

Three potentially costly mistakes real estate licensees make

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If you're honest with your-self, you probably roll your eyes at the thought of completing your continuing education hours as a real estate licensee.

It's something that can easily get moved to the back burner since you need to concentrate on building client relationships, closing deals and planning for the future. Going through a course where they talk about new forms, rules, laws and standards of practice is the last thing you want to do.

But, like it or not, the right education can help prevent you from being on the wrong side of a lawsuit or disciplinary action from the Colorado Real Estate Commission.



According to the most recent data available from 2014, there were 821 complaints filed against real estate licensees with the Colorado Real Estate Commission that year. When compared to the number of active licensees, that number might not seem significant. And it's not, unless you were one of the brokers on the wrong end of a complaint or lawsuit.

Having been called as an expert witness in many cases made against real estate licensees, there seems to be one major factor in all of them: Lack of timely education.

Eric Gold In my years both as an expert witness and as an educator, I regularly see three key areas where a lack of understanding leads to disciplinary action or being sued.

Exercising reasonable skill and care. The most common cause of complaints commercial real estate industry revolves around exercising reasonable skill and care.

This is such a broad category that almost anything can be put into it, but it's also the area in which a real estate licensee should be most careful since "exercising reasonable skill and care" is actually Colorado state law.

Exercising reasonable skill and care can include but is not limited to: proper contract preparation, advising clients to seek expert advice on subjects you are aware of but that are beyond your expertise and keeping your client fully informed regarding the transaction.

In one case I consulted on, a real estate licensee prepared a contract to buy and sell on a real estate commission approved form that was two generations out of date. In the buyer agency agreement, this broker agreed to take on the responsibility of personally completing the physical inspection and other due diligence on the property. After the closing, the buyer found out that the listing broker had missed identifying a gas tank on the property that had been leaking fuel into the ground.

Needless to say, by using an out-of-date version of the purchase contract, this real estate licensee did not exercise reasonable skill and care in his practice and was held to the standard of an expert when deciding his liability for taking on the additional duty of completing the due diligence and inspections. He should have recommended an expert.

Failure to disclose adverse material facts or latent defects. Pursuant to Colorado law, real estate licensees must disclose known adverse material facts regarding the property or their client. An adverse material fact is any material information that is contrary to the interest of either party in the transaction.

For example, one common mistake is a failure to disclose an adverse material fact because the licensee believed the issue was corrected (e.g., if you know the property was hit by a tornado five years ago, The most common cause of complaints in the commercial real estate industry revolves around exercising reasonable skill and care. you must still disclose it, even if it appears the property was repaired).

Breach of fiduciary duties. When a real estate licensee is an agent for his client, he is an advocate and has a fiduciary duty to promote the interest of his client with the utmost good faith, loyalty and fidelity.

Your fiduciary duties are listed in detail in every listing agreement you sign. Pursuant to Colorado law, it is actually a violation of the license law to demonstrate unworthiness or incompetency while acting as a real estate broker by conducting business in a way that endangers the public interest.

Bottom line: If you lack the knowledge or experience to handle a particular type of property transaction or a transaction in a particular geography, you should decline to provide the brokerage services or seek assistance of another real estate broker.

Avoiding these mistakes. The easiest way to avoid these mistakes? Take the mandatory four-hour class earlier in the year in person from an expert in your area of practice, pay attention to the course material and then apply your learnings. That also goes for elective courses. Make sure they're relative to your particular practice area. By taking courses from someone familiar with commercial real estate practices, you're much more likely to learn how important updates will directly affect your transactions and less likely to find yourself in trouble .

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