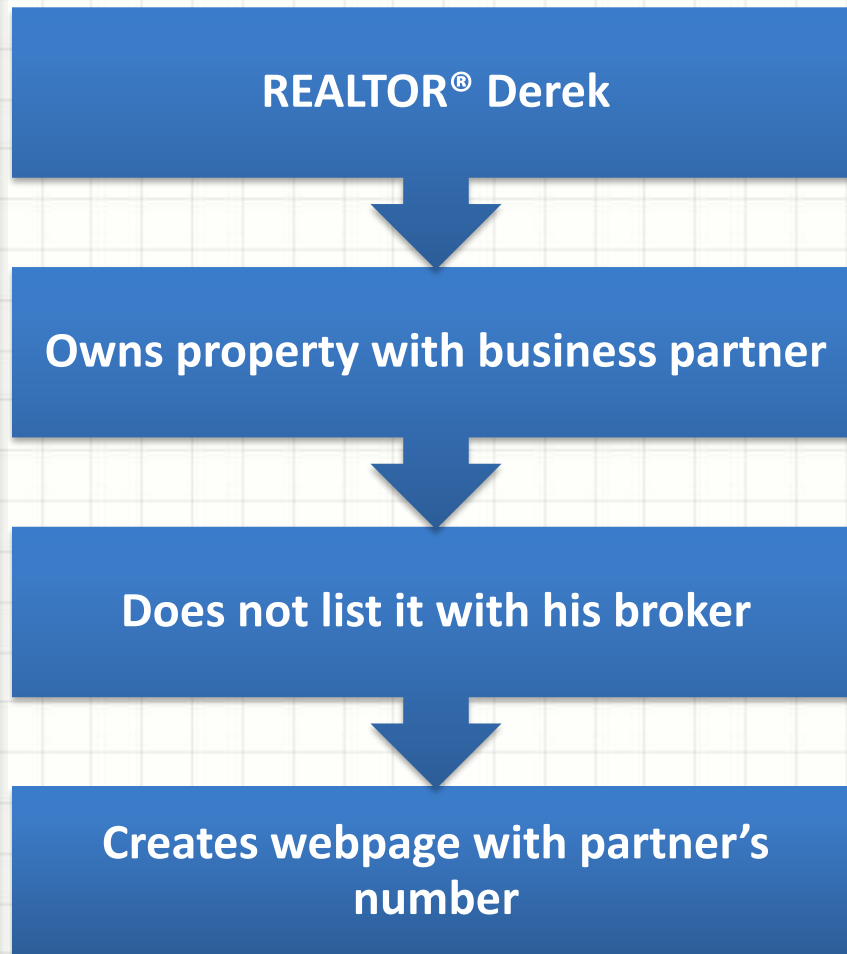
- Purchasers not married
- Agent advises them to take title as joint tenants with right of survivorship



“You’ll Never Work In This Town.”

- New brokerage
- Different business model
- Flat fees
- Advertises ‘save money by listing with us’
- Brokers and agents agree to not cooperate with this brokerage

“I’m Just a Partner”



- Promotes it in social media
- No mention of his ownership or status as licensee

“Me Too”

- **REALTOR® Sam**
- **Listing investment property**
- **His LLC might be interested**
- **Says he has the LLC as a client**
- **Doesn't mention he is in the LLC**

“I Never Got Your Message”



- **Beth sells house to her own client**
- **“Oh, I never got your message”**

Does This Happen Too Much?

- **Unrepresented offers**
- **What about private listings?**



“It’s A Process...”

- **Seller and buyer agent have written agreement for commission**
- **Seller had agreed to pay X% to buyer agent**
- **At closing, compensation to buyer agent had a ‘processing fee’ taken out**



BEST TITLE IS THE BEST

- **REALTOR® Linda recommends Best Title**
- **Doesn't mention her husband owns it**
- **She's a part owner as well**



Follow Me...

- **REALTOR® Debbie** leaves her old company
- **Starts her own**
- **Urges all existing clients personally and in social media to ‘follow me’**



Photoshop



- **REALTOR® Ted**
- **Editing software**
- **Removes cracks in wall**
- **Removes power lines**
- **Removes nearby houses**
- **Adds landscaping**

“Just Lock It Up When You Leave”



- **REALTOR® Frank**
- **Can't show it when Buyer Barry wants to go**
- **“Here's the combo to the lockbox, just lock it up when you leave”**

Social Media

- So easy to connect....
- So easy to offend....
- So easy to be stupid....

Um...NO...Not a violation!

