

2016 AREA Purchase Contract Revisions

Backgrounder: Avoiding Liability in Your Agency Role

Agent's Role:

Agency is a relationship that occurs when one person (agent) is authorized to act or conduct business for another person (principal or client). A client gives the agent certain rights to act on their behalf. In real estate, this relationship is often established through a written service agreement.

A client who is searching for or selling a home expects to rely on an agent's expertise and specialized knowledge to help them. The agent knows how to search for suitable property and the ins and outs of home buying and selling. Agents also write the contract and conduct negotiations under the guidance of the client. In return for the agent's expertise, the client will agree to pay a reasonable fee for agency.

While agents have expertise in selling and purchasing properties, there are related issues and serious decisions clients must make. Often, the agent will not be qualified to help the client in these areas and put themselves at risk if they take on the responsibility. Examples:

If a client asks their agent if a property can be used for a particular purpose, and the agent is unsure of the answer, the agent should not give advice.

If a client asks the agent if the nearby school can accommodate the needs of their child, the agent should recommend the client do their own research. This information is specific to the client's personal needs and not the real estate.

Agents are personally liable for their own actions and therefore, should not hold themselves out as being knowledgeable in areas where they do not have specific expertise.

Agents are also responsible for disclosing information that they know about, if disclosure is mandated by law or the contract. A client can't prevent an agent from disclosing something if the disclosure is mandated by the contract or by law. If either the agent or client is unsure, legal advice should be sought.

To help prevent misunderstanding, agents should capture all statements being relied on about the property in the contract.

How the 2016 contract helps reduce agent liability:

The 2016 purchase contract:

- Places the onus on the client to ensure they obtain advice they need before they sign the contract. The role of the agent is to recommend they get this advice from a competent source. In this way, the agent can protect themselves while at the same time serving the client.
- Broadens the scope of disclosure from sellers and buyers; for example, the contract states that Material Latent Defects and known unpermitted work must be disclosed. The role of the agent



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is to ensure the client understands that these items must be disclosed and that the disclosure obligation extends to the agent.

- Details the intentions of the parties in Section 15 – Confirmation of Contract Terms. This section states that the contract reflects the entire agreement of the parties. The agent should ensure all statements made and relied upon are recorded in writing in the contract.

These contract clauses and the agent's understanding of their duties and limitations can work together to reduce the liability of the competent REALTOR®.