

A DIRTY DOZEN MISTAKES TO AVOID
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REALTORS® make mistakes. Heck, we all do. But we should all want to minimize mistakes and the problems they can cause. This article will set out 12 of the most significant mistakes REALTORS® make in real estate transactions in the hope you will not make them.

Using a Seller to Buyer compensation form when the Listing Broker has already agreed to compensate the Buyer Broker is a poor choice. Some agents do this as a “belt and suspenders” approach and argue it is the same money. But, when a Seller has agreed to pay the Listing Broker and the listing allows payment of part to the Buyer Broker, adding a separate agreement for the Seller to pay direct is adding an additional expense. Since the Buyer Broker is limited in what the Buyer Broker can get paid by terms of the Buyer Broker agreement, there is no need for additional agreement for direct payment from the Seller.

Sometimes this double dip with co-broke and separate Seller agreement to pay is due to the Buyer Broker being too lazy to contact the Listing Broker. Missing that contact not only fouls up the compensation arrangements, but it also deprives the Buyer Broker of the opportunity to get lots of good information about the property.

Mistakes in HOA Disclosure forms can allow a Buyer to terminate. The figures in that form must be limited to current assessments and fees charged only by the HOA involved (not adding in other charges such as the country club or even condominium assessments). If the figures are wrong, the form does not meet the statutory disclosure mandate, and the clock never starts on the Buyer’s 3 days to terminate. That means the REALTOR® wrote an option contract for the Buyer and the Buyer can back out any time.

When a REALTOR® does not require the parties to sign a condominium addendum at the time of contract, trouble can follow. The new structural disclosure requirements made condominium contract disclosure much more critical. Also, the NABOR forms now require attaching a separate condominium addendum to include the mandatory disclosures. No addendum means the Buyer can terminate all the way to closing.

Believing a Buyer has 5 days to terminate after end of inspection period in NABOR’s As Is contract has been the downfall of many REALTORS®. The As Is contract must be terminated by the end of the Inspection Period, or the Buyer accepts the property as is. A conditional termination request that combines a Customer’s request for a credit or repair items along with a termination if the Seller does not respond is not a legitimate form of communication with the Seller.

All NABOR contracts mandate escrow for repairs not completed by closing. What could possibly go wrong? First, the escrow is to be 200% of the estimated cost of the entire repair, not just what is unfinished, and the 200% is not a cap if the total cost exceeds the escrowed amount. A lot of Sellers complain that they were not aware because the REALTOR® did not explain how the escrow works. More importantly, the mandatory escrow may not be acceptable to a lender. If the Buyer (with REALTOR® agreement) waived a financing contingency, escrow could stop funding and the Buyer default at closing. Who does the Buyer always blame....the REALTOR® of course!

Some REALTORS® understand that lenders do not like personal property included in the contracts they get for mortgage financing. So, they draft a personal property sales contract. Problem: that is practicing law. Others use a bill of sale...oops. A bill of sale conveys ownership so when the Seller gives the Buyer a bill of sale, Seller gives ownership to the Buyer. Another problem is drafting

a bill of sale is practicing law. Even a title company cannot draft a bill of sale. Always check with your Broker before including either a Personal Property Sales Agreement or Bill of Sale when writing a Sales Contract for your Customer !

Contracts have deadlines and even when time is not of the essence, a date for performance has meaning. All too often acceptance or a counter is dated after the deadline for acceptance. That can mean no contract and the whole deal blows up. It can be especially troubling when the Seller ends up in contract with another Buyer. The first Buyer will want the property even more when it turns out someone else is buying. As things get ugly, the REALTOR® is square in the middle of blame.

Some REALTORS® have trouble counting days and time. Not in the traditional way, but when computing deadlines. When the contract provides a number of days from the Effective Date as the time for action, the counted days START the day AFTER the Effective Date (the Effective Date is Day 0 not day 1). Same holds true for other time calculations. Getting this wrong at a minimum starts a controversy that should not start and can quickly make the miscalculation look foolish.

Florida law mandates all licensed sales agents including REALTORS® must include the complete Escrow Agent information on ALL residential sales contracts. Some don't. That is a FREC problem and an ethics issue. Do not put "TBD" or leave it blank. Remember the Escrow Agent does not necessarily need to be the eventual Closing Agent. Several Brokers currently hold Escrow monies so check with your Broker to be certain.

When an addendum is to be part of the contract it must be referenced in the contract. NABOR forms make that easy with a checkbox at end of the form. If not checked, the addendum will not be NOT part of the contract which means the offer can be accepted, the addendum rejected, and the parties will have a contract without the addendum. If you do not want to suffer through that, check the box for any addendum and attach the signed addendum.

Walkthroughs are one of the most important parts of closing. This is the Buyers perfect opportunity to make sure everything is there, everything is working, and all repairs are completed. Buyers who cannot attend the walkthrough often will ask their REALTOR® to do the walkthrough. Many Brokerages' E&O policies will not cover the REALTOR® acting as the designated representative. This can result in the REALTOR® becoming the guarantor that everything is good and might find the Buyer requesting the REALTOR® to pay to Buyers for items that are missing or not repaired properly.

Check with your Broker but conducting a walkthrough for a buyer is a clearly a dangerous practice. Also suggest to your Buyer when repairs have been agreed upon to bring their Home Inspector to the Walkthrough to verify that all requested repairs have been completed and done properly. If one or more of the repairs have not been completed or done properly the Sales Contract provides for the Buyer to request escrow monies be withheld from the Seller's proceeds until all repairs have been completed properly.

Last but certainly not the least mistake made by REALTORS® is failing to read this article all the way to the end. If you read to here, congratulations! You will not make any of the dirty dozen mistakes and will hopefully have many happy customers.

The information contained in this article is not intended as legal advice. For questions about specific circumstances, the reader should consult a qualified attorney.