

Reduce the Risk of Being Sued!

1. Ask Yourself:

- **What is the REVISION date on my copy of the TREC Rules?
- **What is the EXPIRATION date of my real estate license?
- **Is my assumed name certificate PROPERLY registered?

2. Follow Established Company Policies/Procedures.

- **Policies and procedures are for ALL agents.
- **Experienced agents often let routine REPLACE policies and procedures.
- **Plaintiff's lawyers LOVE to argue that the agent "violated the agency's own procedures."

3. Keep and Follow Checklists and File Activity Logs.

- **DOCUMENT all agreements, discussions, and recommendations (email, phone, FAX).
- **Create a "PAPER TRAIL" to support your position.
- **Notes made in the ordinary course of business, at or near the time of the event, are ADMISSIBLE.
- **Always imagine how a JURY, years later, would view a sequence of events (swearing match).
- **Does the file SPEAK for itself? Is it in order or do you need to explain it?

4. Keep a Neat, Organized File.

- **Organization allows creation of a timeline and helps locate CRITICAL documents.
- **Organization helps PREVENT mistakes.
- **Save ALL FAX confirmations and emails.
- **In a lawsuit the file will have to be produced as kept in the ORDINARY course of business.
- **You cannot make the file neat AFTER the fact.

5. Fill out Paperwork Correctly.

- **Plaintiff's lawyers EXPLOIT paperwork mistakes.
- **Use the CORRECT form and fill it out PROPERLY.
- **AVOID blanks.

6. Calendar Deadlines with Reminders.

- **READ and KNOW your contracts, effective dates, options, deadlines.

7. Don't Unilaterally or Orally Modify Written Contracts.

- **CLEARLY note any changes and have all parties initial them.
- **AVOID arguments over contract formation or contract terms.
- **Does the contract reflect – AT A GLANCE – what the deal is?

8. *Always Put the Interests of Your Client and Customer Ahead of Your Own.*

**An agent has a fiduciary duty to their client and must act with an EXTREME measure of honest, unselfishness, good faith, fairness and FULL disclosure of ALL material information.

**The AGENT bears the burden of proof if there is a claim of breach of fiduciary duty.

**TREC Rule 535.2(b) A real estate broker acting as an agent owes the very HIGHEST fiduciary obligation to the agent's principal and is obliged to convey to the principal ALL information of which the agent has knowledge and which may AFFECT the principal's decision. A broker is obligated under a listing contract to negotiate the BEST possible transaction FOR the principal, the person the broker has agreed to REPRESENT.

9. *Disclose ALL known Latent Defects and Information that could affect the Decision to Purchase.*

**Check "in-house" company files to learn of PRIOR inspections, engineering reports and Seller's Disclosure Statements.

**Are repairs of noted defects DOCUMENTED?

**Are there PRIOR structural repairs?

**Do NEIGHBORS know of a problem?

**What every Plaintiff says: "If I had KNOWN that, I WOULDN'T have bought the house."

**Is there something about the house, the neighborhood, or the area that should be DISCLOSED?

10. *Don't Make Representations You CAN'T back up.*

**If you MAKE a representation, you have the DUTY to know if it is true.

**You are LIABLE for a misrepresentation, even if you acted in GOOD FAITH and thought it was true.

**"I DON'T KNOW" is a perfectly acceptable response.

11. *Tell the Client or Customer when You are Relying on Information Provided by Another.*

**"ALL measurements, taxes, age and financial data are approximate and provided by other sources. Buyer should independently VERIFY the same before relying on it."

**"ALL information deemed accurate, but NOT reliable."

**Use the "NOTICE OF INFORMATION FROM OTHER SOURCES" form.

12. *Know Exactly what Your Duties are-and Aren't!*

**If you ASSUME a duty, you MUST perform it properly.

**Many services are rendered that are not REQUIRED under a Listing Agreement or Buyer's Representation Agreement.

****You could be LIABLE if those services are performed NEGLIGENTLY.**

****What every Plaintiff says: "I completely relied on my AGENT."**

13. Have the Buyer SIGN the Seller's Disclosure.

****Have the buyer initial contract statement that the buyer has RECEIVED the notice.**

****Have the buyer initial or sign any PRIOR inspection reports.**

14. Don't give Evasive Answers to Client's or Customer's Questions or Pretend to Know MORE than You do About Property Conditions.

****"Those cracks DON'T mean anything!"**

****"Foundation settlement is COMMON in this area."**

****"I DON'T KNOW" is ACCEPTABLE!!!**

15. Keep Separate Accounts for Escrow Funds or Deposits.

****"Special Account," "Operating Account," or "Property Management Account."**

****Trust or Escrow Accounts are Required...If NOT, commingling is presumed.**

****The sponsoring broker MUST be a signatory on the account.**

16. DON'T ignore Your Instincts!

****The PROBLEM client or customer is likely to become a PLAINTIFF!**

****"I KNEW they were trouble when I FIRST met them!"**

****How many other agents have they FIRED because "they couldn't get it RIGHT?"**

17. DON'T Rush to Closing!

****A delay in receiving commissions is NOTHING compared to lost time and money from a suit.**

18. DON'T Think that it will NEVER Happen to YOU!