<u>Where Realtors make errors playing attorneys aka UPL</u>

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In today's real estate market, agents are expected to wear many hats — negotiator, marketer, coordinator, and trusted advisor. But there is one role a Realtor® must avoid: ATTORNEY.

In Florida, the unauthorized practice of law ("UPL") can expose real estate professionals to serious liability, disciplinary action, and even criminal penalties in certain situations. The good news is that most UPL issues can be avoided with awareness and proper boundaries.

Below are several common pitfalls Florida Realtors should avoid:

1. **<u>Drafting Custom Contract Language</u>**

Florida Realtors may complete approved real estate forms in connection with a transaction. Problems arise when agents begin creating legal language themselves.

Examples include:

- Writing custom addenda
- Revising legal clauses
- Drafting seller-financing provisions
- Creating indemnity or liability language
- Modifying legal rights or remedies

Even well-intentioned edits can create legal consequences for the parties involved.

Best Practice: Use approved forms and involve an attorney whenever custom drafting is needed.

2. **<u>Interpreting Legal Rights Under a Contract</u>**

Realtors often help clients understand the transaction process, but interpreting legal rights crosses the line into legal advice.

Risky statements include:

- "The seller is definitely in breach."
- "You can cancel the contract."
- "You will win if this goes to court."
- "This clause fully protects you."

Best Practice: Explain the practical process but leave legal interpretations to attorneys.

3. **Advising Clients How to Take Title**

Ownership structure decisions can affect:

- Probate
- Estate planning
- Asset protection
- Taxes
- Homestead rights

Realtors should avoid recommending:

- LLC ownership
- Trust ownership
- Joint tenancy structures
- Life estates or Lady Bird deeds

It is important to know about these options because you will be asked. But it is equally important that you not make recommendations for title given the legal significance of the choices.

Best Practice: Encourage buyers to consult legal and tax professionals before deciding how to hold title.

4. **Preparing Deeds or Legal Conveyance Documents**

Drafting deeds or bills of sale is one of the clearest examples of the practice of law. This includes:

- Warranty deeds
- Quitclaim deeds
- Corrective deeds
- Life estate deeds

Bills of sale are particularly confusing. Many Realtors will draft "bill of sale" for personal property, not realizing that they meant to draft a contract for the sale of the personal property. Neither of these documents should be drafted by a Realtor because of the significant tax consequences and the fact that a bill of sale actually transfers title when it is delivered to the buyer signed by the seller.

Best Practice: Transfer document preparation should be handled by a licensed Florida attorney.

5. **Giving Advice on Probate, Foreclosure, or Bankruptcy**

Real estate transactions often overlap with complex legal issues. Realtors should be cautious when discussing:

- Probate administration
- Inherited property rights
- Foreclosure defenses
- Deficiency judgments
- Bankruptcy consequences

Statements such as "you do not need probate" or "the lender cannot pursue you" can create significant exposure.

Best Practice: When unique situations arise, refer clients to qualified legal counsel early in the process.

6. **Negotiating Legal Disputes**

While agents routinely negotiate business terms, legal disputes are different. Potential UPL concerns arise when agents:

- Threaten legal action
- Draft settlement agreements
- Advise clients on litigation strategy
- Interpret default remedies

Best Practice: When disputes escalate into legal territory, involve counsel promptly.

A SIMPLE RULE TO REMEMBER

A helpful guideline for Realtors is: "Explain the process — not the legal effect." Be the Source of the Source.

One of the safest and most professional responses an agent can give is:

"That is an important legal question that should be answered by a Florida attorney."

Clients appreciate professionals who recognize the limits of their role and connect them with the right resources. Most UPL issues do not arise from bad intentions. They happen because agents genuinely want to help their clients solve problems quickly. However, staying within the scope of a real estate license protects not only the Realtor®, but also the client and the transaction itself. Strong Realtor-attorney relationships are one of the best ways to reduce risk, avoid disputes, and keep transactions moving smoothly.