

**AGENT ALERT: TRY TO STAY IN YOUR LANE
WHEN YOU ARE ASKED TO GO ABOVE AND BEYOND**

It is a scenario that plays out thousands of times around the country by real estate agents and it spreads fear through the hearts of brokers and managers but brings a sense of joy and financial stability to litigation attorneys. A client retains the services of a real estate brokerage firm and the agent is excited at fulfilling the fiduciary obligations that flow from that agency relationship. As we know those fiduciary obligations include obedience, loyalty, disclosure, confidentiality, accountability and reasonable care. The agent conceivably understands that the manner by which he or she services the client is an overriding factor for any seller, landlord, purchaser or tenant. After all, with technology, social media and data sharing that is common to most real estate offices, agents spend considerable time and effort in separating themselves from the pack by touting the services provided to clients and customers who retain them for purposes of pursuing the American dream of home ownership. The question is, how far will an agent go in an attempt to procure the listing or hold onto the listing once it is obtained.

Unfortunately from a risk management point of view, the services that are asked of the agent by the client or customer sometimes far exceed the normal boundaries usually associated with real estate brokerage and the willingness of agents to venture beyond those boundaries may bring unforeseen consequences to both the agent and the firm. Recently, I have received anxious phone calls from brokers and agents involving scenarios where agents have attempted to satisfy the demands of their principals in countless ways: acting as a home sitter and watching the property while the sellers are on vacation or out of town and leaving the door and/or windows unlocked resulting in a home invasion, walking the family pets who run away and are never to be found again, shoveling snow or removing ice from the sidewalk or driveway and someone slips and falls causing bodily injury; providing babysitting services and the child has to be rushed to the hospital because of a medical condition, remove debris from the property which results in damage to the walls or other structures or even worse, the item that was thought to be debris was really a family heirloom, painting of rooms where the paint splatters causing damage to hardwood floors or rugs, going to the building department to remove violations against the property, speaking to adjoining landowners about relinquishing easements or removing encroachments, reviewing the title reports and offering advice on how to remedy a certificate of occupancy issue or an ancient mortgage that was never removed from the record, promising to visit the property to make sure the utilities are operational and the heat is functioning only to discover that the water pipes froze and burst causing the entire home interior to be destroyed by water damage, and the list goes on and on.

As you read this, I am sure there are those of you who will say “Are you not staying in YOUR lane, counselor, by advising real estate agents how to do THEIR business.” After all, I do not practice real estate brokerage nor would I profess to tell an agent or brokerage firm how to best service a client or customer. Nevertheless, I believe I am qualified to alert you as to the legal ramifications of good intentions gone awry. If you choose to perform these or many other tasks in the name of “service”, then by all means, do what it is that you think you do best; however, you have an obligation to notify your broker and/or manager as to what you are being asked to do and whether the firm will authorize you to provide that service. And to you, the brokers and managers, when confronted with an overzealous agent who is running out the door with a baby

monitor or paint brush in hand, it would be wise to contact your errors and omissions carrier to confirm that such activity would be covered if, as and when a lawyer comes knocking at your door because Fido, the medal winner at the Kennel Show, was last seen running down the block with your agent far in the distance. As always, direct yourself accordingly!!

Submitted by Alfred M. Fazio, Esq. of Capuder Fazio Giacoia LLP. Visit our website at CFGNY.com for copies of recent articles as well as other areas of interest to the real estate community. If you would like to be added to our mailing list and receive future articles, please click the link below.

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