

focus on: Legal Affairs

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2009 WHAT'S "HOT" ON THE LEGAL HOTLINE YEAR IN REVIEW



Here are some actual member legal hotline questions that were answered in the *Indiana REALTOR® Advocate* during 2009.

Hopefully the review will be of some assistance to you. As always, thank you for your questions and continued support and please remember that principal and managing brokers or their written designates may reach us through the IAR Legal Hotline at

1-800-444-5472, or by fax at (317) 842-8494, between 9 a.m. and 5 p.m., Monday through

Friday. You may also e-mail your questions to legalhotline@indianarealtors.com. You will receive a phone call in response to your faxes and e-mails.

Q What words CAN be used in advertising in order to avoid any fair housing issues?

A In general, with regard to fair advertising, descriptions of property usually physical in nature, which are not preferential or limiting (i.e. two bedrooms, cozy, family room, quiet streets, etc.) are not discriminatory on their face and do not violate fair housing advertising rules. In other words, we suggest you always describe the property and never the "appropriate" persons. You may also indicate that the property is accessible to handicapped individuals or intended for and operated as housing for older persons.

Q As a broker, if one of my salespeople participates in a price-fixing discussion, my firm cannot be held liable unless I have personal knowledge of the salesperson's conduct, right?

A Wrong. Just as ignorance of the law is no excuse, a broker's ignorance of his salesperson's conduct is no defense to an antitrust charge. A brokerage firm will be held liable for the conduct of its salespeople whether or not the principal broker was personally aware of that conduct.

Q In order to re-coop some of the firm's operating costs, we charge every listing client a fee that is in addition to the commission they pay. While our clients have all been accepting of it, I have heard it may be a problem - is it?



1.800.444.5472

A **BEWARE:** Any fee which is in addition to commission that is being charged to either a buyer or a seller must be a legitimate one which is for a service that is being provided that goes above and beyond what would normally be provided by a broker to his/her client in a real estate transaction. A federal district court recently ruled that an administrative brokerage fee of \$149.00 paid by a home buyer to the brokerage firm that represented her was not sufficiently related to any specific settlement service performed on behalf of the client by the brokerage (Busby v. JRHBW Realty, Inc. d/b/a RealtySouth). This resulted in a violation of Section 8 of the Real Estate Settlement Procedures Act (“RESPA”)

Q I manage a rental property for an owner, but the property has gone into foreclosure. The renter wasn’t even aware the home was in foreclosure until they were approached by the new owner telling them they must move immediately. Should the tenant have received notice of the foreclosure?

A The passage of the “Helping Families Save Their Home Act of 2009” includes some provisions to protect tenants from eviction as a consequence of a foreclosure affecting the property being rented. Under the new law, tenants will have to receive 90 days notice prior to being evicted when their rental home is foreclosed upon. Another provision of the Act is that tenants must be allowed to stay in the home through the end of their lease, with two exceptions: 1) the new owner wants to occupy the property as a personal residence, and 2) there is no lease (month to month), or there is a lease but state law allows the lease to be terminated at any time upon notice. Indiana law does not provide for a lease to be terminated at any time upon notice, unless the parties agreed to such in their contract or in the event of a breach (eviction proceedings).

e-mail
legalhotline@
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Q As an agent, I am leaving the firm I am currently associated with and going to work under a new principal broker. I approached my current principal broker and they have indicated to me that they will not allow me to take my 15 listings with me to the new company. Those are clients that I secured and, in fact, one is even a relative of mine. I don't understand why my broker thinks they can keep my listings. Help!

A According to Indiana license law, all listings belong to the principal broker and “shall remain the property of the principal broker” once a licensee terminates his or her association with the principal broker. Unless there is a written agreement between the principal broker and the licensee to the contrary, the broker has every right to retain the listings.

Q As a principal broker, I have an agent who is doing property management ‘on the side’. Since I don't want to be involved with property management, the agent is doing it as his own business. That is OK, isn't it?

A No, that would not be OK. Pursuant to Indiana license law, a person licensed as a real estate salesperson must act under the auspices of a licensed real estate broker when performing duties that require licensure. Since property management is an act which requires licensure, an agent may only perform those acts if they are doing so as a representative of the principal broker. By the way, according to the Indiana Attorney General's Office, a common complaint they are currently receiving is concerning people who are performing property management without any real estate licensure at all.

Q The bank only accepts offers to be submitted on their website. However, once one offer has been submitted, the system does not allow for any other offers. I have received 2 more offers from other buyers but I can't submit them. The buyer's agents are getting angry because I have told them there is no way to submit their buyers' offers since I can't do it on-line. I'm being threatened with having complaints filed against me but my hands are tied, right?

A Both the Indiana law (IC 25-34.1-10-10 & 876 IAC 1-1-23) and the NAR Code of Ethics (Article 1, Standard of Practice 1-6) clearly impose the obligation on brokers to present all offers. Because brokers are aware of this obligation, they should discuss this with the bank prior to accepting the listing. In doing so, arrangements should be made to submit offers via alternate means (i.e., e-mail, U.S. mail, etc.). In the alternative, the broker may obtain written instructions from the seller client indicating that they do not want any offers to be presented once one offer is on the table. According to both the Indiana law and the Code of Ethics such written instructions will relieve brokers of their obligation. □