

REAL ESTATE ERRORS AND OMISSIONS RISK REDUCTION TIPS

While even the most careful professional may be the victim of a frivolous claim, diligent business practices help decrease risk. Rice Insurance Services Company, LLC (RISC) specializes in real estate errors and omissions (E&O) insurance. As of February 2019, RISC has handled more than twenty thousand claims against real estate licensees, giving us unique insight into claims and ways to reduce the risk of a claim arising in the first place. Even if these procedures do not prevent a claim, they may greatly enhance the chance of a successful defense.

CREATE A PAPER TRAIL.

-) Document conversations, recommendations, and activities in a log.
-) Confirm conversations by sending a follow up email.
-) Keep copies of any information you provide to your client or others related to the property or transaction.
-) Keep organized, detailed records of all real estate transactions.

When a claim is made, the parties often have conflicting versions of events. For example, Betty Buyer alleges her real estate agent Abe Agent did not disclose the property was subject to monthly homeowners' association (HOA) dues prior to closing. Abe tells the RISC adjuster he told Betty about the HOA and there would be fees. Abe says he told Betty he requested fee information from the listing agent but did not receive a response despite leaving several messages. Abe says he then tried to contact the HOA's management company numerous times but did not receive a response. According to Abe, he told Betty prior to closing he had been unable to get the information, but Betty wanted to purchase the property anyway, because she loved the house.

The adjuster asks Abe for copies of any documentation to support his version of events, such as emails to confirm the conversations and requests. Having such documentation would greatly enhance Abe's position. Otherwise, it will likely be much more difficult to defend without documented proof to confirm Abe's version, even if he did nothing wrong.

ASSUME IT'S NOT IF A PROBLEM WILL ARISE, BUT WHEN.

-) Be detailed oriented. Don't wait until the last minute to address problem issues. When people rush to resolve matters, they are more likely to make mistakes or overlook items.
-) Involve key professionals, such as attorneys, home inspectors, termite inspectors, appraisers, lenders, and surveyors when needed. Provide a list of several names but do not recommend a specific individual or firm.
-) Recommend inspections and a home warranty when you represent a buyer. If the buyer declines, have them sign a form confirming the declination.
-) Explain the importance of accurately and thoroughly completing the disclosure form when you represent the seller. Have the seller update the disclosure form if any issues arise while the property is listed.
-) Disclose any defects of which you are aware and maintain written evidence of your actions. If you're not sure whether an issue is a material defect, err on the side of disclosure.

It's often impossible to know what type of issues may occur until a problem arises. When a claim is made, you have the benefit of hindsight. A pool inspection may not seem critical until the buyer discovers after closing that key pool equipment had been removed. City permitting records may not seem important until it's discovered after closing that a prior owner made unpermitted additions.

FAMILIARIZE YOURSELF WITH TRUST ACCOUNT AND SECURITY DEPOSIT RULES.

-) Maintain detailed records of each deposit and disbursement.
-) Brokers should personally review bank statements and check behind any employee or bookkeeper who reviews account information.

It is a good idea to inform the listing agent or seller in writing if the buyer does not timely pay the earnest money. We are seeing more claims where there is a contract between a buyer and seller, but the buyer doesn't pay the earnest money, asks the selling agent to hold the earnest money check, or the earnest money check bounces. If the transaction does not close, the seller may claim they would not have held the property off the market had they known the earnest money was not paid.