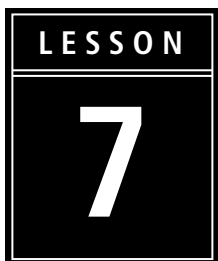


Disclosing Latent Defects: Always tell the truth about the property or the transaction



To earn the respect, and trust, of your clients, it's imperative that you always tell the truth; even hard truths if the situation demands it. For the long-term health of your business, you don't want to earn the reputation that you selectively deal with the truth, or that you will do anything to close a deal.

Yes, you have to protect the interests of your clients, and disclosing latent defects may seem counter to their interests. But in the long run, full disclosure will save you and your clients far more headaches and legal worries than failing to disclose. It's simply good for your business to deal with your clients, other agents and their clients honestly. That said, you are not expected to act as an expert in any field other than real estate; no one expects you to be a civil engineer or a lawyer. If you have any doubts at all about a property, refer your client to someone who is qualified to render an opinion.

TIPS

1: When you are new to the business, disclosure can be an overwhelming issue. If you have any doubts, talk to your broker or sales manager. They can give you guidance.

2: Because disclosure affects everyone, your fellow agents have valuable experience you can draw on, too. Share examples among yourselves.

3: Under the Code, you are not obligated to discover latent defects that are not reasonably apparent. If you know of latent defects, though, you are obligated to disclose them. If you represent the seller, make sure your client understands the obligations spelled out in Article 2 of the Code.

4: When in doubt, talk to the seller about disclosing. There is no substitute for good communication.

CASE STUDY

Case Study #2-3: Obligation to Disclose Defects

A seller comes to your office, explaining that his company is transferring him and he wants you to sell his house. In the listing contract, the seller specifies that the house has "hardwood floors throughout." You show the house and consequently reach an agreement with a buyer. After the transaction closes and the seller moves out, the buyer receives a bit of a shock.

On the day the buyer moves in, he sees the house unfurnished for the first time. It turns out the hardwood floors exist only on the outer rim of each room, with subflooring material in the middle, which had been covered by rugs. The seller, when confronted, says that he had built the floors that way 10 years before to save money and had forgotten about it. He refuses to make any amends for the situation.

The buyer then files a complaint against you, saying you should have told him about the state of the floors.

So are you guilty of navigating disclosure and violating the Code?

At a hearing before a Hearing Panel, during which all of the facts were brought out, the Panel found that you had acted in good faith in accepting the seller's description of the property. While Article 2 will bust you for concealing, exaggerating or misrepresenting facts, you'd been upfront with your buyer by truthfully passing on what the seller had told you. There was no reason you should suspect the seller had taken such a miserly and unusual course when building his house and you are not in violation of Article 2. Good job.



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Instructor's Notes

- Try to create conversation; lectures are less interesting. Try to talk about personal experiences. Encourage newer agents to talk about situations that might be confusing. In the long run, dialogue is good for your business.
- Have your agents write down the most unusual defect they've ever seen in a house.
- Share a few stories with the group. Use the time to point out your responsibilities as a REALTOR® to both your clients and your profession.
- Be sure and stress the line between representing your client and being truthful throughout the process.
- For agents that miss your meetings, these lessons are also available online at thecodeisgoodbusiness.com/va/lessons.

