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55 YEARS

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From the eyes of a real estate industry expert witness

September 05, 2013 - Northern New England

As I've often been asked to give an expert opinion on real estate litigation, judging one's peers might be the toughest part of my professional career; ditto in my role as the chairman of the N.H. Commercial Investment Board of Realtors grievance committee.

When the route is litigation, I'm mostly asked to opine for hire as I was a lobbyist for the N.H. real estate industry in a past life and have had extensive involvement in laws and rules of the industry, as well as having been a continuing education instructor for many years. I've also managed both a large residential office and a large commercial real estate firm and see and understand the vast differences (even though most laws and rules apply equally to all licensees irrespective of product type brokered).

Plus, not many in our industry care to judge others.

Litigation is a way of life. My firm retains some excellent lawyers to wind our way through complex transactions with substantial consideration often in play. That not all deals go smoothly is an understatement.

If a grievance occurs in the transactional process, everybody lawyers up. Most brokerages have errors and omissions insurance and aggrieved plaintiffs also know that treble damages are available through the N.H. Consumer Protection Act.

Additionally, more and more real estate brokerage practitioners are coming under the ever increasing spotlight of the N.H. Real Estate Commission and its administrative actions and fine capabilities. Over the past decade, the N.H. General Fund has been the recipient of increased revenues from defendant real estate licensees found in violation of the N.H. Real Estate Practice Act (RSA 331-A).

In my case load, most grievances come from property condition disclosures or lack thereof (four of the last five cases I've been involved with). The old standard of caveat emptor (buyer beware) has had a seismic shift in the last couple of decades. The general question of whether the broker actually knew of a material defect and failed to disclose has morphed into whether the broker should have known and disclosed. Listing brokers and buyer/tenant reps are all under the microscope. Their supervising brokers, too.

In one recent assignment, the Plaintiff was a buyer broker suing the buyer client for purchasing investment real estate without using (or telling) the agent. Buyers surely can be liars.

The commission has also cracked down on out of state brokers listing and selling real estate in N.H. without a N.H. broker's license, as well as paying particular attention to licensees who fail to use proper agency disclosure with consumers.

How to ensure you stay out of the legal and regulatory minefield? Here are some simple tips: put everything in writing with a strong paper trail; adopt a Brokerage Policy and Procedures Handbook; be honest to all parties; remember that one transaction won't likely allow you to retire but one bad

deal could mean you can't; and, of course, hire a good lawyer.

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