

Legal Hotline Risk Management Guide



Although the calls that come in to the legal hotline may differ in the specific facts, there is often a common underlying issue. That issue is whether the broker should have done something differently or didn't do something they should have. From those conversations, I have created a list of Dos and Don'ts. Hopefully the following list will be taken into consideration and if so, should help achieve a successful transaction as well as protect brokers from any possible liability.

DOs

- ✓ **Read contracts to/with your client.**
Make sure your client actually reads and understands the contract they are going to be bound to by either reading it to them or along with them.
- ✓ **Stress the fact that the Listing Contract and the Purchase Agreement are actual, legally binding contracts.**
It seems that home buyers and sellers have the opinion that Listing Contracts and Purchase Contracts can easily be cancelled by them at any time at their sole discretion. However, since these are bilateral contracts, it takes both parties to agree to terminate the contract.
- ✓ **Deliver earnest money immediately, or at the agreed-to time as specified in the Purchase Agreement.**
According to the pre-printed language on the IAR Purchase Agreement, earnest money is to be submitted to the seller at the time the offer is made. The parties can agree, in writing, that the earnest money will be submitted at any other mutually agreeable time. However, as stated in the contract, if the buyer fails to submit the earnest at the agreed upon time, the seller may terminate the contract. Therefore, in order to keep your buyer in the contract, the earnest money must be delivered timely.
- ✓ **Deliver signed documents to the co-operating broker immediately.**
One of the required elements of an accepted contract is the delivery of the signed contract. In other words, until the signed contract is delivered to the hands of the co-operating broker, there is no binding contract. Since either side may rescind their offer or counter-offer before acceptance of the same, it is imperative that brokers deliver all signed contracts to the other side as quickly as possible.
- ✓ **Make sure all contracts are kept current and in force with written agreements to extend deadlines.**
Verbal agreements to extend closing dates, etc. are NOT enforceable and should never be relied upon. Protect your client and yourself by getting an Amendment to the contract signed by both parties.
- ✓ **Make sure your buyer understands they must do an inspection response before seeking a Mutual Release.**
Pursuant to the IAR Purchase Agreement, a buyer must give a seller the opportunity to agree to fix any defect found in an inspection. Therefore, the buyer cannot just decide that they no longer want the property after discovering a defect – unless they reserved the right to do so in the Purchase Agreement with specific language doing so.
- ✓ **Advise your client, buyer or seller, to speak with their attorney first if they are considering breaching a contract.**
Clients need to understand what damages they may be liable for prior to breaching a contract. Since you can't give legal advice, you should direct them to their own legal counsel.

focus on: Legal Affairs *(continued)*

DON'Ts

✗ **Back-date any contract.**

The back dating of a contract is fraudulent and should never be done.

✗ **Sign any contract on behalf of your client.**

You could get stuck buying a home you didn't plan to purchase. Whether they are buying or selling, clients simply need to make themselves available for signature. Given this technical age, they really shouldn't have any excuses not to be available. If it just isn't possible to get a signature, the process will need to wait until they are available and they may or may not lose out on the purchase or sale of their home.

✗ **Tell your client that they can easily get out of a Purchase Agreement once it is in place.**

Clients need to understand the seriousness of their actions when they enter into a Purchase Agreement. A breach of the contract can result in the client being liable for monetary damages to the other party.

✗ **Attend a home inspection on behalf of your client.**

The broker should not be present at an inspection. Often times the inspector will mention things during an inspection that may or may not appear on the inspection report. If the inspector tells the broker something and the broker fails or forgets to share it with the client there will be a potential for liability on the broker.

✗ **Order inspections or other services on behalf of your client in your name.**

I hear all the time about brokers who have ordered home inspections, surveys, etc., on behalf of their clients. This poses a couple potential problems. 1) Brokers should not be the one to select any service providers for their clients and 2) brokers can get stuck paying the bill for the service.

✗ **Fail to list all items that are to be included in the sale on the Purchase Agreement.**

If an item is mentioned in the MLS/BLC or marked on the Seller's Disclosure as being "not defective," it does NOT mean that it will stay with the property. The contract is the ONLY thing that creates the agreement between the buyer and seller as to what will be included in the sale of the property.

✗ **Give legal advice.**

As a real estate broker, you should refrain from giving legal advice to your client. You are able to fill in blank lines on a legal contract which has been prepared by attorneys (such as the Indiana Association of Realtor® forms). However, any attempt to answer legal questions presented by your client can result in the unauthorized practice of law. You should direct your client to their own attorney for answers to their legal questions.

Please remember that the Legal Hotline is available to assist principal or managing brokers and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday. The Legal Hotline can be reached at (800) 444-5472. Brokers may also send e-mail questions to legalhotline@indianarealtors.com or fax questions to (317) 842-8494.