

Your realty agent must disclose role in writing

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BALTIMORE SUN

MARCH 18, 2006

A pending lawsuit in Washington's Maryland suburbs is focusing fresh light on a growing problem: Realty agents are failing to disclose whom they represent in transactions - even where state laws require them to do so in writing at their first substantive meeting with a potential client.

According to new research by the National Association of Realtors, just 30 percent of all buyers during 2005 received disclosures about representation from their agents at their first meeting. Nearly half of all first-time buyers either received no disclosures anytime during the sales transaction or were unaware of whether they did or did not.

To the Realtor association's top lawyer, general counsel Laurie Janik, this is very bad news.

"I was so extremely disappointed" at the latest low disclosure percentages, she said in an interview. "Our eye is not on the ball anymore."

Most states require realty agents to inform potential sellers or buyers about who will be representing whom in writing. Agents frequently represent the property seller exclusively. But under "buyer-agent" arrangements, they may represent the purchaser exclusively.

Clarity about representation is crucial because sellers and buyers often divulge confidential information to agents about their finances, personal circumstances or bargaining strategies that can sharply affect pricing and negotiations. If a buyer mistakenly confides key personal or tactical information to an agent representing the seller, that agent is highly likely to pass it along for the advantage of the seller.

When agents fail to provide the written disclosures mandated by most states, clients may be misled into paying too much, forgoing contractual protections such as contingency clauses, and generally ending up dissatisfied with the outcome of the transaction. Some buyers or sellers end up angry enough to sue.

That's what Joel Stern of Silver Spring did after dealing with two agents affiliated with Weichert Realtors, one of the largest independent brokerages in the country. Though the specific factual allegations are complicated, the bottom line was this: Stern believed he was induced to sign a contract on a house with an excessive price because the agent he thought represented him as a buyer's agent was in fact functioning as an agent for the seller.

The agent did not disclose her representation until the contract signing, according to the suit. Maryland state law requires written disclosure much earlier. The agent's partner allegedly persuaded Stern to list his current home for sale through her with Weichert. The first agent also persuaded Stern not to include a contingency clause that would have required his current home to be sold before the new purchase could close.

The agents "defrauded [Stern] into overpaying" on the new house "because they assured him he could quickly sell his house," according to the complaint. Working together, the agents "were intent on making the highest commission" off Stern's purchase and in profiting further from the listing of his current home.

Stern had put a \$34,000 deposit on the home he sought to purchase.

He backed out of the contract when he learned that his agent represented the seller, not him as he assumed, and suspected that he had agreed to an excessive price.

A county circuit court ruled recently that Stern's agent's failure to disclose her representation was not sufficient to cancel the purchase contract outright. Stern is appealing that decision and seeking \$300,000 in punitive damages and the return of his \$34,000 if the contract is deemed valid.

Lawyers representing the agents and Weichert declined to discuss any aspect of the case, quoting a company policy of never commenting on ongoing litigation.

Stern's lawyer, Francis Koh, said the court's ruling essentially means that agents "can violate the law and not be held responsible. Mr. Stern believed [his agent] to be representing him. If he had known that she was working for the seller, he would not have gone ahead" with the transaction, said Koh.

What's the significance here for you? Putting aside the allegations in the unresolved Stern case, the statistical reality is that agents nationwide are neglecting to provide the upfront disclosures regarding representation that their own trade association - the National Association of Realtors - says they should.

Under the circumstances, you as a buyer or seller need to be on alert. Demand a formal disclosure of representation before beginning any substantive discussions with an agent. Do not assume that you are working with a buyer's agent whose sole loyalty is to you.

If it's not in writing, it doesn't exist. In the absence of a signed buyer-agent agreement or other disclosure to the contrary, your agent is almost certainly working for the seller and will squeeze the highest price possible out of you on the seller's behalf.

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