If you take 3.5% while the other agent gets 2.5% you should lose your license! This is unethical and against the NAR code of conduct 🤡

Buyer Agency

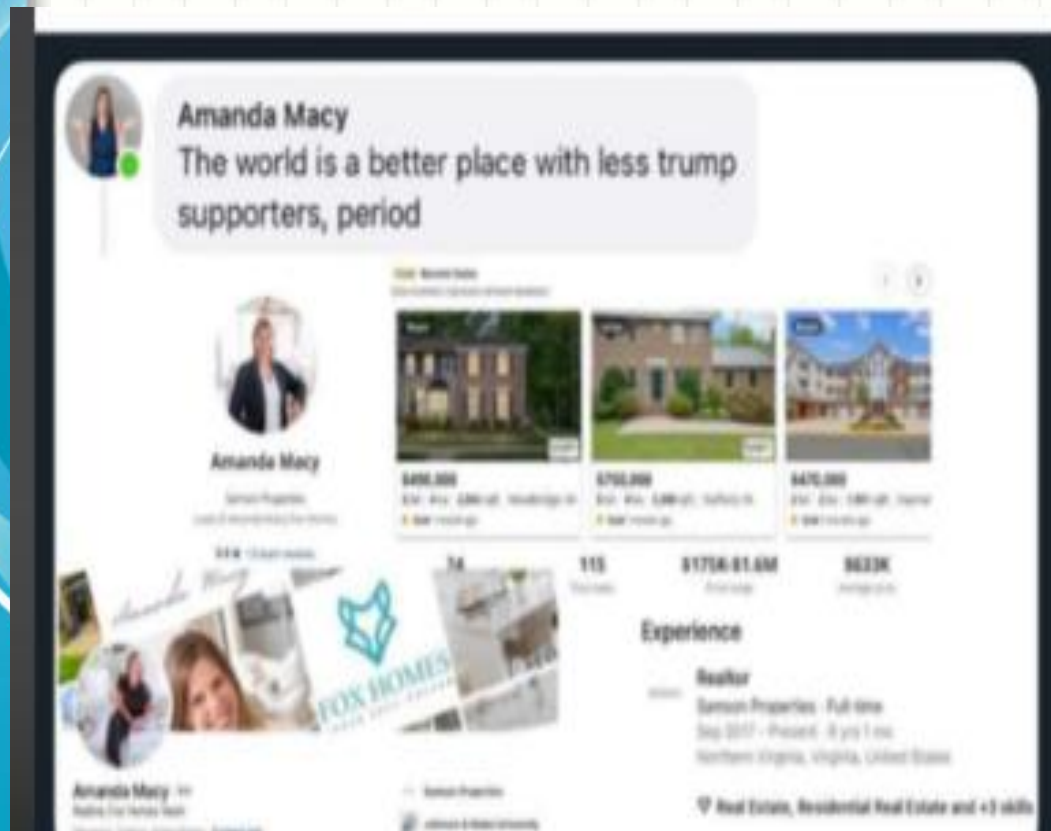


- **Follow the rules!**
- **The settlement is *not* a suggestion**
- **Listing agent is NOT responsible for negotiating your fee**
- **Working without a contract risks NOT getting paid!**



Let's Insult People!

- On an agent's page
- With the caption:
- "The 70's called and they want their living room back!"



Politics and Cruelty—Not a Winning Combo!

- This agent was fired by her brokerage
- In Virginia

Why?

- Promote yourself, business?
- Get referrals, recommendations?
- Establish yourself as an expert?
- Connect with friends?

Risk Shifting

- Property inspectors
- Home warranties
- Surveyors
- Attorneys/ title companies
- E & O insurance

Risk Management

- Confirm details
- Chronological logs
- Disclose, disclose, disclose
- Prepare for court
- Follow routine & guidelines
- Systems
- Broker in loop
- Report problems asap
- Review all contracts
- Fact? Or Opinion?
- Confidentiality & privacy

What belongs in your file?

- Required agency disclosure(s)
- Employment form(s)
 - Listing agreement
 - Buyer agency agreement
- All public data
- Copies of MLS, ads
- Seller property disclosure
- Home inspection report
- Chronological log
- Records from electronic lock box
- MLS history
- Copy of contract

What belongs in your file?

- Closing statement
- What else?

Notes of all phone calls, texts

Copies of emails

Copies of snail mail

Written instructions

Receipts for deposits

Record of deposits



What did you learn?

Did you get at least three “take away” ideas?

Are you going to stop doing anything you’ve been doing?

Thanks for coming!